

Chapter 1

Overview

1.1 The Senate Education, Employment and Workplace Relations Legislation Committee presents its report to the Senate.

1.2 On 26 November 2009¹ the Senate referred the following documents to the committee for examination and report in relation to the Education, Employment and Workplace Relations portfolio:

- Particulars of proposed additional expenditure in respect of the year ending on 30 June 2010 [Appropriation Bill (No. 3) 2009-10];
- Particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2010 [Appropriation Bill (No. 4) 2009-10];
- Final budget outcome 2008-09—Report by the Treasurer (Mr Swan) and the Minister for Finance and Deregulation (Mr Tanner), September 2009; and
- Issues from the advance under the annual Appropriation Acts—Report for 2008-09.

1.3 Standing legislation committees are required to report to the Senate on 23 February 2010.

Portfolio coverage

1.4 The committee has responsibility for examining the expenditure and outcomes of the Education, Employment and Workplace Relations portfolio. Appendix 1 lists the department and agencies under this portfolio.

Portfolio Additional Estimates Statements (PAES) 2009—10

1.5 The Portfolio Budget Statements (PBS) and the Portfolio Additional Estimates Statements (PAES) inform senators of the proposed allocation of funding to government outcomes by agencies within the portfolio. However, unlike the PBS, the PAES summarise only the changes in funding by outcome since the Budget. The PAES provide information on new measures and their impact on the financial and/or non-financial planned performance of programs supporting those outcomes.

1.6 The PAES 2009-10 details the following measures that the department will deliver as a result of additional estimates:

- extension of transitional arrangements for Youth Allowance recipients to establish eligibility for independent status. As a result, 'gap year' students who

1 *Journals of the Senate*, No. 104, 26 November 2009, p. 2907.

meet the relevant conditions will have until 1 July 2010 to establish eligibility for independent status under the existing workforce participation criteria.

- establishment of an apprentice kick-start bonus and increased pre-apprenticeship training places to encourage employers to recruit apprentices and support pre-apprenticeship training in traditional trades; and
- establishment of 10 000 new environmental and heritage training and work experience placements, available to young people aged 17 to 24.

1.7 These measures are offset by a number of savings measures, outlined in the PAES.²

Safe Work Australia—a new agency in the portfolio

1.8 Safe Work Australia was established as a statutory agency on 1 November 2009 under the Safe Work Australia Act. According to the portfolio overview of the PAES, Safe Work Australia was established to progress national approaches to occupational health and safety (OHS) and workers' compensation in order to increase productivity and to achieve significant and continual reductions in the incidence of death, injury and disease in the workplace. Initially, Safe Work Australia was established as an executive agency on 1 July 2009 under section 65 of the *Public Service Act 1999*. The executive agency was then abolished, and Safe Work Australia was transferred from the portfolio department.³ Safe Work Australia will replace the Australian Safety and Compensation Council that operated within the Department of Education, Employment and Workplace Relations (DEEWR). The government will contribute \$36.3 million over four years to fund 50 per cent of Safe Work Australia; the remaining 50 per cent will be funded by the states and territories in proportion to their population.⁴

Hearings

1.9 The committee conducted two days of hearings, examining Employment and Workplace Relations outcomes and agencies on 10 February 2010 and Education outcomes and agencies on 11 February 2010. In total the committee met for 22 hours and 53 minutes, excluding breaks.

1.10 The following outcomes and agencies appeared before the committee:

- Outcomes 1 — 5
- Australian Curriculum, Assessment and Reporting Authority (ACARA)
- Comcare

2 Portfolio Additional Estimates Statements (PAES) 2009-10, p. 13.

3 PAES 2009-10, p. 5.

4 Mid-Year Economic and Fiscal Outlook 2009-2010, p. 175.

-
- Office of the Australian Building and Construction Commissioner
 - Fair Work Australia
 - Fair Work Ombudsman
 - Safe Work Australia

Public interest immunity claims

1.11 On 13 May 2009, the Senate passed an order relating to public interest immunity claims.⁵ The order sets out the processes to be followed if a witness declines to answer a question. The full text of this order has previously been provided to departments and agencies and was incorporated in the Chair's opening statement on each day of the additional estimates hearings. It is also reproduced in Appendix 3 of this report.

1.12 The order was directly referenced twice during the additional estimates hearings. On the first occasion, Senator Ronaldson was questioning an officer of the Fair Work Ombudsman as to whether they are currently inquiring into certain alleged actions of the Health Services Union. When the officer did not provide a clear answer, Senator Ronaldson asked:

Is there a claim of public interest immunity in relation to this?⁶

1.13 Following some further discussion, including an indication by the Chair that it would be appropriate for the witness to state his reason for not answering the question, the witness told the committee that to answer the question in any detail may prejudice future investigations:

I am actually not at the moment investigating, and it may be that there will be no investigation. I am inquiring. As part of those inquiries, there are aspects of those inquiries that I think would prejudice, if we do proceed to an investigation in which prosecution action could take place. I think they could impact on those prosecutions.⁷

1.14 The Chair indicated a belief that this was an acceptable public interest immunity ground for refusing to answer the question, and Senator Ronaldson chose not to press for an answer.

1.15 The second reference to the order occurred when Senator Cormann was questioning officers of DEEWR about the current balance of the Education Services for Overseas Students (ESOS) Assurance Fund. Minister Carr intervened and

5 *Journals of the Senate*, No. 68, 13 May 2009, p. 1941. The order was moved by Senator Cormann.

6 Senator Michael Ronaldson, *Committee Hansard*, 10 February 2010, p. 49.

7 Mr Terry Nassios, *Committee Hansard*, 10 February 2010, p. 50.

indicated that the question would be taken on notice in order to take further advice from the minister concerned.⁸

1.16 Senator Cormann called for a ruling on whether the 13 May 2009 order required that Minister Carr state a public interest immunity ground. However, the Chair ruled that, as the Minister had not refused to answer the question but had instead taken it on notice, the public interest immunity order did not apply. Following a private meeting of the committee, Senator Cormann made the following statement:

I wish to place on record the opposition's severe disappointment that the government is not prepared to answer a question, through the mechanism of taking it on notice, as a means of avoiding providing information to a committee of the Senate which is essentially assessing the performance of executive government. This is not in the spirit of what Senate estimates is all about. We are very disappointed about the way the minister at the table in particular has handled this. We do not think that that is in the spirit of the order that was passed by the Senate on 13 May 2009 and we will be reporting on this to the Senate to seek a resolution from the Senate as to these sorts of circumstances: when clearly information is known by the minister and officers at the table but a decision made, for whatever reason, to take it on notice to avoid answering the question.⁹

1.17 The Minister was given an opportunity to respond, before the committee then proceeded to other areas of questioning:

I am indicating to you that I have not claimed public interest immunity because I have not refused to answer the question. I am indicating to you that your claim that the executive is seeking to avoid scrutiny is wrong and that you are misrepresenting the resolutions of the Senate in these matters in any event. The government guides for official witnesses, from back as far as 1989, have made it very clear that witnesses are entitled to seek advice from superior officers should they have any doubt about any matters. I am saying that we have given you an assurance that the fund is cash positive, that the government will ensure that it remains sovereign, and that I am taking your question in regard to the specific balance at this point on notice.¹⁰

Questions on notice

1.18 The committee has drawn the attention of the department and its agencies to the agreed deadline of Thursday 1 April 2010 for the receipt of answers to questions taken on notice from this round, in accordance with Standing Order 26.

8 *Committee Hansard*, 11 February 2010, pp 136 - 138.

9 Senator Mathias Cormann, *Committee Hansard*, 11 February 2010, p. 154.

10 Senator the Hon Kim Carr, *Estimates Hansard*, 11 February 2010, p. 154.

1.19 For this round, written questions on notice were received from Senators Back, Barnett, Bob Brown, Cameron, Cash, Mason, Ronaldson and Siewert.

Note on Hansard page referencing

1.20 Hansard references throughout this report relate to proof Hansard page numbers. Please note page numbering may differ between the proof and final Hansard.

