

Chapter 2

Education, Employment and Workplace Relations portfolio

2.1 This chapter summarises areas of interest and concern raised during the committee's consideration of additional budget estimates for the 2009—10 financial year. This section of the report follows the order of proceedings and is an indicative, but not exhaustive, list of issues examined.

2.2 The committee heard evidence on 10 February from Senator the Hon Mark Arbib, as minister representing the Minister for Education, Employment and Workplace Relations, along with officers from areas of the department and agencies responsible for employment and workplace relations, including:

- Comcare
- Fair Work Ombudsman
- Fair Work Australia
- Australian Building and Construction Commission
- Safe Work Australia

2.3 On 11 February the committee heard evidence from Senator the Hon Kim Carr, as the minister representing the Minister for Education, Employment and Workplace Relations, and from officers from areas of the department and agencies responsible for administering education policy. In addition to departmental officials, officers from the newly established Australian Curriculum, Assessment and Reporting Authority were examined by the committee.

2.4 Senators present over the two days of hearings were Senator Marshall (Chair), Senator Cash (Deputy Chair), Senators Abetz, Back, Bilyk, Brandis, Cameron, Collins, Cormann, Crossin, Fielding, Fifield, Fisher, Hanson-Young, Mason, Milne, Parry, Payne, Ronaldson and Ryan.

Cross portfolio

2.5 Senator Cormann contributed to much of the committee's examination of cross portfolio issues with a series of questions relating to DEEWR's role in the economic stimulus package. The department was asked what input they had in the planning of the stimulus package, and if they provided advice as to how it should be structured. The Secretary of DEEWR, Ms Lisa Paul, told the committee that DEEWR's role centred on implementing policy, rather than providing advice on how the policy should be formulated. The department was asked if any assessment of the stimulus package included analysis of the impact of interest rates on jobs, and responded that such economic assessments are a matter for Treasury. Ms Paul

reiterated that DEEWR's role in the stimulus package related only to implementing the Building the Education Revolution program. Senator Cormann raised with officers the Keep Australia Working program, and asked if the department had conducted any formal evaluation into how successful it has been. Ms Paul told the committee that the department is monitoring the changes that happen in each priority employment region, and undertook to provide on notice the measures the department is utilising to monitor the progress of the program.¹

Comcare

2.6 Much of the examination of Comcare focussed on bullying in the workplace. Comcare told the committee that a recently released Productivity Commission draft report into the issue examined how differing jurisdictions—federal, state and territory—approached workplace bullying. Mr Paul O'Connor commented on a high-profile bullying court case in Victoria when he stated:

The recent decision in Victoria highlights and sends a very strong message to the Australian community and to employers about the importance that employers and colleagues at the workplace have to keep a focus on making sure that not just the health but the welfare of people at the workplace is kept as a priority and a focus.²

2.7 Senator Abetz asked a series of questions relating to psychosocial bullying, and asked if there was delineation between traditional physical injury claims and claims relating primarily to bullying and harassment. Comcare explained that, within their jurisdiction, they do make a distinction between 'injury claims' and what is referred to as 'disease claims', and commented that there has been a decline in the number of claims about work-related harassment or workplace bullying. Comcare attributed this decline to increased awareness in federal workplaces regarding bullying and increased skilling of line managers in facilitating understanding of bullying policies.

2.8 Both the Chair and Senator Abetz raised the issue of the varying definition and categorisation of psychosocial claims that exists between states and territories, and how reclassification of definitions can result in misleading reductions in bullying figures. Mr O'Connor explained to the committee that the Productivity Commission report included analysis that tried to understand and interpret the points of difference between the ways the various jurisdictions applied classifications. The new national model of work health and safety laws will rectify the issue of varying definitions of bullying related injuries.³

1 *Committee Hansard*, 10 February 2010, pp 5 - 15.

2 Mr Paul O'Connor, *Committee Hansard*, 10 February 2010, p. 16.

3 Mr Paul O'Connor, *Committee Hansard*, 10 February 2010, p. 18.

Fair Work Ombudsman

2.9 Examination of the Fair Work Ombudsman (FWO) began with questions regarding the educational workplace visits conducted by the Ombudsman that commenced on 5 January 2010. Intended to educate workplaces on the new modern awards and the impact of the referral of the powers of four state systems to the Commonwealth system, the workplace visits focussed on small businesses moving from the state system to the Commonwealth. Senator Abetz asked the Ombudsman if these visits would have been more effective if they had been held prior to the changes occurring. The Ombudsman told the committee that the workplace visits were always scheduled to commence in January 2010, as the referral of state powers was only finalised in December 2009. The FWO expects to conduct 26 000 transitional educational visits in 2010.⁴

2.10 Senator Cash inquired about dispute resolution pathways that are available to people who call the FWO. Mr Wilson elaborated upon the process, noting that the office receives approximately one million phone calls per year, two-thirds of which are from employees. Of these calls, the Ombudsman estimated that 25 000 relate to complaints of underpayment of wages. Using such a call as an example, Mr Wilson explained the process that would follow the office receiving a complaint of underpayment. Once the claim has been registered, officers initiate the process of 'voluntary resolution' where both the employee and employer are contacted. The employer is told they have a period of time to remedy the situation, and, according to the Ombudsman, it is at this stage that a significant amount of cases are resolved. However, if voluntary resolution does not eventuate, the matter is formally assigned to a Fair Work inspector. If the ensuing investigation establishes that a breach has occurred, the employer is again given time to voluntarily remedy the situation. The Ombudsman commented that in 75 per cent of cases the process is concluded within 90 days. In 'very few...cases, 50 or 60 per year', litigation is commenced against the non-compliant party, with these cases going through the usual court process. The FWO agreed to provide the committee with a breakdown of the types of complaints that have been received since the office commenced.⁵

2.11 Senator Cameron asked the Ombudsman if a memorandum of understanding existed between the FWO and the Australian Building and Construction Commission (ABCC). The committee was told that there is an exchange of letters, not a memorandum of understanding. The committee has demonstrated previous interest in the relationship between the FWO and the ABCC, with Senator Humphries asking a similar line of questions in the supplementary estimates hearings of October 2009.⁶ The Ombudsman elaborated on the process of the exchange of letters, explaining that issues which relate to money matters are generally dealt with by the FWO, while

4 *Committee Hansard*, 10 February 2010, pp 20 - 23.

5 *Committee Hansard*, 10 February 2010, pp 28 - 30.

6 *Committee Hansard*, 21 October 2009, pp 102 - 103.

matters which relate to compliance issues are handled by the ABCC. When asked how much work the building and construction industry generates for the FWO, Senator Cameron was told that, between 2006 and 2010, 16 matters were formally referred from the ABCC to the FWO and its two predecessor organisations under the exchange of letters. Mr Wilson also told the committee that the FWO is involved with other work in the building and construction industry, receiving 5602 matters between March 2006 and December 2009. The Ombudsman undertook to provide the committee with aggregated data on underpayments and other matters related to the recoveries the Ombudsman was involved in.⁷

Fair Work Australia

2.12 Fair Work Australia (FWA) first appeared before the committee at Supplementary Budget Estimates in October 2009. The President of FWA, Justice Giudice, was not in attendance at that hearing. On 28 October 2009, a motion was passed in the Senate requiring the President to attend Additional Estimates in February 2010, and all subsequent estimates hearings of the committee.⁸

2.13 Justice Giudice gave the committee an overview of the operations of the national industrial tribunal, outlining the key areas of responsibility of the organisation. The President explained to senators that the key area of work relates to industrial matters, which includes disputes, agreements, various applications that may relate to protected action ballots and industrial action. All industrial matters are dealt with by a panel system, with industries divided into four industry panels. While commenting that this is the 'traditional industrial work' of the tribunal, Justice Giudice remarked that the volume of such matters is not as great as it once was.⁹

2.14 Senator Abetz asked FWA how many applications for modern award variations had been lodged, and how many are currently being processed by FWA. Officers told the committee that there were 208 applications for variations lodged by 31 December 2009. Since this date, FWA has received a further 9 applications and has until 31 March 2010 to determine the variations. The President informed the committee that the office has issued decisions in relation to 150 applications, and he is confident that FWA will be able to process the balance within the timeframe.¹⁰

2.15 From 1 July 2009 to 31 December 2009, 5208 applications for unfair dismissal remedy were lodged with FWA. Of these, 2783 have been resolved by conciliation. The committee was told that there are 24 conciliators across the country, and there are no plans to increase this number at the moment. The committee was told that, while there are no formal performance indicators, there are a range of measures

7 *Committee Hansard*, 10 February 2010, pp 46 - 47.

8 *Journals of the Senate*, No 95, 28 October 2009, p. 2661.

9 The Hon Geoffrey Giudice, *Committee Hansard*, 10 February 2010, pp 52 - 53.

10 *Committee Hansard*, 10 February 2010, p. 63.

and matters that FWA look at to assess how the conciliation process is developing, including outcomes and results. However, the number of claims settled at conciliation is not a performance indicator. Formal key performance indicators that conciliators are to meet are currently being developed by the FWA.¹¹

2.16 In his concluding remarks to the committee, the President of FWA stated:

I am not the head of any agency for budget purposes. I would like that to be recorded. I urge anybody connected with these proceedings to ensure it is clear in the public domain that I am not an agency head.¹²

The committee notes that section 658(a) of the Fair Work Act provides that the General Manager has independent responsibility for compliance with the Financial Management and Accountability Act—which FWA falls under—and that this may be what the President was referring to.

2.17 The President's statement about his role at FWA follows on from correspondence with the committee during 2009 about which FWA executives are best placed to appear and answer estimates questions. At the time of that correspondence, the committee accepted Justice Giudice's view that the General Manager of FWA was the appropriate representative. Having regard to the questions asked of FWA during the additional estimates hearings, the committee is still of that view.

2.18 However, the committee notes that the Senate order of 28 October 2009 is of continuing effect.

Australian Building and Construction Commission

2.19 The examination of the Australian Building and Construction Commission (ABCC) began with officers providing the committee with an update on current investigations. Of the 59 active investigations being carried out by the ABCC, 25 are in Victoria, 21 in New South Wales, 10 in Western Australia and 3 in Queensland. Senator Abetz asked officers to give the committee an overview of what the most common breaches of legislation relate to. Of the cases that have involved the ABCC, 37 per cent have related to industrial action, 21 per cent to coercion and 15 per cent to freedom of association. Right of entry issues, strike pay and discrimination cases form the remaining workload of the agency.¹³

2.20 Following on from previous estimates hearings, Senator Cameron showed interest in the reports the ABCC commissioned from the economic consultancy firm Econtech. Senator Cameron questioned the findings of the report which suggested that GDP would rise by 1.5 per cent as a result of the activities of the ABCC. The

11 *Committee Hansard*, 10 February 2010, p. 66.

12 *Committee Hansard*, 10 February 2010, p. 69

13 *Committee Hansard*, 10 February 2010, p. 70.

Commissioner assured the committee that the Econtech modelling is rigorous and is used by the industry. The Commissioner went on to comment that the three reports prepared by Econtech are the most thorough investigations of the impact of the ABCC that have been undertaken, and each report has arrived at the same conclusion.¹⁴

Safe Work Australia

2.21 Safe Work Australia (SWA) appeared before the committee for the first time as a separate agency. Prior to additional estimates, SWA was part of DEEWR. The PAES 2009—10 indicates that while SWA does not have any new measures allocated to it, functions and resources have been transferred from the department.¹⁵ Senator Abetz asked officers if SWA has been asked to investigate or look into the recent deaths related to roof insulations in Queensland. SWA told the committee that it is a national policy body only, and that occupational health and safety (OHS) issues are the responsibility of the state, territory and Commonwealth governments.¹⁶

Outcome 4 (Workforce participation and labour market assistance)

2.22 Senator Cormann opened examination of officers from outcome 4 with questions relating to the Jobs Fund. The department confirmed that Jobs Fund is part of the jobs and training compact, which is part of the Keep Australia Working program. Senator Cormann noted that DEEWR administers three jobs compacts—a compact with young Australians, a compact with local communities and a compact with retrenched workers—and asked the department to elaborate on the status of each. The committee demonstrated an interest in the compact with young Australians, which as Ms Paul explained, has several components that are all underway. The compact has three core principles, one of which states that anyone under the age of 17 must be in full-time school, training or work. Ms Paul explained to the committee that this was an aspiration and the department will never literally achieve a 100 per cent success rate due to the impact of factors such as homelessness and mental illness. Senator Cormann commented that those who fit this category in the United Kingdom were referred to as NEET—neither in education, employment or training—and that the number of young people in this category has been increasing. DEEWR is beginning to develop data on this, and commented that it has previously never been collected.¹⁷

2.23 Officers from DEEWR provided the committee with an update on the status of job seekers within the Job Services Australia system. Senator Cormann asked if there had been any change since the start of the new contract on 1 July 2009 to the way job seekers are allocated to the different streams. DEEWR explained that, as a

14 *Committee Hansard*, 10 February 2010, pp 77 - 78.

15 Portfolio Additional Estimates Statements, 2009 - 10, p. 57.

16 *Committee Hansard*, 10 February 2010, p. 87.

17 *Committee Hansard*, 10 February 2010, p. 91.

result of the global economic downturn, the compact with retrenched workers included a commitment to include retrenched workers in stream 2 automatically, meaning that they are able to receive more intensive support. Officers also informed the committee that there has been a 16 per cent increase in the number of job placements in the first six months of Job Services Australia, when compared to the first six months of the Job Network. Overall, the department commented that the first six months of Jobs Services Australia has been very successful.¹⁸

Outcome 5 (Safer and more productive workplaces)

2.24 The Chair began with questions for officers within the Safety and Compensation Policy branch of DEEWR. Continuing on from a line of questions that were put to Comcare officers earlier in the day, the Chair asked DEEWR to elaborate upon Comcare policy that dictates injured employees who retire early receive 5 per cent less in superannuation payments than injured employees who return to work. DEEWR told the committee:

...the focus of the Safety, Rehabilitation and Compensation Act is on rehabilitation and return to work, and it is probably what distinguishes it from its predecessor acts....The act specifies 75 per cent for employees who do not retire early, but for those employees who do retire early, the formula provides for them to receive 70 per cent of their pre-injury earnings.¹⁹

2.25 According to the department, the formula in the act applies to all employees equally—irrespective of which superannuation scheme they are covered by—and also applies to people who retire early by choice. The Chair acknowledged that, while the purpose of the legislation may be to dissuade people from retiring early, some injured employees are unable to return to work. It was suggested that a distinction should be made between people who retire early by choice and those who, due to injury, are incapable of returning to the workplace. Due to time constraints, the department agreed to provide the committee with a more detailed response on notice.²⁰

Outcome 2 (Schools and youth)

School funding

2.26 Questions were asked regarding the current school funding agreement, which is due to expire in 2012. The department informed the committee that school funding for non-government schools is currently based on socioeconomic status, and that this model will continue until the end of the current quadrennium of funding. In the interim, the government will conduct a review of school funding, which will inform funding arrangements in the new quadrennium. While the method of consultation is

18 *Committee Hansard*, 10 February 2010, pp 115 - 116.

19 Ms Flora Carapellucci, Branch Manager, Safety and Compensation Policy Branch, DEEWR, *Committee Hansard*, 10 February 2010, p. 131.

20 *Committee Hansard*, 10 February 2010, p. 132.

yet to be decided, officers told the committee that widespread consultation with relevant stakeholders will form part of the review process.²¹

Trade Training Centres in Schools

2.27 Senator Cormann asked a series of questions about the Trade Training Centres in Schools program administered by the department. To date, two funding rounds have been conducted, with DEEWR receiving 364 applications for funding, representing 1078 schools. So far, 230 applications have been successful, representing 734 schools. Officers informed the committee that, out of the 108 projects underway, 46 have commenced construction, five have been completed and one is operational. Aviation High School in Brisbane has the only operational trade training centre, catering for 190 students. Officers were unable to tell the committee how many of these students used the centre on a full-time basis but undertook to provide this information on notice. The department expects that 68 trade training centres will be completed by the end of 2010.²²

2.28 Further questions regarding the program were asked by Senator Cash. Following on from information received during supplementary budget estimates in October 2009, Senator Cash noted that the department had originally expected that 27 centres would be operational by May 2010. However, based on current progress, it would appear that only 18 will be completed in the given timeframe. DEEWR explained that some schools had experienced unexpected delays in implementing the centres, with one school affected by a cyclone. However, the department explained they are in constant contact with those schools to determine how best to progress the projects.²³

My School website

2.29 The committee demonstrated strong interest in the recently launched My School website. Witnesses from the Australian Curriculum, Assessment and Reporting Authority (ACARA) appeared before the committee and were able to provide senators with information regarding the functions of the website.

2.30 Responsible for the establishment of the My School website, ACARA was able to respond to concerns some senators expressed about the ability of the website to compare 'like' schools. Senator Mason commented that there had been criticism of the methodology used to measure statistical similarity. Elaborating on this argument, Senator Mason commented that it may be more precise to use the characteristics of the households where students reside as a measure of similarity, rather than the general community in which they live. Professor McGaw told the committee that it is problematic to attempt to compile information on individual households on a national

21 *Committee Hansard*, 11 February 2010, pp 6 - 7.

22 *Committee Hansard*, 11 February 2010, pp 13 - 15.

23 *Committee Hansard*, 11 February 2010, pp 19 - 20

scale. The practice that is employed in Australia for determining funding for non-government schools is to use data obtained from census collections that create a profile of the particular area. The characteristics of the census collection districts are applied to students to give an indication of their socioeconomic background. Professor McGaw emphasised the success of this methodology when he asserted:

There is a very high correlation between these measures of students' social background and the average performance of schools on NAPLAN. The correlation is over 0.8, which is extraordinarily high. So this is a very good measure.²⁴

2.31 However, ACARA acknowledged that there are certain unique situations in which the 'straight computation' of the index does not work well. Some schools may inadvertently be classed as 'advantaged' based on the seemingly prosperous socioeconomic background of their students. However, factors such as government housing in otherwise well-off communities incorrectly alter the status of students within certain schools. In these situations, ACARA can make adjustments so that the true socioeconomic status of the school in question is available.²⁵

2.32 When asked if the index could be improved upon, ACARA officials reiterated their belief in the robustness of the index but also told the committee of plans to strengthen it further. ACARA will add another dimension to the index that will incorporate the results of consecutive National Assessment Program—Literacy and Numeracy (NAPLAN) testing of students. Doing so will enable the website to chart any improvements in results and add an 'educational measure' to the social measure already used. Analysis of educational performance of OECD countries indicated that, while Australia's education system performs well, it is clear that socioeconomic differences have more impact in Australia than in other countries that perform similarly well. As a result, the socioeconomic status of students would continue to be used as a measure on the index.²⁶

Outcome 1 (Early childhood education)

2.33 Senator Payne led the examination of officers from outcome 1, beginning by asking the department to give a breakdown of the number of children in various child care arrangements. Quoting figures from the June quarter of 2009, officers told the committee that there were 800 000 children in approved child care. Of these, 476 000 were in long day care, and 100 000 in family day care and in-home care. DEEWR agreed to provide the committee a breakdown of the figures for those in family day care and in-home care on notice. Senator Payne asked if parents are entitled to a rebate if they employ a nanny in the family home. Officers explained that families may be

24 Professor Barry McGaw, Chair, ACARA, *Committee Hansard*, 11 February 2010, p. 45.

25 *Committee Hansard*, 11 February 2010, p. 45.

26 *Committee Hansard*, 11 February 2010, pp 46 - 47.

eligible for the rebate if the nanny is registered in the system as a carer; however, the rebate is at a lower level than what is generally applied.²⁷

2.34 Questions were asked about the Jobs Education and Training (JET) child care assistance program. The JET program provides extra child care assistance to eligible parents on income support who voluntarily take up work, study or job search activities to meet their mandatory participation requirements. In 2008—09, 34 054 children were assisted under the JET program, and roughly 70 per cent of parents utilising the service were studying or training.²⁸

Outcome 3 (Higher education, VET, international education)

2.35 The inability of the Commonwealth to access data relating to state TAFE institutions was discussed. Senator Cormann asked officers if they had a national picture of which TAFE providers perform highly and which do not perform as well. DEEWR told the committee that they currently do not get access to state-level data and that this has long been an issue under a range of agreements that the Commonwealth has had with the states and territories.²⁹

National VET regulator

2.36 The recent Council of Australian Governments (COAG) decision to establish a national regulator for the vocational education and training (VET) sector was discussed. Officers informed the committee of the department's progress in implementing the regulator, advising that DEEWR has begun the consultation process with the states and territories. This process centres on the draft legislation and the intergovernmental agreement, which, as a requirement of COAG, must be negotiated and back with the states and territories by May 2010. DEEWR told the committee it was on track for this process to occur. Further consultation would be conducted in March 2010 with relevant stakeholders, including training providers and industry skills councils.³⁰

2.37 Senator Cormann questioned whether the regulator could be described as a national body, given that the states of Western Australia and Victoria both agreed not to be part of the organisation. The committee was told that those states are likely to enact mirror legislation, providing the same legislative parameters that govern national regulation of the industry. Furthermore, providers who operate in more than one state will be covered by the national regulator, meaning that sectors of the Victorian and Western Australian markets would be covered by the national body. State level regulatory bodies in Victoria and Western Australia will be responsible for enforcing standards which will be set by a national standards body. The national VET

27 *Committee Hansard*, 11 February 2010, p. 74.

28 *Committee Hansard*, 11 February 2010, p. 75.

29 *Committee Hansard*, 11 February 2010, p. 101.

30 *Committee Hansard*, 11 February 2010, p. 98.

regulator will enforce these standards for the remaining participating states and territories.³¹

Skills Australia

2.38 Senator Cormann asked officers from Skills Australia to comment on the notion that some employers feel Skills Australia is out of touch and not adequately across the needs of employers around the country. Skills Australia refuted this notion, explaining that the strategic industry forums held by the organisation allow Skills Australia to regularly meet with employers and all industry groups. Moreover, it was explained that there has been a 'very intensive series' of consultations conducted around the country, and that specific consultations have occurred with various industry groups and individual employers. Skills Australia agreed to provide on notice a list of all the consultations that have occurred in the preceding 3 years. Senator Cormann also raised the issue of workforce development programs, suggesting that the overlap and inconsistency that exists may be construed as a lack of a nationally cohesive strategy. Officers explained that they are in the process of finalising a national workforce development strategy, which is anticipated to be publicly available within the coming three months.³²

Higher education

2.39 University compacts, and the arrangements between the Commonwealth and universities, were raised by Senator Mason. Officers were asked if the interim arrangements for 2010, as well as the actual compacts for 2011 will be made publicly available. The committee was told that, at this stage, the intention is to make the compacts public, and that there are currently 35 signed interim agreements. The department explained that there are two aspects to transparency in this area—the publication of the interim agreements, as well as the commitment of DEEWR to report to the university sector on the progress and decision-making of all universities regarding the compact.

2.40 It was explained that the compacts are mission based compacts, which will include a clear outline of the university's mission, and will have two aspects—research, to be overseen by Minister for Innovation, Science and Research, and teaching and learning which will be the responsibility of the Minister for Education. Senator Mason argued that there is a worry that the compacts will entrench the status quo. However, Minister Carr told the committee that the compacts will actually challenge the status quo of the universities. The Minister elaborated upon problems the Commonwealth had previously faced with university funding:

We have had this long tradition in the university system that, no matter how much the Commonwealth puts in, someone will turn around and say it is not enough. We are going to hear that again and again. And we will hear

31 *Committee Hansard*, 11 February 2010, p. 99.

32 *Committee Hansard*, 11 February 2010, p. 120 - 121.

this other argument that says, 'It doesn't matter what they say. We can keep doing what we like.' The fact is that we have to change to meet the challenges that we currently are confronting as a country.³³

2.41 The Minister asserted that the compact will allow government to objectively test the performance of universities, and will assist in lifting performance. Targets and directions that are set in the university compacts will allow government to monitor performance, and determine whether universities are on course to meet specified objectives. Minister Carr commented:

...we are also saying that the universities are entitled to be challenged. They challenge each other, and we are entitled to challenge them as to whether or not they are meeting their claims as to their directions.³⁴

Senator Gavin Marshall

Chair

33 Senator the Hon Kim Carr, *Committee Hansard*, 11 February 2010, p. 150.

34 Senator the Hon Kim Carr, *Committee Hansard*, 11 February 2010, p. 151.