The Senate

Education, Employment and Workplace Relations Legislation Committee

Additional estimates 2010–11

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Senate Standing Committee on Education, Employment & Workplace Relations

LEGISLATION COMMITTEE

Membership of the Committee

Senator Gavin Marshall, Chair	Victoria, ALP
Senator Chris Back, Deputy Chair	Western Australia, LP
Senator Michaelia Cash	Western Australia, LP
Senator Catryna Bilyk	Tasmania, ALP
Senator Sarah Hanson-Young	South Australia, AG
Senator Dana Wortley	South Australia, ALP

Participating Members

Senators Abetz, Adams, Barnett, Bernardi, Birmingham, Bishop, Boswell, Boyce, Brandis, B. Brown, C. Brown, Bushby, Cameron, Colbeck, Coonan, Cormann, Crossin, Eggleston, Faulkner, Ferguson, Fierravanti-Wells, Fielding, Fifield, Fisher, Forshaw, Furner, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Macdonald, Mason, McEwen, McGauran, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams & Xenophon.

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Chapter 1

Overview

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

1.2 On 10 February 2011[1] 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 2011 [Appropriation Bill (No. 3) 2010—11];
- Particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2011 [Appropriation Bill (No. 4) 2010—11];
- Final budget outcome 2009—10—Report by the Treasurer (Mr Swan) and the Minister for Finance and Deregulation (Senator Wong), September 2010; and
- Issues from the Advance under the annual Appropriation Acts—Report for 2009-10.

1.3 Standing legislation committees are required to report to the Senate on 22 March 2011.

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) 2010—11

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 provides 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 2010—11 details the following measures that the department will deliver as a result of additional estimates:

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1 *Journals of the Senate No. 19*, 10 February 2011, p. 581.

- The establishment of a Trade Apprentice Income Bonus to provide eligible Australian apprentices from 1 January 2011 with an additional tax exemption bonus as training milestones are achieved.
- A reward system in the form of monetary payments to schools that, upon the analysis of national schools data by an independent authority, generate measurably better results for students.
- The improvement of student performance and outcomes by enabling principals, parents and school communities to have greater input into how local schools are administered; and
- The guarantee that employees that become unemployed as a result of employer insolvency will have the majority of their entitlements protected as a result of a number of new measures.

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

Hearings

1.8 The committee conducted two days of hearings, examining Employment and Workplace Relations outcomes and agencies on 23 February 2011 and Education outcomes and agencies on 24 February 2011. In total the committee met for 20 hours and 16 minutes, excluding breaks.

1.9 The following outcomes and agencies appeared before the committee:

- Outcomes 1 — 5
- Australian Curriculum, Assessment and Reporting Authority (ACARA)
- Australian Learning and Teaching Council
- Comcare
- Office of the Australian Building and Construction Commissioner
- Fair Work Australia
- Fair Work Ombudsman
- Safe Work Australia

1.10 Skills Australia was released from the hearings without examination.

Public interest immunity claims

1.11 On 13 May 2009, the Senate passed an order relating to public interest immunity claims.[3] The order sets out the processes to be followed if a witness

2 Portfolio Additional Estimates Statements (PAES) 2010—11, pp. 11-12.

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 hearing.

1.12 The issue of public interest immunity was not explicitly raised during the hearings, although Minister Evans at one point questioned the appropriateness of placing on the public record details of persons interviewed as part of a current investigation by the Fair Work Ombudsman. Had this been pursued, it may have taken the form of a claim of public interest immunity.[4]

Questions on notice

1.13 The committee has drawn the attention of the department and its agencies to the agreed deadline of Friday 8 April 2011 for the receipt of answers to questions taken on notice from this round, in accordance with Standing Order 26.

1.14 For this round, written questions on notice were received from Senators Abetz, Back, Cash, Fifield, Fisher, Fierravanti-Wells, Hanson-Young, Mason, McDonald, Nash, Ryan, Siewert and Williams.

Note on Hansard page referencing

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

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

4 *Proof Estimates Hansard,* 23 February 2011, pp. 63-64.

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 2010—11 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 23 February from Senator the Hon. Chris Evans, as 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
- Safe Work Australia
- Fair Work Ombudsman
- Fair Work Australia
- Australian Building and Construction Commission

2.3 On 24 February the committee heard evidence from Minister and officers from areas of the department and agencies responsible for administering education policy. In addition to departmental officials, officers from the Australian Curriculum, Assessment and Reporting Authority and the Australian Learning and Teaching Council were examined by the committee.

2.4 Senators present over the two days of hearings were Senator Marshall (Chair), Senator Back (Deputy Chair), Senators Abetz, Bernardi, Bilyk, Carol Brown, Cameron, Cash, Fifield, Fisher, Heffernan, Mason, Nash, Polley, Ronaldson, Williams, Wortley and Xenophon.

Comcare

Health and Safety Representatives

2.5 The committee examined Comcare's guidelines for the training of Health and Safety Representatives (HSRs) in the Commonwealth jurisdiction, and heard that Comcare published revised guidelines for the training of HSRs applicable throughout the federal jurisdiction which came into effect on 30 April 2010.[1] Comcare told the committee that its revised guidelines were developed in close consultation with peak

1 Comcare, *Annual Report 2009-2010*, p. 27.

unions, HSRs and HSR training providers.[2] Mr Steve Kibble, Deputy Chief of Finance, told the committee that the decision to endorse the guidelines has taken into account the results of Comcare's consultations, the requirement in all Commonwealth jurisdictions for face-to-face training for HSRs and the views put forward about this particular training requirement.[3] Mr Kibble advised the committee that Comcare will continue to work with accredited HSR training providers to ensure that courses are consistent with the guidelines.

Compensation Claims

2.6 Senator Xenophon questioned Comcare about a compensation claim identified in the Commonwealth Ombudsman's report of March 2010 titled *Comcare and Department of Finance and Deregulation: discretionary payments of compensation*. Mr Paul O'Connor, Chief Executive Officer, acknowledged that mistakes had been made in relation to the case and that a solution had been identified to partly remedy the financial implications for the client of administrative errors. However, Mr O'Connor observed that the financial remedy identified would not address the full financial claims of this particular constituent. Mr O'Connor summed up Comcare's view by saying that:

> I have, within the constraints of what federal law allows me to do, offered every available opportunity and dollar value of compensation, plus the commitment of our colleagues at the department, the Department of Education, Employment and Workplace Relations as well as Finance to set in train a system that will make sure that this situation does not occur again in terms of this gap in the ability for people affected by the maladministration of ourselves and other determining authorities in the Comcare Scheme. That is an important and sustainable change that needs to be made. We will also be looking to make that new scheme retrospective as well, and we are working with our colleagues in other parts of government to make that happen.[4]

2.7 In response to further questioning by Senator Xenophon, Mr O'Connor agreed to arrange a conciliation meeting with the constituent, Comcare, Senator Xenophon and Minister Evans.

SafeWork Australia

National Work Health and Safety Laws

2.8 SafeWork Australia's (SWA) model National Work Health and Safety Laws were examined at length by the committee. The model laws reflect a Council of Australia Governments (COAG) commitment to harmonise work health and safety

2 *Proof Estimates Hansard,* 23 February 2011, p. 7.

3 *Proof Estimates Hansard,* 23 February 2011, p 7.

4 *Proof Estimates Hansard,* 23 February 2011, p 11.

laws made in July 2008. The Intergovernmental Agreement outlines the commitment of all states and territories of the Commonwealth to work together to develop and implement model work health and safety laws as the most effective way to achieve harmonisation in Australia.[5] Senator Abetz asked SWA if the legislation would introduce one national regulator in place of the existing state and territory based regulators. The Minister told the committee that:

> The arrangements for the states is that they maintain the enforcement, but if we can get uniform legislation we will go a long way to ensuring better understandings of occupational health and safety laws, easier business compliance and significant business savings.[6]

2.9 Senator Bilyk asked officers of SWA about the agency's operational plan to 'Report on and measure impacts of the intended operation of the model WHS Act and Regulations including improved work health and safety outcomes for workers and the reduction of red tape'. Senator Bilyk also asked about the data that would be used to create the framework and the activities SWA are undertaking to explain the model legislation to major stakeholders. Mr Hoy, Chief Executive Officer of SWA, told the committee that SWA was relying upon data from states and territories and that it would continue working with these actors and other major constituents to discuss and explain the legislation up to the legislation implementation date. [7]

Communications Advisory Group

2.10 Senator Bilyk asked about the role of the Communications Advisory Group. Mr Drew Wagner, Branch Manager, advised the committee that it had representatives from all of the state and territory jurisdictions, as well as industry and trade union representatives. The group was currently focused on a communication strategy to ensure that all stakeholders were aware of prospective changes.

Nanotechnology Research Projects

2.11 Senator Wortley asked SWA officials for an update on its nanotechnology research projects. Mr Wayne Creaser, Branch Manager, advised the committee that SWA was awaiting reports from consultants. Senator Wortley asked about the status of the draft codes of practice in relation to safety data sheets and the other in relation to labelling of chemicals. Mr Creaser told the committee that two draft codes of practice were currently being circulated for public comment, which closes on 4 April 2011. The codes of practice are expected to commence on 1 January 2012.[8]

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5 Safe Work Australia, *Model WHS Legislation*, http://www.safeworkaustralia.gov.au/Legislation/Pages/ModelWHSLegislation.aspx, viewed 15 March 2011.

6 *Proof Estimates Hansard,* 23 February 2011, p 14.

7 *Proof Estimates Hansard,* 23 February 2011, p. 17.

8 *Proof Estimates Hansard,* 23 February 2011, p. 18

Fair Work Ombudsman

Customer Service and Dispute Resolution Mechanisms Disruptions

2.12 The committee heard at length of disruptions to Fair Work Ombudsman (FWO) customer service facilities and dispute resolution mechanisms during the period of the 2011 Queensland floods. Officers of the FWO told the committee that the natural disaster resulted in the restructuring of services whereby access to the FWO Live Chat forum was disrupted for 4 weeks and access to the FWO email service was disrupted for over 2 weeks. Officers of the FWO told the committee that during this time telephone and computer pay-check system enquiries increased substantially indicating a shift in the use of one service from another.[9] Senator Abetz asked officers of the FWO if employers and employees were unable to obtain advice during the period of disruption and are unwittingly in breach would be extended leniency. Mr Wilson, the FWO, told the committee that the officers would use their judgement on these matters but that ultimately if information was not sought and persons are found to be in breach of the law then the FWO will not show leniency.[10] Mr Alfred Bongi, Group Manager, added that the FWO was now once again operating on a full complement of staff and that the pattern of inquiries made to the FWO demonstrated that people who had failed to obtain information because of the disruption in services were now successfully seeking that information.[11]

Sham Contracting

2.13 Another matter that FWO was questioned about was sham contracting. Senator Abetz asked officers of the FWO if the enactment of the *Independent Contractors Act 2006* had assisted in dealing with the issue of sham contracting.[12] Mr Loizides, Group Manager, advised that the FWO had used its expertise and powers under the legislation to investigate sham contracting breaches with a number of matters across different industry groupings currently before the courts.[13]

2.14 This topic was pursued by Senator Cameron, who asked more specific questions about sham contracting cases being addressed by the FWO. Mr Wilson indicated that out of a total of 5,800 matters being investigated as at mid-February 2011, FWO had 26 matters being investigated which concerned potential contraventions of the sham contracting provisions, particularly under section 357 of the Fair Work Act.[14] He also told the committee that the FWO was investigating a

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9 *Proof Estimates Hansard,* 23 February 2011, p. 23.

10 *Proof Estimates Hansard,* 23 February 2011, p. 23.

11 *Proof Estimates Hansard,* 23 February 2011, pp 23 & 25.

12 Fair Work Australia, *Independent contractors & employees fact sheet*, http://www.fairwork.gov.au/resources/fact-sheets/workplace-rights/pages/independent-contractors-and-emplyees-fact-sheet.aspx, viewed 15 March 2011.

13 *Proof Estimates Hansard,* 23 February 2011, p. 27.

14 *Proof Estimates Hansard,* 23 February 2011, p. 40.

further 137 matters relating to underpayment in connection with an assertion that a person is a contractor and not an employee. Mr Loizides informed the committee that the FWO recognised the need to do more work in this area and that it is undertaking consultations, updating publicly available information on what constitute sham-contracting and working on producing an auditing program that should commence in the coming months to enable it to expand its investigations into these matters.[15]

Indemnities

2.15 Senator Abetz asked some general questions about how indemnities are applied during the course of FWO investigations. Mr Wilson advised that he was not aware of any formal policies, but that the FWO were happy to consider establishing a policy and would discuss the matter with the Attorney-General's Department.[16]

Employees and volunteers

2.16 Senator Xenophon asked the FWO about the protocols it uses to differentiate employees and volunteers under current legislation. This question was put to the officers of FWO with mention of a particular case under investigation into the Church of Scientology. Mr Wilson commented that the protocols would rely upon a legal determination from FWO inspectors and legal advisors.[17]

> Ultimately, that is a matter of legal determination by a combination of the inspectors and our legal staff. There are principles which need to be applied about the intention to form legal relations and if there is an intention to form legal relations, what the nature is of those relations—whether it is intended to be an employment exercise or whether it is some other exercise. Clearly, it is a matter of engaging with the particular complainant and the respondent and testing through that circumstance.[18]

2.17 Other questions relating to this case focused around matters of:

- contract validity
- statutory limitations affecting the FWO's investigation capacities
- ensuring that FWO officers and investigators were equipped to deal with coercion
- contracts signed by minors.[19]

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15 *Proof Estimates Hansard,* 23 February 2011, pp 40-41.

16 *Proof Estimates Hansard,* 23 February 2011, p. 28.

17 *Proof Estimates Hansard,* 23 February 2011, p. 30.

18 *Proof Estimates Hansard,* 23 February 2011, p 30.

19 *Proof Estimates Hansard,* 23 February 2011, p 31.

Complaints

2.18 Senator Bilyk asked questions about complaints lodged to FWO regarding compliance with workplace legislation. Mr Loizides and Mr Wilson told the committee that FWO had received over 11 000 written complaints and 803 520 telephone complaints up to 12 February in the current 2010-2011 financial year.[20] Mr Loizides told the committee that the FWO resolved 11 305 complaints this financial year, with less than one percent requiring legal action to resolve.[21]

Fair Work Australia

2.19 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.[22] The President of FWA, Justice Giudice complied with the motion in the Senate and appeared before the committee on 23 February 2011.

Unfair Dismissals

2.20 Senator Abetz questioned officers of FWA about unfair dismissal matters, including the frequency of applications to extensions of time to lodge a claim.[23] On the subject of finalisation of claims, officers informed the committee that the FWA annual report contained information about the length of time from the lodgement of a claim to its finalisation, but that in the 2009-2010 financial year 85 per cent of unfair dismissal matters had been finalised within 87 days and that the overwhelming majority of matters were settled through a process of conciliation and finalised within a period of 25 days from lodgement.

Inquiry into allegations against the Health Services Union

2.21 Senator Ronaldson asked questions of FWA regarding a Fair Work inquiry begin undertaken into the member for Dobell, Mr Craig Thomson, in relation to his former role at the Health Services Union. The matter was previously examined at the October 2010 Supplementary Estimates Hearings. Mr Terry Nassios, Director, described to the committee the nature of the investigation he was undertaking and told the committee that the final report is yet to be completed.[24]

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20 *Proof Estimates Hansard,* 23 February 2011, p 42.

21 *Proof Estimates Hansard,* 23 February 2011, p 43.

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

23 *Proof Estimates Hansard,* 23 February 2011, p. 55.

24 *Proof Estimates Hansard,* 23 February 2011, pp. 58-63.

Commission and Commissioner sitting days

2.22 The committee enquired into the number of days FWA commissioners sit each year. Justice Giudice commented that he did not think it would be appropriate to provide this because the number of sitting days for commissioners is not an accurate reflection of the work performed:

> It depends on the nature of the application, obviously, but more and more there is work being done outside of formal sitting. Cases are more complicated, there is more evidence, appeal cases are more difficult. So as a general proposition there is a poor correlation between workload and sitting days.[25]

2.23 Justice Giudice also commented that such a breakdown in figures would be inappropriate and might interfere with the judicial process.

> My view about it is relatively simple. From a budget and a management point of view, aggregate information is obviously important about the amount of work that is generally carried out by the tribunal. Once you start to focus on individual members and differentiate between them, you inevitably raise the prospect that people will make judgments based on that differentiation. Somebody will say, 'This member worked X number of days per year and this member worked Y number of days per year,' and that there is some reason for that difference, which reflects the competence or otherwise of one or other of the members. That is the essential vice in producing individual information, which will really be quite damaging, no matter how well understood it might be by you, Senator, or by others.[26]

Australian Building and Construction Commission

Staffing

2.24 The examination of the Australian Building and Construction Commission (ABCC) began with the newly appointed Commissioner Mr Leigh Johns presenting an opening statement to the committee. Senator Abetz then questioned Mr Johns on changes to the organisational structure of ABCC, and the committee heard that two positions, the Director Operations Northern and The Legal Manager Northern had been abolished and replaced by the Executive Director Public Affairs position. Mr Johns agreed to take on notice the financial costs associated with the changes to both the employees and to the ABCC.[27]

25 *Proof Estimates Hansard,* 23 February 2011, p. 72.

26 *Proof Estimates Hansard,* 23 February 2011, p. 69.

27 *Proof Estimates Hansard,* 23 February 2011, p. 84.

Building and Infrastructure

2.25 Another matter raised in the examination of the ABCC was the opening of a new office in Canberra on 23 February 2011. Mr Johns justified the new office on the basis that 70 per cent of Australian government directly funded work occurred in the ACT and that the office would enable the ABCC to better oversee that caseload.[28] Mr Johns also told the committee that for the same reason the ABCC was looking to open offices in both Darwin and the Pilbara region.[29]

Sham Contracting

2.26 Senator Cameron again raised sham contracting, asking Mr Johns about the difference in the current commissioner's view that sham contracting was endemic and the former commissioner's view that it was less of a problem. Mr Johns told the committee that he could not comment on the difference of opinion between the former Commissioner and himself but said that his position on this issue was based on the statistics that are before him. Mr Johns said that:

> We have 14 investigations on foot. We have, through our legal department, 19 matters where there are breaches. That is 33 matters which are currently sitting with us. That is a quarter of our work. I characterise that as significant, and that is why I characterise it the way I do. I said on 10 February that I thought it was rife in some parts of the industry. There is a lot of legitimate contracting that goes on in the building and construction industry but my principal concern from a regulatory perspective is in relation to the finishing trades—painting, plastering, formwork and those types of trades—where it does appear to me that sham contracting is not unique.[30]

2.27 Mr Johns told the committee that on 19 November 2010 he announced the terms of reference for the ABCC's Inquiry and Roundtable into sham contracting in the building and construction industry.[31] During questioning from Senator Cameron, Mr Johns told the committee that he based the process and the architecture inquiry on the Royal Commission that was conducted into the bushfires in Victoria. For this reason Mr Johns believed that the process put in place has great integrity.[32] Mr Johns agreed to take on notice a number of matters in light of criticisms from Independent Contractors Australia raised by Senator Cameron in relation to the inquiry.[33]

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28 *Committee Hansard*, 23 February 2011, p 86.

29 *Committee Hansard*, 23 February 2011, p 86.

30 *Proof Estimates Hansard*, 23 February 2011. p. 102.

31 Australian Building and Construction Commission, *National Statement - ABCC commences Sham Contracting Inquiry: Call for submissions*, 22 December 2010, http://www.abcc.gov.au/Mediaandnewscentre/Latestnewsandmedia/Pages/ABCCcommencesShamContractingInquiry.aspx, viewed 15 March 2011.

32 *Proof Estimates Hansard*, 23 February 2011. p. 103.

33 *Proof Estimates Hansard*, 23 February 2011. p. 108.

2.28 Other matters raised in the examination of ABCC included:

- Travel and hospitality allowances
- Organisational memberships
- Industrial strikes
- Dispute resolutions
- The appointment of a deputy commissioner
- Section 52(1)(e) of the Building and Construction Industry Improvement Act 2005 (BCII Act).

Cross Portfolio

Building and infrastructure

2.29 The committee questioned DEEWR about building and infrastructure concerns with the DEEWR headquarters at the corner of Rudd Street and Marcus Clarke Street in Canberra. Senator Mason asked officers of DEEWR about the claim that a Zumba exercise class was responsible for structural damage to the building at Marcus Clarke Street. Mr Soren told the committee that DEEWR brought in a range of experts to assess the situation and outlined to the committee the process undertaken by DEEWR to discover the extent of the impact upon the building. Mr Soren told the committee that the conclusions from DEEWR's investigations were that the Zumba class caused harmonic vibrations that impacted upon the movement in the building. The classes have now been cancelled.[34]

2.30 Senator Mason enquired further into building and infrastructure concerns with the DEEWR headquarters. Ms Paul, Secretary, told the committee that during the initial construction a section of scaffolding collapsed. Ms Paul told the committee that the incident did not result in any injuries and was investigated by ACT WorkSafe.[35] Ms Paul went on to say that the two building and infrastructure concerns raised were entirely unrelated and that she personally endorsed the building.[36]

Staffing and redundancies

2.31 The committee heard evidence about voluntary redundancies in DEEWR in the 2010 calendar year. Mr Wyers told the committee that the department went through a process of examining its business requirements to identify potential areas of staff reduction. DEEWR commented that it had received applications numbering in the hundreds and agreed to provide the exact number on notice. Mr Wyers explained that the department had an amount of money that it was willing to spend on

34 *Proof Estimates Hansard,* 24 February 2011, p. 7.

35 *Proof Estimates Hansard,* 24 February 2011, p. 5.

36 *Proof Estimates Hansard,* 24 February 2011, p. 7.

redundancies to position it for the coming financial year, and 138 came within that target range.[37] Ultimately, DEEWR only accepted a portion of those people who expressed an interest in being made redundant.[38] The committee heard that officers of DEEWR were offered a standard voluntary redundancy package of two weeks for every year of service, up to a maximum of 24 years.[39]

Outcome 4 – Workforce participation and labour market assistance

Employment Services Providers

2.32 The examination of Outcome 4 centred on employment services providers. Senator Marshall asked DEEWR to provide a description of how funding for income support and employment services is allocated to support ethnic groups. Ms Sandra Parker, Deputy Secretary, told the Committee that funding for job seekers is not issued on the basis of ethnicity but that each individual is assessed based upon a range of other characteristics according to their needs.[40] Senator Marshall described the case of a number of persons experiencing difficulty obtaining work for which they are qualified using the Job Services Network. The Job Services Network is a national network of private and community organisations dedicated to finding jobs for unemployed people, particularly the long-term unemployed.[41] In relation to the case described by Senator Marshall, the Senator asked DEEWR what its approach was to ensure that people are being treated fairly and equitably through the Job Services Network providers. Ms Parker told the committee that job service providers are required to talk to individual job seekers, take into account what qualifications they have and develop an employment pathway plan with them.[42]

2.33 Senator Back asked officers of DEEWR to report on the outcomes of the implementation of the new service provider, Job Services Australia. Job Services Australia began on 1 July 2009 and is the Australian Government's national employment services system.[43] Ms Parker told the committee that Job Services Australia is performing well under the new arrangements. Ms Parker said that :

> Our analysis is that JSA is comparing favourably to Job Network if we compare like periods. In the first 18 months of Job Network, for example, we had 557,600 job placements. If you compare that to a similar group of

37 *Proof Estimates Hansard,* 24 February 2011, p. 8.

38 *Proof Estimates Hansard,* 24 February 2011, p. 8.

39 *Proof Estimates Hansard,* 24 February 2011, pp 7-8.

40 *Proof Estimates Hansard,* 23 February 2011, p. 88.

41 Department of Education, Employment and Workplace Relations, *Employment Services Procurement*, http://www.deewr.gov.au/Employment/EmploymentServicesProcurement/rft_estc2006_1/Pages/home.aspx, viewed 15 March 2011.

42 *Proof Estimates Hansard,* 23 February 2011, p. 89.

43 http://www.deewr.gov.au/Employment/JSA/Pages/default.aspx

> jobseekers in JSA, we had 615,500, so around a 10 per cent increase. That is taking into account that there are more jobseekers as the population increases. In general terms we would say the system is working well.[44]

2.34 Other matters raised in the examination of Outcome 4 were:

- Family centred employment projects.
- Job seeker relocation pilot program
- Contracts for local employment coordinators, and;
- National Green Jobs Corps.

Outcome 5 – Safer and more productive workplaces

Appointment of ABCC Deputy Commissioner

2.35 Senator Abetz enquired to DEEWR about the process of appointing a deputy commissioner for the ABCC. Mr John Kovacic, Deputy Secretary, told the committee that the selection panel had concluded its consideration and prepared a short list to be provided to the minister for his consideration.[45] Minister Evans told the committee that he had not yet seen the list and Senator Abetz noted his intention to pursue the matter further in the next estimates hearings in May 2011.

Industry Superannuation Funds

2.36 Senator Abetz asked how default superannuation funds ought to be handled in the modern award system and about the appropriateness of the default superannuation fund specified in awards. Mr Kovacic responded that recommendations included in the Cooper review of superannuation went to this particular issue.[46] Mr Kovacic told the committee that questions about the nature of the recommendations and any government response were probably more appropriately referred to the Treasury portfolio.[47] Senator Abetz asked DEEWR to consider the protection of workers in circumstances where super funds mandated by awards are supported due to a vested interest by unions and industries, despite poor performance in terms of workers interests. DEEWR agreed to analyse the matter within their jurisdiction and to provide comment on any related recommendations of the Cooper review.[48]

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44 *Proof Estimates Hansard,* 23 February 2011, pp 90-91.

45 *Proof Estimates Hansard,* 23 February 2011, p. 122.

46 *Proof Estimates Hansard,* 23 February 2011, p. 123.

47 *Proof Estimates Hansard,* 23 February 2011, p. 123.

48 *Proof Estimates Hansard,* 23 February 2011, p. 124.

Outcome 1 – Early Childhood Education

National Early Childhood Education and Child Care Workforce Census

2.37 The committee heard evidence on the National Early Childhood Education and Child Care Workforce Census undertaken by DEEWR. Officers of DEEWR told the committee that the census had been concluded but that analysis of its findings had yet to be completed. Ms Ngaire Hosking, Group Manager, told the committee that this was expected to be completed in the second quarter of 2011. Ms Hosking told the committee that the census went to all child care centres and preschools and that the return rate of the voluntary census was 79.3 per cent.[49] Senator Nash asked DEEWR to comment on the use of incentives to induce compliance with the census. Ms Hosking confirmed that DEEWR offered as an incentive a prize draw of sixteen $750 educational packs. Ms Hosking advised the committee that it was fairly common practice to offer up an incentive to increase participation in a survey as an effective means of facilitating a response rate.[50] Ms Paul added that DEEWR incentives for participation are important because:

> ...if, you get too low a response rate, then you have actually wasted a whole lot of money getting a 35 per cent response rate that you cannot use because it is not statistically significant.[51]

Skills Shortages in the Childcare Sector

2.38 Senator Nash asked officers of DEEWR what was being done to address the skills shortage in the childcare sector. Mr Manthorpe, Deputy Secretary, told the committee that:

> [I]n the context of rolling out aspects of the government's reform agenda in early childhood development, there are certainly challenges associated with ensuring we have enough staff, and enough qualified staff, in the sector.[52]

2.39 Mr Manthorpe noted significant increases in staff in recent years and that there was no reason to believe that this would not continue as the sector grows.[53] Mr Manthorpe described DEEWR's national quality agenda to ensure that all staff within the sector obtain the minimum requirement of a Certificate III level qualification, as well as a number of other matters relating to the department's rollout of measures to encourage participation within the industry. Minister Evans added that DEEWR is looking to address the low level of remuneration characteristic of the industry that has traditionally had a significant effect on staffing in the industry. Minister Evans described various avenues for addressing the remuneration issue being looked at by

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49 *Proof Estimates Hansard,* 24 February 2011, p. 11.

50 *Proof Estimates Hansard,* 24 February 2011, p. 12.

51 *Proof Estimates Hansard,* 24 February 2011, p. 12.

52 *Proof Estimates Hansard,* 24 February 2011, p. 16.

53 *Proof Estimates Hansard,* 24 February 2011, p. 16.

the department including addressing the modern award process and the push for qualifications in the industry already described. In relation to this point Ms Paul added that a key strategy was also retention and up-skilling of the existing workforce.[54]

Indigenous early childhood education centres

2.40 Senator Mason addressed the matter of Indigenous early childhood education centres raised in previous rounds of estimates, and asked for an update on site selection. Ms Hosking told the committee that 25 locations had been selected and agreed to.[55] Ms Hosking agreed to provide the exact location selected on notice to the committee. DEEWR advised that three construction projects had commenced and a fourth was in the initial stages of commencement. Ms Hosking told the committee that the deadline of having 12 centres open by 30 June 2011 was currently being met through the provision of services at interim premises in 10 locations.[56] Officers of DEEWR explained this point further by saying that instead of waiting for construction to be completed the provision of services in interim facilities had already begun and children now had access to that service.[57] Ms Hosking told the committee that DEEWR was looking to have the construction and completion of 21 centres completed by the end of June 2012, a further 13 by June 2013 and the final two by the end of June 2014.[58]

Outcome 2 – Schools and Youth

National School Chaplaincy Program

2.41 The National School Chaplaincy Program (NSCP) was a major area of interest in the examination of Outcome 2. The matter of proselytising was discussed at length. Ms Catherine Wall, Group Manager, succinctly stated that:

> There is a difference between having a conversation and any individual, including a chaplain, trying to promote a religion and trying to influence the student accordingly.[59]

2.42 Officers of DEEWR argued that whether a discussion constituted proselytising was a matter that is heavily dependent on context. Ms Paul went on to say that that NSCP guidelines were developed by DEEWR in consultation with peak bodies including the Scripture Union and others involved in the program. Ms Paul commented that she was confident that the distinction between proselytising and not was well understood in the program. Senator Mason commented that while this

54 *Proof Estimates Hansard,* 24 February 2011, pp 16-17.

55 *Proof Estimates Hansard,* 24 February 2011, p. 27.

56 *Proof Estimates Hansard,* 24 February 2011, pp. 27-28

57 *Proof Estimates Hansard,* 24 February 2011, p. 28.

58 *Proof Estimates Hansard,* 24 February 2011, p. 29.

59 *Proof Estimates Hansard,* 24 February 2011, p. 35.

distinction was conceptually sound, the distinction in practice was far more difficult to draw. Ms Paul told the committee that DEEWR monitors the program closely and that the matter had not been raised as an issue.

2.43 Senator Marshall questioned officers about the legal liability of the Commonwealth in relation to the National School Chaplaincy Program. Ms Wall responded by saying the Commonwealth is not the employer of chaplains, but that it has funding agreements with employers who provide of chaplaincy services. Ms Wall told the committee that the responsibility of chaplains across schools varies because their roles are articulated by their employer and the school principal. Ms Wall also told the committee that the principal generally has the role of ensuring that chaplains are practising within their scope but that DEEWR also requires reports from the parent body and wider school community.[60] Ms Wall explained to the committee that different schools and jurisdictions had different ways in which parents could make decisions about whether their children partake in the NSCP. Ms Wall told the committee that matter was addressed during the consultation phase and that DEEWR was seeking further feedback on the issue.

Building Education Revolution

2.44 As in previous estimates hearings Building the Education Revolution was an area of focus in the examination of Outcome 2. Multiple matters relating to the building and infrastructure program were covered at length by the committee. The progress of the program was one such issue that was examined in detail. Senator Mason who asked for an update on the total spent by the commonwealth for the project. Mr Manthorpe told the committee that the figure was $14 810 806 518.[61]

2.45 Other matters examined in Outcome 2 were:

- Trade training centres in schools
- Indigenous boarding schools
- National Asian Languages and Studies in Schools Program

Australian Curriculum, Assessment and Reporting Authority

2.46 ACARA presented the committee with evidence regarding the NAPLAN results of the Dallas Brooks Community Primary School in Victoria. Senator Mason asked ACARA to comment on why the school's performance appeared to change dramatically over the course of one year. Officers of ACARA told the committee that the Victorian Curriculum and Assessment Authority (VCAA) have the responsibility for the Administration of NAPLAN tests in Victoria. Dr Hill told the committee that the VCAA instigated a thorough investigation into the matter but found no evidence

60 *Proof Estimates Hansard,* 24 February 2011, p. 40.

61 *Proof Estimates Hansard,* 24 February 2011, p. 99.

of anything untoward.[62] Mr Adams also relayed to the committee that the Principal of the school has indicated that she undertook a significant program focusing on literacy and numeracy and attributes the increase in performance to this program. When asked to comment on the case, Dr Hill explained to the committee that:

> One thing we do know is that a function of all gain is that the lower you start the bigger your gains. If you start very high, particularly in literacy and numeracy, the amount of gain is likely to be quite small.[63]

Australian Learning and Teaching Council

2.47 The examination of the ALTC focused on the transfer of some of its functions and programs to DEEWR scheduled to take place by the end of 2011. Dr Nicholls began by describing to the committee the primary functions of the council and how it achieved them. Senator Mason asked officer of the ALTC and DEEWR whether there had been a performance review conducted of the ALTC in the last 12 months, and the committee heard that the last evaluation had been undertaken in 2009. Minister Evans commented on this line of questioning by saying that the decision to restructure the ALTC was not the result of a poor performance review, nor did it reflect on Dr Nicholl or the ALTC, but was part of wider government restructuring and cost saving measures.[64]

Outcome 3 – High Education, VET, International Education

Regional and Remote University Campuses

2.48 The committee examined a number of matters relating to regional and remote tertiary education. In particular the committee heard questions from Senator Back relating to the case of the Curtin University's School of Mines at Kalgoorlie. Senator Back explained to the committee that the regional campus in Kalgoorlie is gradually reducing its presence, opting to relocate elements of the program to its Perth campus. Mr Hazlehurst, Group Manager, told the committee that the issue with the Kalgoorlie campus was that it was struggling to attract sufficient enrolments to keep the campus viable. Senator Evans informed the committee of the advice of the Curtin University that student demand at Kalgoorlie was very low level compared to the demand at the Bentley campus in Perth. Minister Evans stated that:

> My latest advice is they do all the years there, but they have 60-odd students for first year in Bentley in Perth, and 10 or so in Kalgoorlie. Students are effectively voting to do the course in the city.[65]

62 *Proof Estimates Hansard,* 24 February 2011, p. 79.

63 *Proof Estimates Hansard,* 24 February 2011, p. 79.

64 *Proof Estimates Hansard,* 24 February 2011, p. 114.

65 *Proof Estimates Hansard,* 24 February 2011, p. 126.

2.49 Senator Back told the committee that the community in Kalgoorlie strongly rejected the view that students would prefer to study in a metropolitan area rather than a regional one and credited the failure to attract sufficient enrolments in regional areas with a failure by Curtin University to actively promote its regional campuses. Minister Evans told the committee that he would be had an upcoming engagement at Curtin University and agreed to raise these matters with the university's Vice-Chancellor.

Youth Allowance

2.50 Senator Nash examined the matter of youth allowance at length during Outcome 3, and in particular the review scheduled for completion in July 2011. Senator Nash asked DEEWR to explain proposed changes to the classifications of inner and outer regional areas. Minister Evans said that the proposal was to end the existing classifications and find a more financially sustainable way of financing youth allowance. The Minister however emphasised that the decision had not yet been made as the review had not yet been completed. Ms Paul noted that there were a variety of tools that could be used to classify a geographic area as 'regional'. The Minister commented that if it were viable he would like to see all students receive access to full youth allowance.[66] However his view was that youth allowance must be rationed in terms the broad objectives to be achieved and what the Australian taxpayer could afford.

2.51 Senator Nash went on to ask DEEWR for a breakdown of the number of additional students receiving the maximum rate of youth allowance since the changes to the legislation. Ms Milliken reported that 66 630 are either getting the maximum rate or a higher rate of dependent youth allowance for the first time and 27 150 are receiving the maximum rate.

2.52 Other matters that discussed included:

- The Tertiary Education Quality and Standards Agency (TEQSA)
- HELP and HELP liabilities
- The abolition of the Capital Development Pool (CDP)
- The Education Investment Fund (EIF)

Senator Gavin Marshall

Chair

66 *Proof Estimates Hansard,* 24 February 2011, p. 134.

Appendix 1

Committee oversight of departments and agencies

Education, Employment and Workplace Relations portfolio

- Department of Education, Employment and Workplace Relations;
- Australian Curriculum, Assessment and Reporting Authority
- Australian Institute for Teaching and School Leadership Ltd;
- Australian Learning and Teaching Council;
- ComCare;
- The Safety, Rehabilitation and Compensation Commission;
- The Seafarers' Safety, Rehabilitation and Compensation Authority (Seacare Authority);
- Fair Work Australia;
- The Fair Work Ombudsman;
- Office of the Australian Building and Construction Commissioner; and
- Safe Work Australia.

Appendix 2

Index to Hansard transcripts

Education, Employment and Workplace Relations portfolio