

Chapter 2

Education, Employment and Workplace Relations portfolio

2.1 This chapter summarises key areas of interest raised during the committee's consideration of additional budget estimates for the 2011–12 financial year. This chapter 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 15 February 2012 from Senator the Hon. Jacinta Collins, as the Parliamentary Secretary for School Education and Workplace Relations, along with officers from areas of the Department of Education, Employment and Workplace Relations (DEEWR) and agencies responsible for employment and workplace relations, including:

- Fair Work Australia;
- The Office of the Fair Work Ombudsman;
- The Office of the Australian Building and Construction Commission;
- Comcare; and
- Safe Work Australia.

2.3 On 16 February 2012 the committee heard evidence from the Parliamentary Secretary and officers from areas of DEEWR and agencies responsible for administering education policy. In addition to departmental officials, officers from the Australian Curriculum, Assessment and Reporting Authority (ACARA) and the Australian Institute of Teaching and School Leadership (AITSL) were examined by the committee.

2.4 Senators present over the two days of hearings include Senator Marshall (Chair), Senator Back (Deputy Chair), Senators Abetz, Bernardi, Bilyk, Boyce, Cameron, Cash, Crossin, Edwards, Fifield, Fisher, Gallacher, Mason, McKenzie, Ronaldson, Scullion, Siewert, Thistlethwaite, Waters, Williams and Xenophon.

Fair Work Australia

Health Services Union Investigations

2.5 Representatives from Fair Work Australia (FWA) tabled an opening statement providing an update on the inquiries into the National Office of the Health Services Union (HSU), and the HSU No. 1 Victoria Branch. The investigation into the National Office is still underway. It was reported to the committee that the investigation into

the No. 1 Victoria Branch found 25 contraventions of the registration and accountability of organisations schedule and/or rules of the HSU.¹ Acting General Manager Ms O'Neill informed the committee that the report in the No. 1 Victoria Branch would not be made public by FWA:

I have considered whether to make the delegate's report publicly available. However, I have decided not to do so. The reason for this decision is that the report contains material in respect of individuals concerned that may be considered to be defamatory...However, I am aware that the report may be the subject of a request for production under Freedom of Information legislation or indeed an order for production by this committee.²

2.6 The committee was informed that the services of KPMG have been retained to undertake an independent review of the conduct of the investigations following their conclusion. The committee was assured that the outcome of the KPMG review would be made public.³

2.7 The committee also explored with FWA their policies around issuing corrections in response to false reporting of on-going investigations in the media. Witnesses informed the committee that corrections are issued when misinformation in the media is procedural or administrative in nature, but that FWA does not comment on current investigations to ensure that those investigations are not prejudiced.⁴

President of Fair Work Australia

2.8 The inaugural President of Fair Work Australia, the Hon Justice GM Giudice AO, will retire from his role at the end of February 2012. The committee thanked Justice Giudice for his public service over two decades with both the superseded Australian Industrial Relations Commission and Fair Work Australia.⁵

Timely supply of evidence

2.9 In response to questions during the hearing uncovering the fact that erroneous information had been provided to the committee in answers to questions on notice, the Chair emphasised for the benefit of all witnesses the importance of providing corrections to evidence in a timely manner.⁶

1 *Proof Estimates Hansard*, 15 February 2012, p. 5.

2 *Proof Estimates Hansard*, 15 February 2012, p. 7.

3 *Proof Estimates Hansard*, 15 February 2012, p. 6.

4 *Proof Estimates Hansard*, 15 February 2012, pp 14–17.

5 *Proof Estimates Hansard*, 15 February 2012, p. 40.

6 *Proof Estimates Hansard*, 15 February 2012, p. 23.

Fair Work Ombudsman

Targeted Campaigns

2.10 The committee was informed that the Fair Work Ombudsman (FWO) has recently conducted national campaigns that have focused on the security industry, the clerical sector and vehicle repairers. A national campaign targeting the structural metal product manufacturing sector will commence shortly.⁷ Senator Fisher queried how sectors were selected for auditing. Mr Ronson explained to the committee that:

Our approach in auditing – whether national or state – is to perform some complaint analysis. We look at trends. We do research. This shows us those sectors where there are just not high complains but also high contraventions or high violations. We are also interested in looking at sectors where there might be low numbers of complains but we have reason to believe that there are high violations.⁸

PayCheck Plus

2.11 The committee discussed with representatives of the FWO the issue of incorrect advice being provided to the public by the online information tool PayCheck Plus. PayCheck Plus is an online application that automatically calculates rates of pay under modern awards. Senator Abetz asked witnesses about an alleged occurrence of PayCheck Plus returning different wage rates on separate occasions. Discussion ensued around amendments and improvements to the software to minimise information errors. It was reported to the committee that since 1 July 2012 there have been a total of 101 amendments to PayCheck Plus.⁹

2.12 Senator Abetz questioned what measures had been undertaken to ensure that employers were made aware of any changes amendments to PayCheck Plus. The committee was informed that:

[W]e have put and continued to put in place a whole range of mechanisms to detect, correct and notify people about these. At the beginning of this month we listed on our website all the errors since 1 July last year and we have built an RSS feed service so that for the award that they are interested in, or all awards, they can get a regular update on their electronic mailbox of what changes have occurred...within the application itself we are doing some things to improve the visibility of those changes as well.¹⁰

7 *Proof Estimates Hansard*, 15 February 2012, pp 40–41.

8 *Proof Estimates Hansard*, 15 February 2012, p. 41.

9 *Proof Estimates Hansard*, 15 February 2012, p. 48.

10 *Proof Estimates Hansard*, 15 February 2012, p. 48.

Entitlement offsetting

2.13 The committee explored with witnesses the matter of over and under payment of wages and the possibilities of offsetting award entitlements. Senator Abetz questioned what would happen if a workplace audit identified overpayments during the week, with simultaneous underpayments on weekends. Witnesses confirmed for the committee that there are currently no provisions in the Fair Work Act to offset any underpayments against previous made over-award payments. In such a circumstance, the business involved would need to rectify the weekend underpayment.¹¹

2.14 Witnesses from the FWO explained that there is the possibility of offsetting award entitlements in certain circumstances, specifically when the employer and employee agree to the arrangements before payments are made. As explained by Mr Ronson:

[T]he way we approach the question of offsetting we look for clear designation. We look for agreements between an employer and an employee, preferable written, that it is their intention to pay over, say a Monday-Friday rate, if it is to compensate deliberately a weekend rate. There could be a verbal agreement and that would require the assent of both parties. In the absence of agreement, it is hard—the authorities are fairly established—to be too liberal in the offsetting regime.¹²

Office of the Australia Building and Construction Commissioner

Litigation: process, policies, performance

2.15 The committee considered at some length litigation undertaken by the Office of the Australian Building and Construction Commissioner (ABCC). Australian Building and Construction Commissioner Johns reported to the committee that:

Since October 2005 the ABCC has litigated 90 matters. It has been successful in 76 of those. That is 84 per cent. I can tell you that in the past financial year we have finalised 15 matters and we have been successful in 13 of them. That is a success rate of 93 per cent.¹³

2.16 Senator Thistlethwaite queried how many prosecutions were brought under the *Building and Construction Industry Improvement Act 2005* (BCII Act), and how many were brought under the *Fair Work Act 2009*. The committee heard that:

[T]here are a range of acts in which the civil prosecutions are taken. At one end of the spectrum, there will be matters under the BCII Act alone. There will be other matters, of course, that are under the BCII Act and the Fair Work Act. There are others under the Fair Work Act...I think you have to

11 *Proof Estimates Hansard*, 15 February 2012, pp 49–50.

12 *Proof Estimates Hansard*, 15 February 2012, p. 49.

13 *Proof Estimates Hansard*, 15 February 2012, p. 55.

see it across that whole spectrum...I would think, without having the final figures in front of me, that there would be something in the order of around 25 per cent of matters would be solely under the BCII Act.¹⁴

Efficiency gains

2.17 During the hearing the committee heard of a number of areas that the ABCC is improving its operational capabilities and efficiency. Commissioner Johns reported to the committee that the Field Operations and National Code teams have been integrated:

[R]ather than have two separate groups doing two separate bodies of work, we now have available to us a combined inspectorate that can be more easily deployed to do the work where the work needs to be done. Rather than have a separate group for national code, who then cannot be moved in investigations, they are now all together.¹⁵

2.18 Commissioner Johns also informed the committee regarding the progress and rationale for co-locating ABCC offices with those of the FWO. The committee heard that co-locating offices in cities has proved mutually beneficial for the ABCC and the FWO and that there was an ever-present search for efficiencies.¹⁶

Comcare

Record maintenance

2.19 Senator Bilyk discussed with Comcare the matter of missing records, the impact they can have on claims and the incidence of incomplete records. Comcare reported that measures have been put in place to improve the organisation's records management following a data transfer error that resulted in the files of some clients being lost:

A number of reforms have been implemented over the many years since that data transfer error occurred. I believe it was back in the early nineties. It was in the migration of information from one of our technology systems to another. We have a very strict control rules around the migration of data. It is not something we do regularly; it is something that occurred back at the time of a technology refresh. We believe we have very good controls in place to make sure that the accuracy of that data is maintained and that there is integrity there.¹⁷

14 *Proof Estimates Hansard*, 15 February 2012, p. 62.

15 *Proof Estimates Hansard*, 15 February 2012, p. 63.

16 *Proof Estimates Hansard*, 15 February 2012, p. 67.

17 *Proof Estimates Hansard*, 15 February 2012, p. 72.

Immigration Detention Centres

2.20 Comcare reported to the committee that there are three open investigations in relation to incidents that have occurred in immigration detention centres. The investigations relate to an incident involving a forklift at Scherger in March 2011, the death of a client at Curtin in March 2011, and a SERCO officer being found unconscious at Curtin in November 2011. Since 1 January 2012 three improvement notices have been issued in relation to detention centres.¹⁸

Safe Work Australia

Model Regulations

2.21 The committee questioned representatives of Safe Work Australia (SWA) regarding the progress in implementing the national harmonised regulations for occupational health and safety.

2.22 Senators asked FWA how the model regulations would impact on the volunteer sector. Representatives from SWA informed the committee that following Minister Shorten's roundtable with volunteering organisations, additional information has been prepared and distributed informing volunteers and volunteer organisations how the model regulations impact upon them.¹⁹ Senator Fifield and SWA Chief Executive Officer Mr Hoy discussed penalties for volunteers under the new regulations. Mr Hoy informed the committee that the maximum penalty applicable was for reckless conduct which carries the penalty of up to \$300 000 or five years imprisonment. Mr Hoy noted that volunteers in the Australian Capital Territory, Northern Territory and Queensland were covered by workplace health and safety laws and penalties prior to harmonisation.²⁰

Department of Education, Employment and Workplace Relations: Outcome 4 – Workforce participation and labour market assistance

Job Services Australia

2.23 The committee inquired into a number of matters surrounding Job Services Australia (JSA). In particular, the committee discussed an on-going audit of JSA led by Mr Butterworth. The audit will include around ten per cent of providers covering 2 500 claims. The Department reported that it hopes to have completed the audit by March 2012.²¹

18 *Proof Estimates Hansard*, 15 February 2012, pp 75–76.

19 *Proof Estimates Hansard*, 15 February 2012, p. 76.

20 *Proof Estimates Hansard*, 15 February 2012, p. 77.

21 *Proof Estimates Hansard*, 15 February 2012, pp 91–96.

2.24 Senator Siewert asked about the frequency and scope of audits covering major programs and was informed by Department Deputy Secretary Ms Parker:

We regularly do these kinds of activities. One of the things we look at is our range of program assurance mechanisms. Part of that is about having national targeted projects. We survey employers, we look at data analysis and we look at the information we have in our system. We work with each of our contract managers in the states and we hone in on areas where we think there might be an issue. It might come up in one state that there appears to be an issue. Our contract managers meet as a group regularly with our national office people and they say to us, 'We think there might be an issue here. We have been desktop monitoring; we think there is a bit of sharp practice potentially.' We would then decide whether that is a local issue or a national issue, and then we would drill in.²²

Resourcing the future

2.25 Senator Waters led a discussion on the findings and methodology of the 2010 report *Resourcing the Future* by the National Resources Sector Employment Task Force. The committee heard that the report included in excess of 30 recommendations where are being processed by an implementation committee. Ms Paul elaborated on the value of the report and workings of the implementation committee:

The recommendations are quite broad. They go from things like remote housing through to employment arrangements, all sorts of things. They are all quite important to try to get the whole sector working well, with the purpose of enabling economic growth and not fettering it because of skills shortages, labour shortages or any employment, housing or municipal regulation barriers of any kind. On the group that I have been chairing sit the key players; the mining industry representatives, the union representatives, WA government representatives et cetera. The committee has not met that often, but has been quite important, at a very high level, to dip into the recommendations of that report and drive their implementation.²³

2.26 Specifically, the committee discussed the impact of a fly-in fly-out workforce on communities, labour retention within the industry, and the importance of creating local employment opportunities around resourcing projects.²⁴

Disability Employment Services

2.27 The committee heard that the government's Response to the Education, Employment and Workplace Relations References committee's inquiry into the purchasing and administration of Disability Employment Services –

22 *Proof Estimates Hansard*, 15 February 2012, p. 94.

23 *Proof Estimates Hansard*, 15 February 2012, p. 105.

24 *Proof Estimates Hansard*, 15 February 2012, pp 104–106.

Employment Support Services (DES–ESS) would be presented within the standard 3-month timeline.

2.28 Witnesses updated the committee on preparations currently underway in order to proceed with an open tender process from May 2012. The committee learnt that starting from 27 February 2012 an exposure draft of the Request for Tender document would be released followed by public consultations in all capital cities and around 20 regional centres.²⁵

Department of Education, Employment and Workplace Relations: Outcome 5 – Safer and more productive workplaces

Appointment of the Fair Work Australia General Manager

2.29 Senator Abetz queried DEEWR about the process of appointing a new general manager for Fair Work Australia following the elevation to Commissioner of the then General Manager Mr Lee. Deputy Secretary Mr Kovacic told the committee that the position is a ministerial appointment. Section 669 of the Fair Work Act 2009 requires the minister consult with the president regarding potential appointments. The committee was informed that Mr Kovacic consulted with the president of FWA regarding potential candidates on behalf of the Minister. Following this consultation process advice was provided to the Minister on 2 September recommending that Ms O'Neill be appointed as acting General Manager.²⁶

Review of the Fair Work Act 2009

2.30 Senator Abetz discussed with witnesses the size, composition and duties of the secretariat supporting the panel appointed to review the *Fair Work Act 2009*. The committee was told that the secretariat includes six staff members who provide research and administrative support to the panel. The secretariat also has the capacity to provide drafting support under the guidance of panellists.²⁷

Department of Education, Employment and Workplace Relations: Outcome 1 – Early Childhood Education

Childcare management system

2.31 The committee discussed with representatives of DEEWR the cause of the recent technical difficulties with the childcare management system that disrupted payments to some service providers. The childcare management system determines how much a provider is owed in childcare benefits from the government. Senator Back summarised the seriousness of the issue: 'I understand that it has led to

25 *Proof Estimates Hansard*, 15 February 2012, p. 109.

26 *Proof Estimates Hansard*, 15 February 2012, pp 119–120.

27 *Proof Estimates Hansard*, 15 February 2012, pp 120–121.

2.32 DEEWR Deputy Secretary Ms Taylor explained to the committee the genesis of the problem:

I understand that there were upgrades in December. The problem did not become evident until around 13 January. It was a combination of issues exacerbated and brought to the fore by the volume of transactions.²⁹

2.33 It was reported to the committee that the problem appears to have been resolved by the introduction of an additional server to support the computer platform. Of the approximately 14 200 accredited services using the childcare management system only a minority are thought to have been effected. Six applications for business continuity grants were received by DEEWR from services that had their cash flow compromised by the service interruptions. All six services have been provided with funding by DEEWR.³⁰

2.34 On a related matter, Senator Bilyk sought clarification from the DEEWR that money could not be collected from parents through the childcare management system. Officers from DEEWR assured the committee that: 'We pay money to the service but we cannot get any money from the parents and certainly not through their bank accounts. It does not go that way.'³¹

Long Day Care quality framework transition support

2.35 The National Quality Framework (Framework) came into effect on 1 January 2012. The Framework aims to raise quality and drive continuous improvement in education and care services. The committee discussed the one-off grants available to Long Day Care service providers in areas of relative socioeconomic disadvantage. As explained by the witnesses, the grant provides eligible services with \$5000 to:

[A]ssist services with the implementation of the national quality framework. It was a broad range. It may be used for training. It could be used to purchase necessary equipment, to do signage – because there is a requirement to do certain signs to meet the standards – or subsidising relief staff to relieve staff doing upgrades. It could also be used for any modifications in the internal or external environment so that services could come up to standard and outreach activities that would improve access and outcomes for vulnerable children.³²

28 *Proof Estimates Hansard*, 16 February 2012, p. 4.

29 *Proof Estimates Hansard*, 16 February 2012, p. 5.

30 *Proof Estimates Hansard*, 16 February 2012, pp 5–7.

31 *Proof Estimates Hansard*, 16 February 2012, p. 19.

32 *Proof Estimates Hansard*, 16 February 2012, p. 12.

2.36 The committee was informed that 991 centres had received the \$5000 grants.³³

2.37 Among others, the following matters were discussed during Outcome 1:

- Indigenous Early Childhood Education Centres;
- Vacancy rates for childcare workers;
- Teenage parent pilot programs; and
- Long day care centres.

Australian Curriculum, Assessment and Reporting Authority

National Assessment Program – Literacy and Numeracy

2.38 The committee discussed with witnesses the results of the National Assessment Program – Literacy and Numeracy (NAPLAN) tests and what they indicated about Australia's level of educational attainment. Witnesses provided some background information on trends in student development and the spread of abilities between age groups and individual classes.³⁴

2.39 The usefulness and criteria of national minimum standards for literacy and numeracy were discussed at some length. Some senators expressed concern that the minimum standards were set at too low a level. Explaining the rationale and purpose of national minimum standards, Chief Executive Office Dr Hill explained:

In terms of literacy, which is what we are talking about, the standard that we have is deliberately set so that we have a benchmark as to whether the student can meaningfully participate in the instruction. That is where it is set. I think it is an appropriate standard to have. Yes, it is a minimal standard, but that is its purpose. It is to highlight for us where we have a student who cannot meet that and clearly we really have to have very special support for that student so that they can engage productively in the instruction in the classroom.³⁵

Chief Executive Officer

2.40 The committee was informed that the Australian Curriculum, Assessment and Reporting Authority's Chief Executive Officer Dr Hill would be retiring, and that this would be his last appearance before the EEWL committee. The Hansard transcript bears witness to the high regard in which Dr Hill is held:

33 *Proof Estimates Hansard*, 16 February 2012, pp 11–12.

34 *Proof Estimates Hansard*, 16 February 2012, pp 27–28, 30.

35 *Proof Estimates Hansard*, 16 February 2012, p. 31.

Senator Jacinta Collins: The work that Dr Hill has conducted has been of extreme value to the government and to the country more generally. We note his departure with regret and wish him well in retirement.

Ms Paul: On behalf of the department, I reinforce what the parliamentary secretary has said. Dr Hill has been the first CEO of ACARA, and has had a very distinguished career. ACARA has been very fortunate to have Dr Hill as its first chief executive, and Dr Hill has seen through the groundbreaking and, in many areas, world-leading work that ACARA does.

Senator MASON: On behalf of the opposition, Dr Hill, you have always been a very gentlemanly witness, despite all provocations, so thank you very much.

CHAIR: Thank you, Dr Hill. We are very privileged in this country to have a very professional and expert public service. You have certainly been a fine example of that. My personal thanks go to you. You have brought great calmness to this issue. I do recall many times when Senator Mason has been in full flight and your calm, considered response has brought him back to earth to the benefit of all of us. So thank you, Dr Hill.³⁶

Department of Education, Employment and Workplace Relations: Outcome 2 – Schools and Youth

School Enrolment Attendance Measure

2.41 The committee undertook an expansive discussion of the School Enrolment Attendance Measure (SEAM); specifically the SEAM Evaluation Report for 2010 released on 2 February 2012.

2.42 Senator Siewert discussed with representatives the difficulties in collecting data on attendance in non-government education facilities. Witnesses, building upon this theme, reported difficulty in accessing the appropriate data from the Catholic Education Authority in some instances.³⁷

2.43 Senator Scullion went on to discuss with officers the efficacy of the SEAM trial and some of the reasons behind the minimal increase in attendance in many places. The committee was informed that:

[Y]ou have to have reasonable expectations about a program like SEAM. It is operating in the most challenging communities, probably, that we have to deal with. The fact that there is an improvement is something that suggests that this is worth trying, but there is no doubting that the families face multiple barriers, as is documented in the report. These are some of the most difficult circumstances.³⁸

36 *Proof Estimates Hansard*, 16 February 2012, p. 36.

37 *Proof Estimates Hansard*, 16 February 2012, pp 49–50.

38 *Proof Estimates Hansard*, 16 February 2012, p. 53.

Cybersafety and bullying in schools

2.44 The committee discussed at length the issue of bullying in schools, and in particular measures that are either in place or being developed to ensure that the online playground is a safe one.

2.45 Officers of DEEWR reported progress on a number of fronts including the development and maintenance of the *Bullying. No Way!* website, as well as more traditional information resources provided under the National Safe Schools Framework. These resources help educate teachers and parents how to identify, discuss, and prevent bullying. The committee was also informed of work undertaken by the Department of Broadband, Communication and Digital Economy to improve cybersafety; notably a website called *Cybersmart*.³⁹

2.46 Witnesses also highlighted for the committee on the work undertaken by the Australian Communication and Media Authority in providing information to teachers, students and parents on strategies to mitigate cyberbullying. To date, over 350 000 individuals have attended events organised by ACMA covering issues around cybersafety.⁴⁰

2.47 The committee heard that 16 March 2012 is the National Day of Action Against Bullying and Violence which will be observed across all states and territories.⁴¹

National School Chaplaincy and Student Welfare Program

2.48 The committee questioned witnesses regarding recent changes to the National School Chaplaincy and Student Welfare Program (Program). The Program replaced the former National School Chaplaincy Program at the beginning of 2012 enabling schools to choose between either a chaplain or a secular student welfare worker. Minimum qualifications, benchmark standards for service providers, and improvements to the complaint management system have also been introduced.⁴²

2.49 New requirements for chaplains and student welfare workers include minimum qualification levels. Witnesses informed the committee that there were numerous education service providers that offered the required qualifications, and that the relevant units were also available online.⁴³

39 *Proof Estimates Hansard*, 16 February 2012, pp 60–65.

40 *Proof Estimates Hansard*, 16 February 2012, pp 61–62.

41 *Proof Estimates Hansard*, 16 February 2012, p. 61.

42 The Hon Peter Garrett MP, *Schools given greater choice under expanded chaplains program*, Media release, 7 September 2011.

43 *Proof Estimates Hansard*, 16 February 2012, p. 71.

2.50 Among others, the following matters were discussed during Outcome 2:

- Reward for School Improvement program;
- Indigenous Boarding Schools;
- Building the Education Revolution;
- National Safe Schools Framework

Senator Gavin Marshall

Chair