

The Senate

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Employment, Workplace Relations  
and Education Legislation Committee

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Budget estimates 2006–07

June 2006

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<b>Members:</b>	Senator Gavin Marshall (Deputy Chair)	(ALP) Vic
	Senator Guy Barnett	(LP) Tas
	Senator George Campbell	(ALP) NSW
	Senator David Johnston	(LP) WA
	Senator Natasha Stott Despoja	(AD) SA

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Senator Andrew Murray (AD) WA	for Senator Stott Despoja for workplace relations matters
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# **Employment, Workplace Relations and Education Legislation Committee**

## **Report to the Senate**

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

### **Introduction**

1.2 On 9 May 2006 the Senate referred the following documents to the committee for examination and report in relation to the Employment and Workplace Relations and the Education, Science and Training portfolios:

- Particulars of certain proposed expenditure in respect of the year ending on 30 June 2007;
- Particulars of proposed expenditure in respect of the year ending on 30 June 2007;
- Particulars of proposed expenditure in relation to the parliamentary departments in respect of the year ending on 30 June 2007;
- Particulars of certain proposed supplementary expenditure in respect of the year ending on 30 June 2006; and
- Particulars of proposed supplementary expenditure in respect of the year ending on 30 June 2006.<sup>1</sup>

1.3 The committee heard evidence from Senator the Hon. Eric Abetz, representing the Minister for Employment and Workplace Relations, the department, and related agencies on the proposed budget estimates for the Employment and Workplace Relations portfolio. The following agencies appeared before the committee: the Office of the Employment Advocate; Equal Opportunity for Women in the Workplace Agency; Australian Industrial Relations Commission and the Australian Industrial Registry; Comcare, including the Safety, Rehabilitation and Compensation Commission; and Seafarers' Safety, Rehabilitation and Compensation Authority; Australian Building and Construction Commission; Australian Fair Pay Commission Secretariat and the Office of Workplace Services.

1.4 The committee also heard evidence from Senator the Hon. Amanda Vanstone, representing the Minister for Education, Science and Training, and from officers of the department and its agencies on the proposed budget estimates for the Education, Science and Training portfolio. These included the Commonwealth Scientific and

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1 *Journals of the Senate No 80*, Tuesday, 9 May 2006, pp. 2133-2134

Industrial Research Organisation; the Australian Research Council, and the Australian Nuclear Science and Training Organisation.

1.5 The committee took into account the Portfolio Budget Estimates Statements 2006-2007 provided by the departments and also their annual reports for 2004-2005. Review of the proposed budget estimates expenditure for these portfolios was carried out over four days, 29, 30, 31 May and 1 June 2006.

1.6 Senators present at the hearing held on Monday, 29 May 2006 were Senator Troeth (Chair), and Senators Barnett, G. Campbell, Ferris, Marshall, McEwen, Siewert, Sterle and Wong.

1.7 Senators present at the hearing held on Tuesday, 30 May 2006 were Senator Troeth (Chair), and Senators Barnett, Bernardi, G. Campbell, Crossin, Eggleston, Ferris, Marshall, McEwen, Siewert, Sterle and Wong.

1.8 Senators present at the hearing held on Wednesday, 31 May 2006 were Senator Troeth (Chair), and Senators Allison, Barnett, Bernardi, G. Campbell, Crossin, C. Evans, Ferris, Forshaw, Kirk, Marshall, Siewert, Stephens, Stott Despoja and Wong.

1.9 Senators present at the hearing held on Thursday, 1 June 2006 were Senator Troeth (Chair) and Senators Barnett, Bernardi, Eggleston, Ferris, Marshall, Stephens and Wong.

1.10 Written questions on notice were received from Senators, G. Campbell, Carr, Crossin, Ludwig, Marshall, Mason, Nettle, Siewert, Stott Despoja, Webber and Wong.

1.11 The committee tables with this report copies of transcripts of evidence of committee proceedings of Monday, 29 May 2006, Tuesday, 30 May 2006, Wednesday, 31 May 2006 and Thursday, 1 June 2006. An appendix to the report lists the contents of the proof Hansard transcripts and the transcripts are available on the internet at: <http://www.aph.gov.au/hansard/senate/committee/s-ewre.htm>.

### **Questions on notice and additional information**

1.12 Standing Order 26 requires the committee to fix a date for the submission of any written answers or additional information. The committee has agreed that written answers and additional information should be submitted by Friday, 28 July 2006.

1.13 Documents taken at the hearings of the budget estimates will be tabled with this report. The answers to questions taken on notice at the committee's hearings will be tabled in the Senate under separate cover. Volumes entitled Additional Information will be published at a later date. Lengthy documents provided as part of answers and not included in the additional information volumes are available on request from the secretariat. This information is also available on the committee's website: [http://www.aph.gov.au/Senate/committee/eet\\_ctte/estimates/index.htm](http://www.aph.gov.au/Senate/committee/eet_ctte/estimates/index.htm).



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## Matters raised at hearings

1.14 The following is an indicative, but not exhaustive, review of issues that received consideration during the Budget estimates hearings.

### Employment and Workplace Relations portfolio

1.15 The committee heard evidence from the Employment and Workplace Relations portfolio on Monday, 29 May and Tuesday, 30 May 2006. This section of the report follows the order of proceedings recorded in the budget estimates transcripts.

#### *Procedural matter*

1.16 On both days of the hearings the department informed the committee was informed by the department that it would refuse to answer questions regarding the time frame in which matters were dealt with in the Minister's office. An officer of department, Mr J O'Sullivan, asserted that to do so may breach the cabinet-in-confidence convention and subsection 13(6) of the Public Service Act which requires an APS employee to maintain 'appropriate confidentiality' in dealings with ministers. DEWR stated that this refusal to answer the questions did not amount to a claim of public interest immunity or a blanket refusal by the department to answer questions on the timing issue.

1.17 Advice was sought from the Clerk of the Senate on the statements made by Mr O'Sullivan. Among other things, the Clerk noted the statement of Senator Minchin in 2003, in which the Government accepted the long-held principle that a general statutory secrecy provision does not apply to the disclosure of information in parliament or any of its committee unless the provision is framed to have such an application. The Clerk's advice is attached at Appendix A.

### Department of Employment and Workplace Relations

#### *Outcome 1: An effectively functioning labour market, and*

Output 1.1: Labour market policy and analysis

Output 1.2: Labour market program management and delivery

#### *Outcome 3: Increased workforce participation*

Output 3.1: Working age policy

Output 3.2: Labour market strategies

1.18 Questioning of the department was initially directed at reviewing answers to questions on notice from the Additional estimates hearing in February 2006. The Opposition senators were interested in obtaining more information regarding the issue of Job Network's implementation of the active participation model and the risk assessment in relation to the specific issue of Job Network members being able to reclassify persons under the JSCI and JSCI updates by Job Network. They believed the department had not answered questions W670\_06, W671\_06 and W673\_06 fully

and requested more information. The department answered that it was the Minister who tables the answers and it would not 'second guess' the Minister's answers. The claim was made that the material requested by the committee from the department of finance was subject to cabinet deliberation and was 'cabinet in confidence'. Advice was sought from the Clerk of the Senate on the department's response that it would breach the Public Service Code of Conduct, Section 13(6) to answer questions relating to dealings with the minister's office.<sup>2</sup>

1.19 In relation to the issue of the exemption of family carers under the new legislation, Senator Siewert followed up her questioning from Additional estimates regarding the department's discussions with the states on whether the states would have registers that included family carers. The committee was informed that it would note that this category had not been recognised, as had foster carers, and would advise the government of the concerns raised, but that it was a government policy decision.<sup>3</sup>

1.20 Further questioning followed regarding current processes for client information exchange of the current Job Network contract, a follow up of question W680\_06; question W693\_06, a request for further information as to demographical or income support payment analysis in terms of estimates for participation in full-time work for the dole; and the status of the investigations into the allegedly incorrect Job Seekers Classification Instrument (JSCI) classifications.<sup>4</sup>

1.21 In regard to the Minister's announcement on 25 May in relation to setting a \$50 per fortnight threshold for people to be able to earn over and above the other items listed for the definition of suitable work for parents, there was a discussion on how this figure was obtained and whether there had been any modelling done in relation to people with a disability, or parents for people with a disability. Other topics discussed were:

- the department's modelling of the Welfare to Work expectation of people seeking and obtaining work of 15 hours a week, with the expectation they will be better off than those who stay on income support and the difference between those on DSP and Newstart;
- NATSEM report (National Centre for Social and Economic Modelling) and its findings;
- factors involved in assessing whether or not a job is suitable for people with a disability;
- the COAG mental health initiative and the 2,500 places in addition to the 6,300 Welfare to Work places in the PSP and the administration of these places; and

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2 Committee proof *Hansard*, Monday, 29 May 2006, pp. 4-9

3 *ibid.*, pp. 9-11

4 *ibid.*, pp. 11-13

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- the monitoring and updating of DEWR's operational guidelines for Job Network providers.<sup>5</sup>

1.22 Further questioning continued on the following issues:

- progress on amendment to the *Social Security Guide*;
- the breakdown of the financial case management component of the 2005-06 compliance budget and the reasons why the penalty of the eight-week non payment period might be instigated;
- the criteria involved in deeming a person as exceptional where their payments were suspended for eight weeks, what is provided to support them, the Personal Support Program and financial case management, and the issue of homelessness as not meeting the criteria, and the administration and role of Centrelink and non-government organisations in the management of these cases;
- the pathway which employees can take if they are dismissed for misconduct, what Centrelink does with the information provided to it about the dismissal, the review and appeal process through the Social Security Appeals Tribunal and the Administrative Appeals Tribunal and the Federal Court system; and
- 'employer incentives' and the 100 per cent trigger regarding wage subsidy and the job seeker accounts, through Job Network providers to employers.<sup>6</sup>

1.23 The department was asked for an update on the employer demand strategy. The department responded that 40 projects totalling \$3.54 million had been committed including setting up a labour market information portal, to provide information on the labour market in particular areas, which is available to the community and Job Network members. The department also informed the committee of the Better Connections workshops held in various locations to inform employers and Job Network members of disadvantaged groups, with a view to increasing their chances of employment. These forums are used to provide innovative projects to assist employers to find local solutions to employment issues.<sup>7</sup>

1.24 Other projects described included training for employers to manage an ageing workforce, and Workforce Tomorrow industry breakfasts. Thirty three breakfasts are to be held around Australia, of which 21 have been held, with a budget allocation of

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5 *ibid.*, pp. 14-29

6 *ibid.*, pp. 33-49

7 *ibid.*, pp. 49-51

\$509,000. Opposition senators were interested in who had been invited to the breakfasts and whether members and senators were invited.<sup>8</sup>

1.25 Questioning continued on these topics:

- the employment services code of conduct regarding providers acting honestly;
- the evaluation and monitoring of the Welfare to Work, including the longitudinal survey of income support recipients to collect information not available through the normal administrative data;
- the preparation of a detailed evaluation strategy, ensuring that the administrative databases will be functioning to collect this data.<sup>9</sup>
- the effective marginal tax rates, the effect on people moving from welfare into work and the services to assist this process;
- the expenditure involved in the supported wage system scheme, the tender process, and who is covered under the 21,000 allocated places in the capped and uncapped streams;
- the communication strategy of \$29 million over three years as part of the Welfare to Work package;
- concern about giving private details of Centrelink income recipients to the Open Mind Research Group, and the script provided by DEWR to consulting firms when dealing with the recipients;<sup>10</sup> and
- the Mitsubishi labour adjustment package.<sup>11</sup>

**Office of the Employment Advocate (OEA) – 29 and 30 May 2006**

1.26 Answers given to the committee by the OEA received significant press coverage. Questions for the Office of the Employment Advocate mainly related to the Australian Workplace Agreements (AWAs). Opposition senators asked about the process employed by the OEA, and in the methodology used, in analysing the workplace agreements' database and whether the AWAs conform to the minimum classification wage and the five statutory conditions established by the standard. The OEA explained that in monitoring the AWAs, there has been a coding or analysis methodology to provide some early indicators based on a sample of 250 AWAs, taken from the 6,263 AWAs lodged in April 2006.<sup>12</sup>

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8 *ibid.*, pp. 52-56, 58

9 *ibid.*, pp. 56-57, 59-64

10 *ibid.*, pp. 76-80

11 *ibid.*, pp. 81-82

12 *ibid.*, pp. 83-95

1.27 Other issues raised were in regard to the checking of prohibited content within the agreements and the advice process provided to organisations by the OEA. A specific example of prohibited content of employees attending trade union based training on occupational health and safety was discussed. Questions also included the delegation requirements of the OEA for the sample agreements provided to the department for checking.<sup>13</sup>

1.28 The role of the Office of Workplace Services in dealing with the breaches in standards was questioned and the committee was informed that the OEA had no enforcement function with regard to the fair pay and conditions standards; these breaches are forwarded to the Office of Workplace Services (OWS) to follow up. The OEA can only deal with prohibited content breaches against the legislation.<sup>14</sup>

1.29 Further questioning continued on the statistical breakdown of the sample 250 AWAs regarding statutory conditions, including casual, full and part-time employees and hours of work; whether award conditions have been excluded; pay increases; family friendly provisions and work hours. All statistical information will be available when the Work Choices changes commence.<sup>15</sup>

1.30 Other issues included: employee collective, non-union collective, and union greenfields agreements; the provision of agreement coverage by postcode to the department, and whether statistical information on the number of AWAs is available by electorate; the testing of AWAs to comply with the no disadvantage clause; allocation of funding for the industry partners program; OEA contractual arrangements with community partners, and funding for promotional activities, including joint presentation with the department in the Work Choices seminars; and the continued practice to publish collective workplace agreements on WageNet after the introduction of the Work Choice legislation.<sup>16</sup>

### **Equal Opportunity for Women in the Workplace Agency (EOWA)**

1.31 The EOWA was asked how it was to be affected by the Work Choices and Welfare to Work legislations. The committee was informed that the Work Choices legislation would not change the reporting mechanism of the agency, as it would need to change its legislation on how organisations report to the agency. The Welfare to Work provisions would be able to be tracked, for example the increase in part-time employment within organisation and the number of women involved.<sup>17</sup>

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13 *ibid.*, pp. 83-95, Committee proof *Hansard*, 30 May 2006, pp. 6-12

14 *ibid.*, pp. 91-95

15 *ibid.*, pp. 95-103

16 *ibid.*, pp. 104-111, Committee proof *Hansard*, 30 May 2006, pp. 4-15

17 *ibid.*, pp. 112-113

1.32 Further questioning looked into the how the agency was able to measure the participation of women in the workplace, the level of participation within an organisation, salary levels, access to paid maternity leave, access to part-time provisions, promotion and recruitment issues and whether women have equal opportunity within a particular workplace, and the level of consultancy in a workplace affecting women.

1.33 Questioning also included issues around maternity leave and the issue of the work and family test case was raised. Following the decision handed down by the Australian Industrial Relations Commission, EOWA was asked if it would be asking questionings of its reporting organisations on the conditions outlined in the test case. Data would be collected during the next reporting period.<sup>18</sup>

1.34 In response to questioning regarding assistance to people with disabilities into the workplace, especially women and how this would be tracked, EWOA responded that it was considering identifying model organisations to encourage others to follow.<sup>19</sup>

1.35 The upgrading of the IT database was also questioned, concerning the agency's ability to more readily access the data collected under its legislative requirements.<sup>20</sup>

### ***Department of Employment and Workplace Relation***

#### ***Cross-portfolio***

1.36 Senator Wong questioned the department on the status of answers from previous hearings which have not been received. The Secretary, Dr Boxall, replied that these answers, three from the supplementary hearing, and seven from the Additional estimates, are still to be tabled. It was the Minister's decision when they will be released to the committee. When asked about the timing of the answers being sent to the Minister's office, the department again responded that to answer questions of that nature would breach the confidentiality of dealings of the department with the minister's office under Section 13(6) of the Public Service Code of Conduct, as stated in answer W764\_06.<sup>21</sup>

The department provides advice to the Minister on answers to questions taken on notice or provided in writing as soon as practicable, having regard to available resources and to the number and complexity of questions. The timing of tabling of answers to questions on notice is a matter for the Minister, subject to the delivery of advice from the department. The content

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18 *ibid.*, pp. 113-114

19 *ibid.*, pp. 114-115

20 *ibid.*, pp. 116-117

21 Committee proof *Hansard*, 30 May 2006, pp. 17-19

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of that advice, and when such is provided, is subject to the confidentiality provisions of the *Public Service Act 1999* (see especially s.13(6)).<sup>22</sup>

1.37 Opposition senators asked the department a series of questions on the following subjects:

- an email sent out to all staff in the department by mistake by the Business and Policy Development Branch of DEWR, in the Indigenous Employment and Business Group, stating that all sick leave absences would require a medical certificate. The department responded this was a mistake and had been rectified;
- the provision of training for departmental staff on their obligations under the Workplace Relations Act and especially the new Work Choices legislation;
- staffing levels, staff turnovers and recruitment, including the provisions of the new template for AWAs with the introduction of Work Choices and the conditions of engagement, what is required by prospective employees joining the department, the choice of a collective agreement or AWA, and the conditions and terms of service;
- advice provided about the introduction of the Work Choices legislation to other departments and agencies and how it would affect the employment practices;
- the prospective employment of a chief economist to assist in consolidating the economic work, modelling and research in the department and what advice or reports the department received on employment and productivity effects of the Work Choices legislation;
- the transfer of staff from the department to the new Office of Workplace Services;
- the tracking of staff morale; and
- the increase in full-time employment from the introduction of the Work Choices legislation and the removal of the unfair dismissal laws.<sup>23</sup>

### ***Outcome 1 and 3 – Indigenous programs***

Output 1.2: Labour market program management and delivery

Output 3.2: Labour market strategies

1.38 Senator Crossin asked questions about the changes to the Community Development Employment Project (CDEP) guidelines for 2006-07 and what process was involved in circulating the changes to the CDEP organisation. The department responded that this was done electronically to the CDEPs on the same day as the

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22 DEWR Additional estimates 05-06 answer W764\_06

23 Committee proof *Hansard*, 30 May 2006, pp. 20-45

Minister's announcement on 29 March. These changes were developed based on the Future Directions document released in 2005, and from a range of issues raised through consultations and by submissions, forums, feedback from the House of Representatives report and from the National Indigenous Council. The main changes are: a youth rate for CDEP; as of 1 July 2006 there is a 12-month limit on urban and regional CDEPs; and the issue about registration with Job Network. Other matters discussed were the CDEP organisations' applications for funding and how these would be processed with the new changes in the policy, along with what insurance requirements are to be available and demonstration of satisfactory governance.<sup>24</sup>

1.39 Further questioning followed on the set up of the 221 CDEPs and their funding, and its role in training young people, for long term employment in real jobs. The department explained that it was working with a number of state and territory governments to develop regional partnerships and shared responsibility agreements leading to the creation of real jobs.<sup>25</sup>

1.40 The committee was informed that across Australia there had been an increase of indigenous people moving from CDEP into jobs, an increase of 100 percent over last financial year's employment target.<sup>26</sup>

1.41 Other topics discussed were:

- Job Network providers in the Northern Territory and the coverage provided for all communities;
- the level of cross-cultural awareness in the department and what training is provided;
- key performance indicators rating for high performing CDEP organisations and DEWR's continual monitoring of the CDEPs performance against the KPIs;
- job skills analysis of CDEP participants as part of the individual participants plan when registering with a Job Network provider;<sup>27</sup>
- defining urban and regional areas regarding the type of services to be received;
- funding available under the Structured Training and Employment Project contract, and the monitoring of CDEPs and Job Networks over the next 12 months; and

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24 *ibid.*, pp. 45-48, 56-57

25 *ibid.*, pp. 46-51

26 *ibid.*, p. 52

27 *ibid.*, pp. 52-55



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- the assistance and working relationship between the Tiwi Islands, NT and Commonwealth governments to assist in establishing business development and employment.<sup>28</sup>

1.42 In response to questioning about the different levels of funding provided to CDEP and Job Network members, the department told the committee that the funding of \$7,500 for Job Network placement and \$2,200 for a CDEP 26-week placement outcome was for the purpose of providing different services. The department encourages CDEPs that have indigenous employment centres to move towards a Job Network model to receive additional funding.<sup>29</sup>

1.43 The issue of individual participants receiving payments of Abstudy and CDEP at the same time was raised. The department explained that there was some confusion in understanding the CDEP guidelines and informed the committee that the guidelines prohibited the payment of both benefits simultaneously. They might be receiving some other funding under Abstudy, but that it would be a living allowance.<sup>30</sup>

1.44 Questioning finished with Senator Siewert asking about the Wheatbelt Aboriginal Corporation in WA and whether the decision had been made to renew its CDEP contract. The department responded that this organisation would continue to provide services until 30 June 2006, and that the decision to renew its contract would be announced soon, when the competitive purchasing process had been completed for CDEPs across Australia.<sup>31</sup>

### ***Outcome 2: Higher productivity, higher pay workplaces***

Output 2.1: Workplace relations policy and analysis

Output 2.2: Workplace relations implementation

1.45 Opposition senators asked a series of questions on the award review task force, its terms of reference, and what recommendations on strategies for rationalising awards and wage and classification structures had been provided to the minister. The committee was informed that 80 submissions had been received, and 130 organisations had attended consultation forums. Approximately 2,200 federal awards had been brought into the federal system with the Work Choice legislation.

1.46 The draft interim report on the classification wage report is also with the Minister, to be completed by 30 July. The committee was informed that the pay equity issues were still to be deliberated, along with labour hire employees, classifications

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28 *ibid.*, pp. 57-59

29 *ibid.*, pp. 64-65

30 *ibid.*, p. 66

31 *ibid.*, pp. 67-68

made on an industry basis, and wages and classification structures of constitutional corporations.<sup>32</sup>

1.47 In response to detailed questioning, the department described the objects of its expenditure in regard to information and education campaigns on the Work Choice legislation, including 1,600 seminars to employers and employees, to migrant workers, women and rural and remote employers and employees.<sup>33</sup>

1.48 Further questioning involved the following topics:

- the legal costs of the Commonwealth's intervention in each of the state and territory's wage cases, and the ministerial review of the decision by Vice-President Lawler allowing the ANF protected industrial action without holding a secret ballot; and<sup>34</sup>
- Investigations into compliance with section 127 notices under the act: 17 investigations were withdrawn at the introduction of the Work Choices legislation, which included the investigation into the Eagle Engineering maintenance workers.<sup>35</sup>

1.49 There were questions about the forthcoming independent contractors' bill. Opposition senators were concerned that the state deeming provisions, which will be overridden by this bill, would not serve the interest of independent contractors, especially in regard to transport workers, and outworkers. DEWR responded that the special protections which exist now in New South Wales and Victoria will be preserved in the transport industry and outworkers will be protected, but the Government believed the state deeming provisions removed the choice of people wanting to be independent contractors.<sup>36</sup>

1.50 Further questioning followed on the Work Choice Infoline, and the scripts provided to the operators to assist them answer questions on Work Choices legislation. Questions were also asked on how the department was going in distributing the 5.9 million *WorkChoices* booklets and their storage.<sup>37</sup>

1.51 Other issues raised included: the prohibition of trade unions for conducting OH&S training; the act of publishing workplace agreements potentially breaching the Copyright Act; and GEERS increase in funding in relation to changes in its

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32 *ibid.*, pp. 768-73

33 *ibid.*, pp. 75-81

34 *ibid.*, p. 83

35 *ibid.*, pp. 84-86

36 *ibid.*, pp. 85-93

37 *ibid.*, pp. 94-102

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operational arrangements to widen the eligibility or the base for payment under the program.<sup>38</sup>

### **Australian Industrial Relations Commission and Australian Industrial Registry (AIR)**

1.52 With the introduction of the Work Choices legislation, the Commission was asked how many unlawful termination claims had been filed. The Commission responded that these figures could be higher when all cases were reviewed, but as of 19 May, 178 unlawful and unfair dismissal and 51 unlawful claims were filed.<sup>39</sup>

### **Comcare; Safety, Rehabilitation and Compensation Commission; and Seafarers' Safety, Rehabilitation and Compensation Authority**

1.53 Questioning of the agency was in relation to the following:

- a newspaper article regarding the compensation payment to the family of the Beaconsfield miner Larry Knight;
- the granting of self-insurance licences under the SRC Act;
- increase in staffing levels; and
- the Minister's statement that workers compensation coverage will 'be removed for journeys to and from work and for recess breaks where there is a lack of employer control'. The Minister at the table took a series of questions on notice in order to give a definitive answer.<sup>40</sup>

### **Australian Building and Construction Commission (ABCC)**

1.54 Senator Siewert followed up on earlier questions on the keeping of records when investigators make contact with members of the public. The ABCC advised on the statistics maintained on unlawful industrial action and ABCC investigators reports on visits to work sites.<sup>41</sup>

1.55 The ABCC was also asked its procedure on monitoring and evaluating the performance of its investigators and how complaints were dealt with.<sup>42</sup>

1.56 Other topics covered were:

- the increase of budget funding from \$22.3 million to \$32.95 million for 06-07, which is the full amount for its operations over a financial year;

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38 *ibid.*, pp. 103-114

39 *ibid.*, pp. 115-116

40 *ibid.*, pp. 119-121

41 *ibid.*, pp. 121-122

42 *ibid.*, pp. 122-123

- increasing staff number from 120 to 155 Australia wide;
- total expenditure for external legal advice and representation;
- what advice the ABCC asks for and receives from DEWR; and
- the investigation into the allegation of payment of strike pay on the Hooker Cochram site in Victoria.<sup>43</sup>

### **Australian Fair Pay Commission Secretariat (AFPC)**

1.57 There was limited scope to question this agency as the AFPC is relatively new. In response to questioning on the issue of staff, the AFPC responded that 20 staff will be employed for the areas of research and analysis for the wage review. This would start once the report was finalised by the award review task force, as discussed earlier in Outcome 2 of the department. Other questions followed on the AFPC's role was under the Work Choice legislation and whether it was to have regard to any relevant recommendations that were handed down by the task force.<sup>44</sup>

1.58 In response to questions on what research had been commissioned, the AFPC answered that there had been a literature review into the effects of the minimum wage and this was due in June.<sup>45</sup>

### **Office of Workplace Services (OWS)**

1.59 Questioning opened on funding and staffing of the agency, and how inspectors would be employed to deal with investigations into breaches of the Work Choices legislation.

1.60 Questions were asked on how matters were referred to the OWS. The Cowra abattoir investigation was discussed in regard to how the OWS was informed of the termination of the employees, how the investigation was proceeding and that one of the outcomes was that the manager of the abattoir had withdrawn the letters of termination as a method to end the dispute.<sup>46</sup>

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43 *ibid.*, pp. 124-128

44 *ibid.*, pp. 1228-130

45 *ibid.*, pp. 130-131

46 *ibid.*, pp. 131-139

## **Education, Science and Training portfolio**

2.1 The committee heard evidence from the Education, Science and Training portfolio on Wednesday, 31 May and Thursday, 1 June 2006. This section of the report follows the order of proceedings recorded in the Budget estimates transcripts.

### ***Commonwealth Scientific and Industrial Research Organisation (CSIRO)***

2.2 A considerable amount of time was given over to questions to the CSIRO. CSIRO was first asked about the large reduction of the forward estimates for external non-government earnings of \$183 million. The explanation was given that part of the reduction of \$121 million involves IP earnings due to litigation actions, some involving CSIRO's royalties around the patent for wireless LAN technology in the United States, and it was thought prudent to adjust this estimate down until those matters are resolved.

2.3 An explanation of the establishment of the flagship program was given to the committee, and its link to private investment. It was not envisaged that the partners in the programs would provide investments in kind, but flagship program partners were providing an increasingly proportion of the revenue in kind. Such funding amounts do not go through CSIRO's accounts and is therefore not registered as income.<sup>47</sup>

2.4 The committee heard that the CSIRO was in a strong financial position and that even with the reduction of forwarded estimates, there was still an increase in total revenue of the organisation during this period of the forward estimates.<sup>48</sup>

2.5 There were questions about salaries for senior officers of CSIRO, notably the expense incurred by Dr Garrett's office and staffing reductions.<sup>49</sup>

2.6 Senator Stephens queried CSIRO on staff morale. The director reported that CSIRO have conducted a number of consultative processes, strategy workshops to involve staff in the process and have established a network across the organisation to assist in gauging staff opinions.<sup>50</sup>

2.7 Other topics discussion by the committee were:

- The duties of the Chief Scientist, Dr Peacock, in his appointment to the CSIRO;
- the CSIRO's capital works projects, including the rationalisation of research activities and the cost of the restructuring in Queensland;

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47 Committee proof *Hansard*, Wednesday, 31 May 2006, pp. 3-9, 11

48 *ibid.*, pp. 9-11

49 *ibid.*, pp. 11-26

50 *ibid.*, pp. 21-23

- the value of land and buildings held by the CSIRO, which are revalued every three years by the Australian Valuation Office;
- staff redeployment due to the closure of Woodville;
- what cash reserves are carried from year to year, and projections on revenue and investing activities;
- the report on the CSIRO's public comment policy;
- the reduction of \$123 million on supplier expenditure; and
- the status of any research being conducted on geosequestration;<sup>51</sup>

2.8 The final topics for questioning were: The Murray Darling Basin Commission; and the G-bIRD technology, including what costs have been occurred in the research, the decision to commercialise the project and the patent application process of the technology internationally. A series of questions on notice were taken by CSIRO on these topics.<sup>52</sup>

### **Australian Research Council (ARC)**

2.9 The ARC was questioned on the drafting of the Australian Research Council Bill, the role of the college of experts, and the retention of confidence in the peer review process of the council. The question of the CEO being able to initiate inquiries into research matters of national interest was raised, and in particular whether this could be done by the CEO independently of the minister. The ARC agreed to provide advice on notice following consultation with the Australian Government Solicitor's Office.<sup>53</sup>

2.10 Another issue was the ANAO audit report of the ARC management research grants. The ARC responded that the report stated that the ARC was administering the administered fund well, but other recommendations of the detailed follow-up of grant outcomes should be strengthened and the development of a new research management system to enable it to follow up progress reports.<sup>54</sup>

2.11 In regard to the ARC's Quality and Scrutiny Committee, Senator Stott Despoja asked if this committee would be established again. The committee were told that it is the Minister's intent to retain some aspects of the committee, such as that of the comparison of quality across the discipline areas of the ARC.<sup>55</sup>

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51 *ibid.*, pp. 27-46

52 *ibid.*, pp. 46-54

53 *ibid.*, pp. 54-56

54 *ibid.*, pp. 57-58

55 *ibid.*, pp. 58-59

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## **Australian Nuclear Science and Technology Organisation (ANSTO)**

2.12 Questions commenced on the issue of the 30 health surveyors working at the Lucas Heights reactor. Until recently six of them worked 24 hour shifts. Changes to the type of work carried out meant that these surveyors were not required during the night. ARPANSA's agreement was sought to the new arrangement by staff members and unions.<sup>56</sup>

2.13 The cold commission of the OPAL reactor has been completed, ahead of time, and full reports have sent to ARPANSA under the licensing application.<sup>57</sup>

2.14 Senator Crossin questioned the ARC at length on the visit from the Northern Land Council to Lucas Heights to learn about what is involved in storing nuclear waste and the construction of the nuclear dump. Further questions followed on where the dump might be built in the Northern Territory. ANSTO gave the committee an interesting explanation of how nuclear waste decays and how it is managed.

2.15 Questions were asked about the storage of the waste from the OPAL reactor, which will be treated differently as the spent fuel will be returned to the USA for the first 10 years and it will remain overseas.<sup>58</sup>

2.16 Other topics discussed were: the water leaking from the waste facility in France; the International Atomic Energy Agency's publication *The long term storage of radioactive waste: safety and sustainability*; and the ANSTO commissioned report by Professor Gittus to assist in informing people about the options of nuclear technology, comparing this method of energy production with the large reserves of high-quality coal and natural gas in Australia, and the economic viability of nuclear power and the insurance risk in building nuclear power stations.<sup>59</sup>

## **Department of Education, Science and Training**

### ***Science Group (SCG)***

2.17 The department was questioned on the national radioactive waste management and the management of the funding.<sup>60</sup>

2.18 Senator Stephens asked the department about administration of the CRC program and the process in selecting CRCs.<sup>61</sup>

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56 *ibid.*, pp. 59-60

57 *ibid.*, pp. 60-61

58 *ibid.*, pp. 65-67

59 *ibid.*, pp. 68-81

60 *ibid.*, pp. 82

61 *ibid.*, pp. 83-85

2.19 Senator Crossin continued questioning DEST regarding applications from the Northern Land Council regarding the site for the waste dump, in particular the responsibilities of the council and the Commonwealth in regard to decisions to be made.<sup>62</sup>

2.20 Final questioning included the polling results of the attitudes to build a low-level waste facility in South Australia; and the radioactive waste leak into the aquifer in France and the department's involvement in developing the environmental and safety cases for the waste facility.<sup>63</sup>

### ***Cross portfolio***

2.21 Questions were asked about the \$ 4 million operating loss for 2006-07 due to commitments in previous years not being completed and the cost of implementing them in the 2006-07 financial year. The Secretary explained that these are the building of the Higher Education Information Management System and some spending within international education projects which have been undertaken through a special account.<sup>64</sup>

2.22 Further questions were asked about the anticipated loss of expenditure due to major election commitments in 2005-06, Investing in Our Schools program, the Australian technical colleges, the Tools for Your Trade initiative and during 2006-07 the COAG initiatives around skills and the mental health. All these need additional departmental resources.<sup>65</sup>

2.23 Other questions related to staffing issues; changes in preparing the 2006-07 portfolio budget statements in line with the department's strategic plan; and the department use of the services of actuaries, for example, to assist in determining doubtful debt of the Higher Education Contribution Scheme and the Higher Education Loan Program.<sup>66</sup>

### ***Innovation and Research Systems Group (IRSG)***

2.24 Senator Stephens questioned the group on matters relating to national radioactive waste management and the major national research facilities and the allocation of the funding. DEST replied that at the end of the financial year the Major National Research Facilities Program ends and the National collaborative Research

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62 *ibid.*, pp. 86-92

63 *ibid.*, pp. 92-96

64 *ibid.*, p. 98

65 *ibid.*, p. 99

66 *ibid.*, pp. 101-102



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Infrastructure Strategy will commence, and the development of the Strategic Roadmap.<sup>67</sup>

### ***Indigenous and Transitions Group (I&T)***

2.25 Recent events at Wadeye provoked some questions from the Opposition on Commonwealth funding for Northern Territory indigenous students in Wadeye, and the funding arrangements with the Northern Territory Government. Senator Crossin asked about Commonwealth funding of a new secondary school on Bathurst Island and whether this funding should have been used to upgrade the Xavier Community Education Centre. Questions were asked about consultation with the Tiwi community and the Northern Territory Government in relation to this matter. Senator Chris Evans also asked questions about underspending on IESIP.<sup>68</sup>

2.26 The committee noticed the difficulty some senior DEST officers had in explaining the complexities of IESIP funding. It was clear that some officers at the table were not able to fully answer questions and relied, on briefing from subordinate officers. In general, the committee prefers to hear from officers who are most closely involved in the detail of policy, even if these officers are below SES level.

### ***Strategic Analysis and Evaluation Group (SAE)***

2.27 Senator Evans questioned the department on the initiatives to improve school attendance. The main initiative, which is supported by the communities, is by linking the Abstudy payment to be paid over the four term school year, if the student attends 85 per cent of the time.<sup>69</sup>

### ***Higher Education Group (HEG)***

2.28 The department reported that the higher education students' statistical reports were available on line and that this data was to be updated twice each calendar year. Funding has been provided to the universities for this system totalling \$70 million.<sup>70</sup>

2.29 DEST stated that it would not be monitoring the effects of VSU on the campuses. The department will review university services after 18 months from the full implementation of the VSU. Fees are still being collected for the first semester of 2006.<sup>71</sup>

2.30 DEST responded to questions about its \$80 million transition funding to assist with services formerly provided by student unions. The Minister would determine the

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67 *ibid.*, pp. 103-104

68 *ibid.*, pp. 104-115

69 *ibid.*, pp. 133-135

70 Committee proof *Hansard*, Thursday, 1 June 2006, pp. 4-5

71 *ibid.*, pp. 5-6

proposals to be funded. Senator Stephens also asked questions about the \$10 million small business fund to be used to encourage small business to establish services on regional campuses.<sup>72</sup>

2.31 Questions were asked about the 4,420 allocation of new university places, 2,800 announced under the Backing Australia's Future program, 1,000 nursing places, 420 mental health nursing places and 200 postgraduate clinical psychology places. An additional 1,800 places will be allocated next year. In addition to these, 400 medical places are being allocated through a separate process. The Minister has contacted all state and territory education ministers seeking their views on priorities.<sup>73</sup>

2.32 Other issues covered were: the flow of university graduates obtaining VTE sector qualification; the problem of the treatment of credit transfers and recognition of prior learning status by different institutions; TAFE colleges accredited as higher education providers; increase of offers for university place by three per cent; the decrease in FEE-HELP estimates based on the report from the Australian Government Actuary of doubtful debt reduced from 50 per cent to 43 per cent; and the announcement of the increase in the FEE\_HELP loans limit raised for medical, dental and veterinary students to \$100,000 to assist students who pay up-front fees.<sup>74</sup>

2.33 Senator Wong asked questions in regard to universities which failed to reach their enrolment targets and the financial implications for that university and the higher education indexation factor. The department was also questioned on universities being required to provide more information in order to determine their compliance.<sup>75</sup>

### ***Vocational Training and Education Groups (National Training Directions and Industry Skills) (VET)***

2.34 Senator Bernardi questioned the department on the status of the New Apprenticeship scheme and asked for an update on the pattern of apprenticeships and in providing a skilled work force. DEST responded that there was an increase in students 19 and younger commencing an apprenticeship, over the past decade from 51,000 to 108,000 and that women now account for 41 per cent of all new apprenticeships.<sup>76</sup>

2.35 There were questions on the states and territories signing up to the Skilling Australia's Workforce program agreement. The committee was told that the department wanted all parts of the agreement completed, including the bilateral

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72 *ibid.*, pp. 6-7

73 *ibid.*, pp. 9-11

74 *ibid.*, pp. 13-23

75 *ibid.*, pp. 25-32

76 *ibid.*, pp. 39-41

agreements and the VET plan before tabling. These three components have to be in place before any money can be paid to any state or territory under the legislation.<sup>77</sup>

2.36 Senator Wong followed up from the last hearing on the status of the Institute for Trade Skills Excellence's constitution. The department replied that it was still to be completed, but would then be registered with the ASIC. A discussion continued on the membership of the industry reference groups and appointing a CEO to the institution. Some of the industry groups mentioned as being considered were in the areas of mineral resources, hospitality and personal services and rural and state chambers and associations for example the Housing Industry Association.<sup>78</sup>

2.37 DEST was questioned on the additional \$106.7 million over the next four years for New Apprenticeships Centres and the tender process to select new organisations; the basis of how the payments will be provided to the centres; and the key plan dealing with key client groups, including indigenous people, those with a disability, mature-age and school based new apprentices. The centres will be required to submit their outcomes against their business plans in March of each year.<sup>79</sup>

2.38 Further topics discussion were: the funding program for the industry skills councils; Tools for Your Trade, with 16 additional trades added based on DIMA's Migration Occupation in Demand List; and the funding of Surf Life Saving Australia.<sup>80</sup>

2.39 The committee asked a series of questions on the progress of the Australian technical colleges. DEST informed the committee that out of the 24 regions announced at the beginning, 22 have been successful proposals, 12 funding agreements have been signed with several more to be finalised soon, and four have started operations.<sup>81</sup>

### ***Schools Group*** ***(Schools Resources and Schools Outcomes) (SG)***

2.40 The Schools Group was questioned on the following:

- answer E997\_06 as to why there is the variance between the targeted and primary and secondary indexes and how they are calculated;
- comparing the estimates for government and non-government schools for 2005-06 and 2007-08;

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77 *ibid.*, pp. 44-46

78 *ibid.*, pp. 46-51

79 *ibid.*, pp. 54-61

80 *ibid.*, pp. 67-71

81 *ibid.*, pp. 71-96

- the Students with Disabilities pilot;
- the tutorial vouchers initiative;
- reviews of the SES funding arrangements and the financial questionnaire;
- the Australian Certificate of Education report released in May 2006; and
- the funding of the parliamentary and civics education rebate (formerly the Citizenship Visits Program).<sup>82</sup>

### ***International Education Group (IEG)***

2.41 The matter of Bridge College was again raised in regard to the application to be granted ministerial exemption under the ESOS Act. It was explained that this was the second application and it had been granted in March. Students are now protected if a course is not provided by Bridge College that they enrolled in and the college does refund their fees, the students are able to apply to the assurance fund for assistance.<sup>83</sup>

2.42 The committee was provided with routine updates on prosecutions against breaches of the ESOS Act and the Migration Act.

2.43 Senator Wong asked for a list of the 18 providers with ministerial exemptions and what courses are involved.<sup>84</sup>

### **Acknowledgements**

2.44 The committee is grateful for the assistance given to it by Senator the Hon. Amanda Vanstone, Senator the Hon. Eric Abetz and officers of the departments and agencies concerned.

### **Senator Judith Troeth Chair**

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82 *ibid.*, pp. 96-116

83 *ibid.*, pp. 116-117

84 *ibid.*, p. 117

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## **Appendix A**

**Clerk's Advice on DEWR evidence to the committee**





hl.let.15054

6 June 2006

Senator Penny Wong  
The Senate  
Parliament House  
CANBERRA ACT 2600

Dear Senator Wong

**ESTIMATES HEARINGS  
EVIDENCE BY DEPARTMENT OF EMPLOYMENT AND WORKPLACE RELATIONS**

You asked for some further advice (that is, further to the advice provided by the Deputy Clerk, Dr Rosemary Laing, dated 29 May 2006) on certain answers given by the Department of Employment and Workplace Relations, and particularly by Mr J O'Sullivan of that department, at the estimates hearings of the Employment, Workplace Relations and Education Legislation Committee on 29 and 30 May 2006.

This note will be somewhat more detailed than should be necessary, because there is a great deal of ambiguity and lack of clarity in what the department put to the committee in those answers, and it is necessary to untangle various strands of the answers.

The department, in the person of Mr O'Sullivan, whose answers were not qualified by the secretary of that department, Dr Boxall, invoked subsection 13(6) of the *Public Service Act 1999* as an impediment to answering certain questions in the hearing. That subsection is one of a number of parts of the Public Service Code of Conduct, and provides:

An APS employee must maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff.

Mr O'Sullivan, and the department, believe that this provision could be breached by disclosure of some information to a parliamentary committee. He referred to it as imposing an obligation on public servants (transcript of hearing, 29 May 2006, p. 14), and twice stated that answering some questions could be a breach of the provision (30 May 2006, p. 18).

The first point to be noted is that the subsection is not a normal statutory secrecy provision, which prohibits the disclosure of particular information. Like all statements in codes of conduct, it is cast in terms of uncertainty and judgement: it refers to "appropriate" confidentiality.

Even if it were a prescriptive secrecy provision, contrary to what Mr O'Sullivan thinks an officer cannot be in breach of such a provision by providing information to a parliamentary

committee. This matter was extensively canvassed by senators in 1991, and, after some uncertainty on the part of some government advisers, the considered view of the then Solicitor-General, in accordance with the established law on the subject, was that a statutory secrecy provision does not prevent the provision of information to a House of the Parliament or its committees unless there is something in the provision which indicates that it has that application. This established principle is shared by the current government and its advisers and was expressed in the Senate in 2003:

A general statutory secrecy provision does not apply to disclosure of information in parliament or any of its committees unless the provision is framed to have such an application. (Senator Minchin, Minister for Finance and Administration, *Senate Debates*, 4 December 2003, pp 19442-3.)

Most departments and agencies are now aware of this point. It is most surprising that any officer of any department should still be referring to the possibility of being in breach of a statutory provision by providing information to a parliamentary committee. At one point Mr O'Sullivan referred to the statutory provision not providing a bar to questions being answered (transcript, 29 May 2006, p. 42), but that statement was inconsistent with his other references to his being in breach of the subsection by answering the questions. If he could be in breach of it, how could it not be a bar? There was, to say the least, a lack of clarity in what he put to the committee.

At one stage Mr O'Sullivan stated that the point he was raising was not a public interest immunity claim (transcript, 30 May 2006, p. 18). This is perhaps the most remarkable of his statements. The difficulty he finds with subsection 13(6) is, according to this statement, something other than the normal grounds of public interest immunity claims.

A public interest immunity claim, that is, a claim that it would not be in the public interest to disclose certain information to a parliamentary committee, is simply the vehicle by which issues about the sensitivity of particular information are raised. This is made clear by the *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters*, published by the Department of the Prime Minister and Cabinet. In the discussion of public interest immunity claims in that document the following issues are listed as issues which may give rise to such claims, which must be made by a minister:

- material disclosing cabinet deliberations
- material consisting of advice to government
- material subject to statutory secrecy provisions.

The *Government Guidelines* refer to the following categories of information which "could form the basis of a claim of public interest immunity":

material disclosing any deliberation or decision of the Cabinet, other than a decision that has been officially published, or purely factual material the disclosure of which would not reveal a decision or deliberation not officially published

material disclosing matters in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place in the course of, or for the purpose of, the deliberative processes involved in the functions of the Government *where disclosure would be contrary to the public interest* [emphasis added] (para 2.32).

In relation to statutory secrecy provisions, the *Government Guidelines* refer to them as “considerations [which] may affect a decision whether to make documents or information available”, and states that the Attorney-General’s Department should be consulted when occasions arise involving such provisions (para 2.33).

If Mr O’Sullivan considered that the information for which he was asked could fall into either of these categories, or could be subject to a statutory secrecy provision, he should have raised them as possible grounds for a public interest immunity claim, which, as the *Government Guidelines* state, must be made by a minister. He should have indicated to the committee that he intended to ask the responsible minister to consider whether a public interest immunity claim should be raised on those grounds, after consulting with the Attorney-General’s Department if he thought that a statutory secrecy provision was involved. Instead, Mr O’Sullivan and the department made their own decision that subsection 13(6) prevented the answering of the questions. It should be emphasised again that the stated grounds are only factors to be taken into consideration as to whether a public interest immunity claim should be made by a minister.

As indicated in the advice of 29 May 2006, questions about when advice was provided to ministers’ offices have frequently been answered in committee hearings. In these cases, if the *Government Guidelines* have been followed, and if any consideration has been given to raising a public interest immunity claim, it has been decided either that there is no basis for such a claim or that any basis for such a claim is outweighed by the public interest in revealing the required information to the committee. It is not clear that Mr O’Sullivan and the Department of Employment and Workplace Relations realise that the issues they sought to raise are factors to be weighed by ministers in this process of public interest balance.

At another stage of the hearing, Mr O’Sullivan drew an analogy between what he regards as his obligation to comply with section 13(6) of the Public Service Act and an obligation to maintain confidentiality about a freedom of information request which might be made by a senator (transcript, 20 May 2006, p. 18). This is an unhelpful analogy. Estimates hearings, and indeed other parliamentary inquiries, are based on a constitutional premise of a great public interest in parliamentary scrutiny of how ministers and departments perform their functions, which may on rare occasions be outweighed by a public interest in not disclosing particular information. It has already been noted that this department appears not to appreciate the weighing of public interests which must occur, and the relative weight they bear. Does it think that the responsibility of a minister and a department to account to the Parliament for the minister’s and department’s performance of official functions has only the same public interest quota as the privacy of an FOI inquirer, or, alternatively, the performance by a senator of the senator’s individual functions as a parliamentarian? Privacy is not the issue, and, on the other interpretation, the situations are hardly equivalent in terms of the public interests involved. The use of this analogy only raises more problems than it answers in relation to this department’s approach to its accountability obligations.

Mr O’Sullivan and the department contended that information about when answers to questions on notice were provided to ministers’ offices falls within the prohibited area (transcript, 30 May 2006, pp 17-19). It is to draw an extremely long bow to claim that such information falls within the category of advice to government. That, no doubt, is why other departments have regularly answered questions about when answers were provided to ministers’ offices. The departments which answered such questions in the recent hearings

include the Department of the Prime Minister and Cabinet, the Department of Finance and Administration, and the Department of Foreign Affairs and Trade.

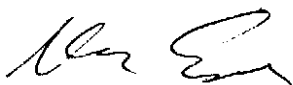
Subsequently it was clarified that the answers had not yet been finalised (transcript, p. 19), but there was no indication that this involved any withdrawal from the position put earlier. This only serves to indicate the lack of clarity in the position adopted by Mr O'Sullivan and the department.

Mr O'Sullivan used the language of objecting to the questions. Perhaps he thinks that his taking objection to questions automatically triggers the Senate's Privilege Resolution 1(10). This provides that, if a witness objects to answering any question, the committee is to consider the stated ground of the objection and to deliberate and make a decision upon it. That provision, however, refers to witnesses of all kinds, not specifically public service witnesses, and to all possible objections to questions (the example given in the provision is self-incrimination). In relation to public service witnesses and possible public interest immunity claims, it is not triggered unless and until a minister makes such a claim. A public servant who considers that a minister should be given opportunity to make a public interest immunity claim is covered by Privilege Resolution 1(16), which allows an officer reasonable opportunity to refer questions to superior officers or a minister. As has been indicated, the ground for not answering the questions which Mr O'Sullivan seems to have raised is one of the possible grounds of a public interest immunity claim, and if he thought that it could arise he should have referred the question to the minister under Privilege Resolution 1(16).

I suggest that this note be drawn to the attention of the minister and the department for consideration before the next estimates hearings. That course may at least achieve the goal of properly identifying and articulating any difficulty which officers see in the answering of particular questions. It should also ensure that any claims that questions should not be answered are properly considered and made by the minister.

Please let me know if I can be of any further assistance in relation to this matter.

Yours sincerely



(Harry Evans)