

Chapter 2

Education, Employment and Workplace Relations portfolio

Introduction

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

2.2 The committee heard evidence on 1 and 2 June from Senator the Hon Joe Ludwig, as minister representing the Minister for Education, Employment and Workplace Relations, along with officers from areas of the department and agencies responsible for employment and workplace relations, including:

- Comcare
- Australian Industrial Registry
- Australian Fair Pay Commission Secretariat
- Workplace Ombudsman
- Workplace Authority
- Australian Building and Construction Commission

On 3 and 4 June the committee heard evidence from Senator the Hon Kim Carr, as the minister representing the Minister for Education, Employment and Workplace Relations and from officers from areas of the department responsible for administering education policy. Senator Mark Arbib also represented the Minister for Education, Employment and Workplace Relations for part of the hearings.

2.3 Senators present over the four days of hearings were Senator Marshall (Chair), Senator Humphries (Deputy Chair), Senators Abetz, Adams, Back, Bilyk, Brandis, Cameron, Cash, Collins, Cormann, Crossin, Fifield, Fisher, Hanson-Young, Macdonald, Mason, Nash, Parry, Payne, Ronaldson, Ryan, Sterle and Xenophon.

Public Interest Immunity Claims

2.4 On 13 May 2009, the Senate passed an order detailing the process to be followed by public sector witnesses who feel they have grounds for withholding information from Senate committees. The order requires that witnesses state recognised public interest grounds for withholding information and if requested by a committee or any senator, refer the matter to the relevant minister. The minister is also required to state recognised public interest grounds for any claim to withhold

information. The order does not change the existing procedures of the Senate, but consolidates the formerly established process for the guidance of public sector witnesses. This order was formally incorporated into the Hansard in the Chair's opening statement for each day.

Cross Portfolio

2.5 Senator Humphries commenced the committee's examination of cross portfolio issues with questions regarding the resources of the department. After inquiring about the total appropriations of the department as stated in the portfolio budget statements, officers explained to the committee that the table had incorrectly listed the figure in millions of dollars, as opposed to thousands of dollars which is consistent with the rest of the document. The department confirmed that the Portfolio Budget Statements available on the website have been corrected.

2.6 Following on from questions asked at Additional Estimates 2008–09, the committee showed interest in contracts entered into by DEEWR, with particular reference to editorial and speech writing services. At the Additional Budget Estimates round in February, Senator Ronaldson inquired into a contract with Mr Samuel Glover for speech writing services. Continuing this line of questioning, Senator Mason raised the issue of the department's outsourced speech writing functions. It was explained to the committee that it is often difficult to employ good speechwriters, and given the high number of speeches associated with the five ministerial officers the department utilises a number of external speechwriters when needed.¹

2.7 Senator Humphries asked a series of questions relating to industrial agreements covering officers of the department. The Secretary, Ms Lisa Paul, told the committee that a collective agreement is in place for the majority of staff below the SES level, but a few may remain on Australian Workplace Agreements or individual agreements. Further explanation revealed that the majority of the remaining 150 employees not covered by the collective agreement are on leave from the department.

Outcome 4 (Workforce participation and labour market assistance)

2.8 Senator Cash commenced the examination of Outcome 4 with questions relating to employment services and issues affecting job seekers. Many questions related to the new employment services mode– Job Services Australia– due to start on 1 July 2009. Officers from the department explained to the committee that a new version of the Job Seeker Classification Instrument will be ready in conjunction with Job Services Australia. Senator Collins asked about the variety of employment providers awarded Job Services tenders. The committee was told that a range of specialist providers had been identified, including Indigenous-specific organisations,

1 Ms Margaret Pearce, Group Manager, Parliamentary and Communications Group, DEEWR, *Committee Hansard*, 1 June 2009, p. 5.

youth specialists, groups that specialise in homelessness cases and those that work with job seekers from non-English speaking backgrounds.

2.9 The department told the committee that ninety-five per cent of providers under Job Services Australia had operated in Job Network. Senator Cash asked the department for a break down of the service providers into those who represented specialist needs, including youth and mental health disability specialist providers. There was concern that the new employment services model would not identify and target effectively employment categories such as women and youth. The department was asked to provide a list of specific elements that target individual groups on notice.

2.10 Senator Mason continued the line of questioning regarding the Job Seeker Classification Instrument (JSCI), asking about the review process that was conducted. According to the Department, the review carried out by Taylor Nelson Sofres Australia (TNS) had a particular focus on testing, and subsequently refining, the new wording developed by DEEWR in the JSCI. Officers explained that as way of researching the effectiveness of the new instrument, interviews were conducted with 78 job seekers, varying in age, length of employment, allowance type and disability status. In addition, the JSCI was tested with Centrelink and Job Network staff. Mr Scott Matheson explained to the committee why an external consultant conducted the research, citing particular expertise in social research surveys and in developing survey instruments. Mr Matheson explained that although the testing is conducted by an external consultant, the actual policy work around JSCI was done by the Department.

2.11 Further questions regarding job seekers were from Senator Cash, who asked the department to outline specific initiatives undertaken since November 2007 aimed at employment participation as opposed to employment training. The department described the role of Job Services Australia, of which the JSCI is an important component. Ms Paul also told the committee of the \$650 million Jobs Fund aimed at increasing employment participation in local communities. Senator Bilyk asked the department to clarify how the employment pathway fund would differ from the current jobseeker account. Officers explained to the committee that the fund is a pool of resources available to be spent supporting the jobseeker, such as the procurement of necessary equipment, clothing or to assist in transport costs. The fund also provides non-vocational interventions such as drug and alcohol counselling.

2.12 Senator Fifield asked a series of questions regarding the Golden Gurus program which developed following the 2020 summit. The program offers the expertise of retirees aged 55 years and over to new small businesses. Senator Fifield asked if any similar schemes were operating under the auspices of state and local governments. Officers explained that the aim of Golden Gurus at a national level is to provide a national scheme to which other schemes may wish to join. Senator Fifield asked if any existing schemes had been invited to join. The department replied that they are in the process of consulting with a range of interested stakeholders including volunteer associations and pre-existing business mentoring services. Under the New Enterprises Incentives Scheme, new businesses receive assistance for the first 12

months of operation. Officers explained that the Golden Gurus scheme would complement NEIS by continuing to provide assistance to these businesses following the initial 12 months of support. The program is due to commence 1 July 2009. Senator Fifield inquired as to whether the scheme will include rural and regional businesses. The department told the committee they were in the development phase of the program, and the issue of rural and regional businesses will be taken into account.

Comcare

2.13 Senator Humphries began with questions about the review of the Comcare scheme which commenced in December 2006. The CEO of Comcare, told the committee that the review was with the Minister, awaiting a response. As noted in the committee's report on *Annual Reports (No. 1 of 2009)*, the findings of this review are yet to be made public, despite being presented to the Minister on 1 August 2008.² Senator Humphries asked when the Minister was going to respond, and this was taken on notice.

2.14 Continuing the examination of Comcare, Senator Humphries asked a series of questions relating to self-insuring. Officers explained that under the *Safety, Rehabilitation and Compensation Act*, a company 'that is in competition with an existing or former Commonwealth authority can be declared eligible by the Minister for Employment and Workplace Relations for a licence for what is called, in shorthand, self-insurance.'³ Comcare told the committee there were currently 29 self-insurers in the scheme.

2.15 The harmonisation of Occupational Health and Safety (OHS) was discussed, with Senator Humphries inquiring into the current state of the process. Mr Dolan told the committee that the Workplace Relations Ministers' Council agreed to this policy following recommendations from a panel report to the Deputy Prime Minister. This policy will form the base of model laws for Safe Work Australia and will be incorporated into an exposure draft bill for release later this year. The Workplace Relations Ministers' Council will later endorse these model laws for adoption and enactment by each of the jurisdictions around the country. Comcare was asked to comment on which particular areas of OHS laws were most diverse and most in need of harmonisation. One area highlighted was the differing level of penalty for breaches of OHS legislation.

2.16 The committee was interested in the role played by Comcare in the Commonwealth's common-law liabilities for asbestos compensation. In evidence given by Mr Dolan, the committee was informed that a number of claims are currently before the courts, and it was likely there will be a considerable number in the future. It was estimated that there would be '\$700 million or \$800 million worth of liabilities

2 Senate Education, Employment and Workplace Relations Committee, *Annual Reports (No. 1 of 2009)*, p. 10.

3 Mr Martin Dolan, CEO, Comcare, *Committee Hansard*, 2 June 2009, p. 5.

into the future'.⁴ In addition, the committee was told that it was generally agreed that the number of asbestos-related injuries has not yet reached its peak; but should do so in the next five or ten years. Senator Humphries asked whether asbestos has been removed from all Commonwealth assets, Mr Dolan explained that its use has been banned, with very limited exceptions, since 2004. The Defence Force continues to use asbestos in parts for certain aircraft, yet the exemption that allows this use is due to expire at the end of 2010. The Chair asked if there had been an audit of Commonwealth assets to identify where the asbestos is, but was told a comprehensive and central register does not exist.

Australian Fair Pay Commission Secretariat

2.17 The Chair asked the Director of the Australian Fair Pay Commission Secretariat what transition the commission will experience when Fair Work Australia commences operation. The committee was told that the secretariat will form part of Fair Work Australia to assist the minimum wage panel in their minimum wage reviews.

Australian Industrial Registry

2.18 The committee took interest in the award modernisation function of the Australian Industrial Registry (AIR), with Senator Humphries asking officers to provide an updated award modernisation program. Mr Terry Nassios told the committee that the program had four stages, with the AIR currently in the third stage of the process. Mr Nassios explained that exposure drafts have been published, and the AIR will hold a series of public hearings based on submissions received in relation to these drafts. The committee was told that the legislation provides for a five year transition period from 1 January 2010 to allow transfer from current awards to the modern award. The AIR explained that further information regarding the progress of the award modernisation exercises is on the AIR website.

2.19 The AIR confirmed for the committee the transition arrangements for the commencement of Fair Work Australia, explaining that all 233 staff of the AIR will automatically transfer to the new agency.

Workplace Ombudsman

2.20 Senator Abetz led the examination of the Office of the Workplace Ombudsman, beginning with a series of questions relating to unpaid wages. The Workplace Ombudsman told the committee that on some occasions employers pay the underpaid money to the Workplace Ombudsman who, under current arrangements, holds the money in a trust account while locating the relevant employees. Officers informed the committee that roughly \$860 000 is currently held in trust, owed to

4 Mr Martin Dolan, CEO, Comcare, *Committee Hansard*, 2 June 2009, p. 9.

around 2,500 employees.⁵ Senator Abetz asked for this figure to be broken down into money that has been held for three, six and twelve months or more. This request was taken on notice. Mr Nicholas Wilson, the Workplace Ombudsman, told the committee that his office goes to considerable lengths to locate employers who are owed unpaid wages. A new pilot program was launched just prior to estimates that would use the social networking site Facebook to locate these employees who are not contactable by other means. The Office of the Workplace Ombudsman undertook to provide an outcome of this initiative at the next estimates round.

2.21 Senator Abetz continued with questions asked in previous estimates rounds regarding Ms Maureen Healey and the Theatre Royal Hotel in Hobart. Mr Michael Campbell told the committee that of the 41 employees owed money in the case, 23 had received their outstanding entitlements. Senator Abetz asked what happens with the outstanding money that is in trust and if any interest is earned, does this go to the employee or consolidated revenue. This was taken on notice.

2.22 Senator Fisher asked the Ombudsman if the number of employees who have sought the assistance of the Workplace Ombudsman had risen as a consequence of the global financial crisis. Mr Wilson told the committee that between 1 July 2008 and 30 April 2009, there was a 37 per cent increase in the recorded number of breaches relating to termination compared with the previous financial year. Mr Wilson commented that this data reflects the changing nature of the work conducted by the office, commenting that while the volume of work has not necessarily increased, the nature of the work has.

Workplace Authority

2.23 Senator Humphries began the examination of the Workplace Authority with a question regarding staffing arrangements. The Acting Director of the Workplace Authority, told the committee that of the 586 employees, 104 were on Workplace Authority AWAs, 11 were on ex-Office of the Employment Advocate AWAs, 462 were covered by collective agreements and nine SES staff were on section 24 determinations. When asked how the transition to Fair Work Australia would affect these arrangements, the committee was told that existing employment agreements would continue to operate until they are replaced with a new set of arrangements.

Australian Building and Construction Commission

2.24 Many questions asked of the Australian Building and Construction Commission (ABCC) were intended to highlight the need for the continued operation of the organisation. Senator Brandis commenced the examination of the ABCC with a series of questions relating to the Wilcox report, mainly as to whether the adoption of recommendations from the report would alter certain powers of the ABCC. One of the

5 Mr Mark Scully, Chief Financial Officer, Workplace Ombudsman, *Committee Hansard*, 2 June 2009, p. 19.

recommendations discussed relates to bringing penalty levels in line with those in the Fair Work Act, which are lower than those that apply in the Building and Construction Industry Improvement Act. Senator Brandis asked whether a reduction in penalties could reduce the effectiveness of the ABCC as a deterrent to unlawful conduct. Questions were asked of entry permits required to be held by union officials when entering a worksite.

Outcome 5 (Safer and more productive workplaces)

2.25 Senator Cash commenced examination of Outcome 5 with questions relating to the General Employee Entitlements and Redundancy Scheme (GEERS), and how this is publicised. Officers told the committee the department is in regular contact with insolvency practitioners, businesses and employer and employee groups regarding GEERS. Furthermore, the scheme is publicised online which provides information on making claims and the eligibility requirements. Senator Xenophon asked a number of questions relating to the implementation of specialist information assistance for small and medium sized enterprises within the Office of the Fair Work Ombudsman.

Outcome 1 (Early childhood learning)

2.26 Opening the questioning of Outcome 1, Senator Payne asked questions relating to Child Care Management System (CCMS). Officers told the department that 12 525 child care services have transitioned to the CCMS, representing 99.9 per cent of all child care services. The few that remain relate to the final ABC settlement. Officers told the committee that the department is working on strengthening the capacity to gather meaningful vacancy data.

2.27 Questions were asked regarding the election commitment to develop 260 early childhood centres, an issue discussed at the Additional Estimates 2008–09. The department hopes to have all centres operational by the end of 2010. A number of initiatives developed by the department relating to early childhood education are going before COAG for endorsement. The Early Childhood Development strategy will provide direction for future policy, and will assist the department in the roll out of infrastructure for childcare centre. The Early Years Learning Framework (EYLF) is an example of an initiative established in conjunction with states and the Commonwealth. The EYLF trial was conducted in 28 centres, which were chosen by the EYLF working party to which each state and territory is a signatory. Once the framework is endorsed by COAG in July, officers envisage that it will be available to centres to use in the planning and implementation of their programs.

Outcome 2 (Schools, career transitions and youth)

Asian languages

2.28 Questions were asked about the Asian Languages in Schools program. The first concerned measures that were being taken to attract specialist language teachers. Officers replied that a number of programs existed to identify and recruit qualified teachers, and funding has been allocated to improve the skills of current language

teachers. Officers told the committee that \$9.36 million of the funding available is for establishing links between schools and universities, and to assist Asian related businesses to promote teaching and learning of the four target languages: Chinese, Indonesian, Korean and Japanese.⁶

Fibre Connection to Schools initiative

2.29 Questions about the Fibre Connection to Schools initiative continued an earlier theme of interest in the government's policy of ensuring that schools are able to teach computer-based literacy and bring IT connections onto all school desks. Questions were asked about the connection which might exist between the Fibre Connection initiative and the National Broadband Network. The Fibre Connection to Schools is a five-year program, but the department was unable to provide details of its connectivity with the more recently announced National Broadband Network.

Administration of the stimulus package on school building

2.30 Questions relating to the expenditure of \$14.7 billion on school education as part of the economic stimulus package generated extensive questioning which revealed a great deal about the interaction between the Commonwealth and the states and territories in the disbursement of funds. While the overall policy of the Commonwealth, through DEEWR, of ensuring compliance with the conditions of Commonwealth funding appears to be unchanged there is evidence that under this program some states and territories are required to implement long-overdue change to their administrative cultures, particularly in the matter of local consultation and consent.

2.31 For many years this committee has been aware of the difficulties in ensuring proper levels of accountability that is owed to the Commonwealth in regard to its direct grant funding. The fear of policy makers and administrators at the Commonwealth level is that such direct grants may be used to substitute for, rather than supplement, state and territory expenditure. As one officer told the committee in regard to this current expenditure, part of the condition of funding under agreements made with states is that, first, they get value for money in their contracting (for school building projects) and second, that they maintain their own capital expenditure over time.⁷ Senator Mason put a series of questions on notice requesting explicit information on the administration of grants, supervisory practices of the department, and action to be taken in the event of non-compliance.

2.32 One indication of the Commonwealth's more direct role in school funding made relevant at the hearings is the readiness of DEEWR to respond to complaints and difficulties faced by schools, presumably in circumstances where they might claim that local needs have received insufficient recognition by state authorities.

6 *Committee Hansard*, 3 June 2009, pp 30–31.

7 *Ibid.*, p.47

DEEWR officers emphasised the importance of education authorities consulting principals and their school communities to ensure their agreement with proposed capital works projects at their schools. New guidelines require that school principals indicate their agreement with proposals that are put forward to DEEWR by education authorities.⁸ In some states, notably Victoria, where a large measure of school autonomy exists in the public system, principals routinely deal with architects and builders. Such guidelines will have most effect in more traditionally centralised systems like Queensland and New South Wales where principals enjoy less autonomy.

2.33 Nationally, however, such guidelines should hasten changes to administrative culture, particularly in the way in which education authorities manage relationships with school principals and communities. Senators raised specific cases of schools having local difficulties with their authorities. For instance in South Australia, Senator Fisher identified Naracoorte Primary School as being faced with a 30 per cent loading on its building costs imposed by the state department. The committee was advised that this was not usually permissible under the Commonwealth guidelines, and the matter would be investigated.⁹ Senator Hanson-Young raised another matter in regard to education authorities in South Australia: a claim that they are making the receipt of stimulus funding to schools in the north of the state conditional on an amalgamation of schools which is opposed by local communities. Without commenting on the specific case, the Secretary of DEEWR gave a strong indication that the Commonwealth would, as a matter of principle pay close heed to local concerns.¹⁰ Senator Cash raised the case of Burbridge Primary School in Western Australia which caters for children with serious disabilities and which 'desperately' needs funds for its pool which is used for physiotherapy. The school has been offered playground equipment or a library instead. DEEWR officials undertook to follow this and other matters up.¹¹

Outcome 3 (Higher education, VET, international education)

Education Investment Fund

2.34 Senator Mason commenced the examination of Outcome 3, with questions relating to the Education Investment Fund (EIF). The 2008–09 Budget papers indicated that the EIF would be comprise \$6 billion of asset transfer funds from the former Higher Education Endowment Fund (HEEF) and \$5 billion from the 2007–08 and 2008–09 budget surpluses. At Additional Estimates 2008-09, Senator Mason asked the department when the government would be depositing the \$5 billion, and was told that half of the allocated amount would be deposited by 30 June 2009.¹²

8 Ibid., p.52

9 Ibid., p.64

10 Ibid., p.75

11 Ibid., p.63

12 *Committee Hansard*, 25 February 2009, p. 126.

Following up on this, Senator Mason asked the department if the allocated \$2.5 billion had been deposited into the EIF. The Minister representing, the Hon Senator Carr, told the committee:

As part of the Australian government's commitment to creating and supporting the jobs of the future, the planned allocation of \$2.5 billion of funds to EIF, due no later than 30 June 2009, will instead be allocated to the groundbreaking Clean Energy Initiative. This new initiative will place Australia at the forefront of the response to climate and drive research in clean energy. On the basis of the budget and other commitments, and the impact of interest and management fees, at the end of the budget forward estimates in 2012-13, it is estimated that EIF will have an approximate value of \$3.1 billion for additional investments in vocational education and training, universities and research.¹³

2.35 Senator Mason asked the department to explain to the committee the link between the Clean Energy Initiative and universities. The committee was told that the initiative funds renewable energy research in universities, as well as research agencies. The Clean Energy Initiative is a joint initiative between DEEWR and the Department of Resources, Energy and Tourism.¹⁴

Tertiary Education Quality and Standards Agency

2.36 Continuing the examination of Outcome 3, Senator Mason asked a series of questions relating the announcement of the Tertiary Education Quality and Standards Agency (TEQSA) in the 2009–10 Budget. Officers from the department explained that the new agency would be operational on 1 January 2011, and there is the potential for it to be a independent, statutory authority that will report to the Minister. The reasoning behind the development of TESQA was discussed, with officers explaining the need for national consistency in quality assurance standards for universities. One aspect of the new agency will be performance measurement, the details of which will be worked out over the next six to 12 months.¹⁵

Youth Allowance (Tertiary)

2.37 In response to recommendations made in the Bradley Review, the government has made a number of changes to student income funding in the 2009–10 Budget. The budget introduces a range of measures to assist students studying at university, with particular emphasis on supporting students from low socio-economic backgrounds.¹⁶ Part of the overhaul of student income requirements and eligibility has resulted in a tightening of workforce participation criteria for independence under Youth Allowance and ABSTUDY. While current student income recipients will be

13 Senator the Hon Kim Carr, *Committee Hansard*, 4 June 2009, p. 5.

14 *Committee Hansard*, 4 June 2009, p. 8.

15 *Ibid.*, p. 17.

16 *Ibid.*, p. 27.

'grandfathered' in terms of retaining their existing benefits, the changes made to the independence criteria will be implemented by January 2010. Therefore, prospective claimants under this scheme may no longer be eligible for independence status as had previously been thought. From January 2010, students will no longer be able to claim independence after working 15 hours per week in 24 months, or earning \$18 000 in 18 months. Rather, those wishing to attain independence status will be required to work 30 hours per week for 18 months within a two year period.

2.38 The committee showed strong interest in these changes to the 'gap year' independence eligibility requirements. Concern was expressed for students who had currently deferred university study in order to gain independent status but who would now no longer be eligible to do so. The effect the new measures would have on rural and regional students was raised, with Senator Cash seeking an indication of what response the department had received from affected students.

2.39 The department took this on notice. Minister Carr told the committee that with the more generous parental income thresholds, an additional 68 000 dependent young people in rural areas will receive access to Youth Allowance or ABSTUDY.¹⁷ Senator Nash asked questions relating to the removal of the option to earn \$18 000 in any period within 18 months. Arguing that many rural students earn irregular amounts of money during the harvest season, the senator questioned the fairness of removing the ability to earn the required amount of money in any given time frame.¹⁸

2.40 Opposition Senators raised questions regarding the youth allowance thresholds with particular reference to parental assets of students from farms. Officers told the committee that for a family, the assets limit is \$571 500 but for farm assets the limit increases to \$2.286 million. Senator Back questioned the appropriateness of this amount, commenting that the average net assets of farming properties were above this figure, yet the annual income generated was quite low in comparison.¹⁹

International Students

2.41 International education continues to be a topic of interest to senators, because it is the third highest export in terms of earnings, after iron ore and coal. Officers from the department told the committee that last year international education was believed to have been worth \$15.5 billion, and commented that Australia has become one of the leaders in international education worldwide.²⁰

2.42 Senator Cash began the examination of officers from the international education section with a series of questions relating to the role of education agents in representing universities abroad. Senator Cash raised concerns regarding the

17 Senator the Hon Kim Carr, *Committee Hansard*, 4 June 2009, p. 32.

18 *Committee Hansard*, 4 June 2009, p. 37.

19 *Ibid.*, p. 49.

20 *Ibid.* p. 51.

reputation of these agents, and asked officers if there were any provisions in the 2009–10 Budget to bring education agents under increased supervision. Officials told the committee that no provisions were made in the budget, but there is a national code of practice for registration authorities and providers of education and training. In addition, officers explained there is an onus on education providers to ensure that the marketing of their education and training services is professional, accurate and maintains the integrity and reputation of the industry.²¹

2.43 A number of senators raised the issue of safety of international students following the recent assaults on Indian students in Melbourne and Sydney. Senator Hanson-Young asked the department how long they had been aware of issues surrounding the safety of international students. Officers told the committee that it had been aware of concerns for several years, and the department worked in conjunction with Universities Australia to deal with the issue. Moreover, the department is regularly in contact with organisations that represent TAFE and private higher education providers regarding the safety of students.

Senator Gavin Marshall

Chair

21 Ibid.