

Chapter 1

Overview

Reference

1.1 On 11 May 2010 the Senate referred the following documents to the Senate Education, Employment and Workplace Relations Legislation Committee for examination and report in relation to the Education, Employment and Workplace Relations portfolio:

- *Particulars of proposed expenditure in respect of the year ending on 30 June 2011;*
- *Particulars of certain proposed expenditure in respect of the year ending on 30 June 2011; and*
- *Particulars of proposed expenditure in relation to the parliamentary departments in respect of the year ending on 30 June 2011.*¹

1.2 Standing committees are required to report to the Senate on 22 June 2010. This report of the Education, Employment and Workplace Relations Legislation Committee is provided to the Senate in fulfilment of that requirement.

Portfolio coverage

1.3 The committee has responsibility for examining the expenditure and outcomes of the Education, Employment and Workplace Relations portfolio. Appendix 1 lists the department and agencies under this portfolio.

1.4 Three agencies that were previously in the portfolio ceased to operate in 2009-10 and accordingly will no longer be examined by the committee. As noted in the Portfolio Budget Statements 2010-11, the Australian Industrial Relations Commission and the Australian Industrial Registrar ceased to operate on 31 December 2009, with all assets and liabilities transferring to Fair Work Australia. Similarly, the Workplace Authority ceased to operate on 31 January 2010, with all assets and liabilities transferring to the Fair Work Ombudsman.²

Public hearings

1.5 The committee conducted four days of hearings and, in total, met for 41 hours and 29 minutes, excluding breaks.

1 *Journals of the Senate No. 120*, 12 May 2010, p. 3444.

2 *Portfolio Budget Statements 2010-11 – Budget Related Paper no. 1.6 – Education, Employment and Workplace Relations Portfolio*, p. 3.

1.6 The committee heard evidence on 31 May and 1 June 2010 from Senator the Hon. Mark Arbib, as the minister representing the Minister for Employment and Workplace Relations, along with officers from areas of the Department of Education, Employment and Workplace Relations (DEEWR) and from the agencies responsible for administering employment and workplace relations policy:

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

1.7 On 2 and 3 June the committee heard evidence from Senator the Hon. Kim Carr, as the minister representing the Minister for Education, and from officers from areas of the department and agencies responsible for administering education policy.

1.8 Appendix 2 of this report provides a brief guide to the contents of the Hansard transcripts. These transcripts are available on the committee's homepage and on the Hansard website: <http://www.aph.gov.au/hansard/senate/commtee/comsen.asp>

Procedural matters arising during the hearings

Public interest immunity claims

1.9 On 13 May 2009, the Senate passed an order relating to public interest immunity claims.³ The order sets out the processes to be followed if a witness declines to answer a question. The full text of this order has been provided to departments and agencies and was incorporated into the Chair's opening statement on each day of the Budget Estimates hearings. It is also reproduced in Appendix 3 of this report.

1.10 A witness from Fair Work Australia declined to answer a number of questions on the grounds that to do so may prejudice investigations and possible future legal proceedings. This was consistent with the stance taken during the February 2010 Additional Estimates hearings and in responding to questions taken on notice in February.

1.11 When asked how the provision of information that has been on the public record through the media for over a year could be harmful to the public interest, the witness responded:

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

I believe it would be harmful on the basis that in the event that my now investigation was to find that there were contraventions of the Fair Work (Registered Organisations) Act, it may well be that some of those prosecutions of the contraventions would be jeopardised.⁴

1.12 Although the questioning senator expressed some dissatisfaction at the number of questions that went unanswered, the minister made the following point:

There is an investigation underway by Fair Work Australia and I will not be saying anything, nor will the government, which may prejudice it.⁵

1.13 The Chair indicated a belief that this was an acceptable public interest immunity ground for refusing to answer the questions, and the questioning senator chose not to press the matter further.

Attendance at estimates by the President of Fair Work Australia

1.14 On 28 October 2009 the Senate passed a resolution of continuing effect requiring the President of Fair Work Australia (FWA) to appear and answer questions at all future estimates hearings held by the Senate Education, Employment and Workplace Relations Legislation Committee.⁶

1.15 This resolution was passed despite acceptance by the committee of the view of the current President, Justice Giudice, that the General Manager of FWA is the appropriate representative to attend and answer questions.⁷

1.16 In its February 2010 Additional Estimates report, the committee maintained that the General Manager would be an appropriate representative but also acknowledged that the Senate order of 28 October 2009 overrides this view.⁸

1.17 Justice Giudice opened his appearance at the Budget Estimates hearings on 1 June 2010 with a request that the Senate reconsider its order. He indicated that he does not agree with the basis on which he is being required to appear and suggested that compelling him to appear compromises the independence of FWA.⁹

4 Mr Terry Nassios, *Committee Hansard*, 1 June 2010, p. EEWR 89.

5 Senator Mark Arbib, *Committee Hansard*, 1 June 2010, p. EEWR 94.

6 *Journals of the Senate*, No. 95, 28 October 2009, pp 2661-2662. The motion was moved by Senator Fisher.

7 Senator Gavin Marshall, *Senate Hansard*, 28 October 2009, p. 7462.

8 Senate Education, Employment and Workplace Relations Legislation Committee, *Additional Estimates 2009-10*, p. 11 - see paragraphs 2.17 and 2.18.

9 For the full text of Justice Giudice's statement, please see: http://www.aph.gov.au/Senate/committee/eet_ctte/estimates/bud_1011/tables_docs/tableddoc_4.pdf (viewed on 7 June 2010).

1.18 The committee has now considered Justice Giudice's statement and the concerns raised within it. The committee does not resile from the view that it is within the authority of the Senate to call the President of FWA to appear at estimates hearings. However, the committee does not believe that the President should automatically be required to attend all such hearings on an ongoing basis. No other officer of the Commonwealth is subject to such a requirement. It would now be appropriate for the Senate to relax the order of 28 October 2009, while maintaining its expectation that the President will appear at future estimates hearings if requested by the committee. Accordingly, the committee will be asking the Senate to reconsider its order of 28 October 2009.

1.19 Coalition Senators note advice provided by the Clerk of the Senate to Senator Fisher (tabled in the Senate on Thursday 17 June), dealing with President Giudice's statement, and oppose any moves to have the Senate reconsider the Senate resolution.

Attendance at estimates by the Chair of the Building the Education Revolution Implementation Task Force

1.20 The committee notes that Mr Brad Orgill, Chair of the Building the Education Revolution (BER) Implementation Taskforce, was not called to appear at the Budget Estimates hearings as he may not fall into the category of an 'officer' under Senate Standing Order 26. However, the committee further notes that Mr Orgill was willing to appear and that the Senate Education, Employment and Workplace Relations References Committee has already taken evidence from, and is likely to take further evidence from, Mr Orgill in the course of its current inquiry into the Primary Schools for the 21st Century element of the BER program.¹⁰

Questions on notice

1.21 The committee has drawn the attention of the department and its agencies to the agreed deadline of Friday, 30 July 2010 for the receipt of answers to questions taken on notice from this round, in accordance with Standing Order 26.

1.22 Answers will be progressively published on the committee's estimates web page as they are received.¹¹

Note on Hansard page referencing

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

10 Further information about this inquiry is available through the following web page: http://www.aph.gov.au/Senate/committee/eet_ctte/primary_schools/index.htm (viewed on 7 June 2010).

11 Please see http://www.aph.gov.au/Senate/committee/eet_ctte/estimates/index.htm