

The Senate

Education, Employment
and Workplace Relations
Legislation Committee

Budget estimates 2010–11

June 2010

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Senator Michaelia Cash, Deputy Chair	LP, Western Australia
Senator Chris Back	LP, Western Australia
Senator Catryna Bilyk	ALP, Tasmania
Senator Jacinta Collins	ALP, Victoria
Senator Sarah Hanson-Young	AG, South Australia

Senators participating in the scrutiny of the Budget Estimates

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Senator the Hon. Ronald Boswell	NAT, Queensland
Senator the Hon. George Brandis	LP, Queensland
Senator Doug Cameron	ALP, New South Wales
Senator Mathias Cormann	LP, Western Australia
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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.apf.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

Chapter 2

Education, Employment and Workplace Relations portfolio

Introduction

2.1 This chapter summarises areas of interest raised during the committee's consideration of the Budget Estimates for the 2010-11 financial year. It follows the order of proceedings at the estimates hearings and is an indicative, but not exhaustive, list of issues examined.

Outcome 4 (Employment)

Job Services Australia

2.2 As at the last two rounds of estimates hearings, the committee took an interest in the reforms created by the establishment of Job Services Australia (JSA) on 1 July 2009.

2.3 The committee made a thorough examination of JSA's employment providers. There are 111 contracts for JSA, provided by 136 organisations.¹ An additional 120 organisations are subcontracted through commercial arrangements with primary providers. Opposition senators pursued the measures taken to ensure accountability of all subcontractors. The department explained that primary providers are required to seek approval from the department prior to entering into any subcontracting arrangement.²

2.4 Opposition senators also questioned the efficiency of subcontracting rather than having direct contracts with providers. Ms Paul, Secretary, DEEWR, explained that it was advantageous for organisations during the tender process to demonstrate local expertise yet still have the reach of a national operation and the ability to target specific client groups. Many of the organisations in the tender process achieved this through the use of subcontractors.³

2.5 Opposition senators also asked about the financial viability of employment providers. The department outlined that 10 to 12 of the primary providers have informally identified issues with their commercial operations, some as a result of JSA's new funding model. The department explained that some providers had not

1 Some contracts are shared by more than one primary provider.

2 *Committee Hansard*, 31 May 2010, pp EEWR 6 – 8.

3 *Committee Hansard*, 31 May 2010, p. EEWR 8.

adapted readily to the changes and, in particular, had found difficulties with the financial flexibilities provided through the Employment Pathway Fund (EPF).⁴

2.6 In these cases, the department has assisted providers to assess fixed costs and make internal restructures. The department outlined that, whilst five providers have transferred business or relinquished contracts, there has been no loss to job seekers. The committee notes that the relinquishment of contracts and the transfer of business has been a consistent occurrence historically.⁵

Indigenous Employment

2.7 The Indigenous Employment Program has been allocated \$139,460,000 for 2010-11.⁶ The department outlined that in the period 1 July 2009 to 31 March 2010 there have been 12,777 commencements in employment and training under the program; 7,593 of these were employment placements. In addition there have been 25,600 Indigenous job placements through JSA.⁷

2.8 The committee examined the allocation of \$6 million over the next 3 years to improve Indigenous employment, recruiting and retention practices. This measure supports the National Partnership Agreement on Indigenous Economic Participation across governments to increase Indigenous employment in the public sector by 2.6 per cent by 2015. The department explained that the funding is for resources to support agencies, and agencies are expected to continue to invest in their own strategies.⁸

Outcome 5 (Workplaces)

2.9 Following on from questions asked at Additional Estimates in February 2010, senators questioned officers about the application of the *Fair Work Act 2009* and, in particular, large-scale changes brought about through the award modernisation process.

2.10 Opposition senators targeted questions towards the impact of the modern awards on new businesses, asking whether transitional provisions would apply consistently to both new and established businesses. The department explained that provisions were consistent for both types of businesses.⁹

4 Committee Hansard, 31 May 2010, pp EEWR 9 – 14.

5 Committee Hansard, 31 May 2010, pp EEWR 12 – 14, 33 and 36.

6 Portfolio Budget Statements 2010-11, p. EEWR 115.

7 Committee Hansard, 31 May 2010, pp EEWR 42 – 43.

8 Committee Hansard, 31 May 2010, pp EEWR pp 46 – 47.

9 Committee Hansard, 31 May 2010, pp EEWR 78 – 79, 82, 84, 86 – 88 and 105 .

2.11 Opposition senators also sought clarification on the application of take-home pay orders¹⁰ and questioned officials about the level of education and awareness among employees about the use of these orders. Opposition members flagged the possibility of an employer dropping an employee's pay based on a modern award rate and the employee being unaware of their entitlement to apply to Fair Work Australia for a take-home pay order. The department explained that employer organisations have been advised to maintain existing rates of pay. Moreover, should an employer choose to decrease an employee's pay, that worker is entitled to a take-home pay order. Extensive education campaigns have been undertaken to ensure take-home pay orders are accessible to workers, including the ability for a union to apply on behalf of a class of employees.¹¹

2.12 The committee also asked questions about the Fair Work Education and Information Program. The department outlined that 19 organisations received \$10.7 million to administer the program. Organisations delivered 3500 activities, of which 2400 were workshops or seminars. The program finished in April 2010 and upon receipt of all reports from providers the evaluation process will begin. The department explained that future education campaigns are a matter for the Fair Work Ombudsman.¹²

General Employee Entitlements and Redundancy Scheme (GEERS)

2.13 The committee pursued questions relating to the \$178.4 million allocated to the General Employee Entitlements and Redundancy Scheme (GEERS), an \$88 million increase from last year's allocation. Departmental officers explained that GEERS is a demand-driven scheme and the funding appropriated in each budget fluctuates depending on the number of insolvencies, the award or conditions of employment, outstanding entitlements and years of service for employees in that particular year. The committee also queried the measurement of GEERS' performance against the outcomes listed in the Portfolio Budget Statement and heard that this was done through client surveys.¹³

2.14 The department reported that in the period 1 July 2009 to 30 April 2010 GEERS received 15,622 claims and the average amount of assistance per claim was \$9926.57. Opposition senators highlighted the lengthy waiting period that some workers experience due to the requirement for a business to be in liquidation before GEERS can process a claim. They also queried whether a mechanism could be

10 A take-home pay order ensures that workers are not disadvantaged under the Fair Work changes. An employer must comply with the order, which will have effect so long as the employee remains in the same job and that job is covered by the modern award. See Fair Work Australia website, <http://www.fwa.gov.au/index.cfm?pagename=resourcefactstakehome> (accessed 9 June 2010).

11 *Committee Hansard*, 31 May 2010, pp EEWR 84, 86-88, 105-118.

12 *Committee Hansard*, 31 May 2010, pp EEWR 134-135.

13 *Committee Hansard*, 31 May 2010, pp EEWR 90-91 and 94.

introduced to the scheme to allow the worker to be paid from government resources, with the money to be reimbursed by the liquidated company at a later date. The Minister undertook to pass on this suggestion.¹⁴

Cross Portfolio

2.15 Opposition senators sought clarification about funding allocated to the National Green Jobs Corp. DEEWR's website shows a \$79.6 million investment over two years, and the Portfolio Budget Statements show there is \$77.2 million allocated over three years.¹⁵ The department explained that \$79.6 million is the total cost of the budget measure, which includes the cost of departmental expenses to administer the measure. The \$77.2 million over three years is the actual cost of the program.¹⁶

2.16 Opposition senators asked about the Trade Training Centres in Schools program. They placed on notice a number of questions pertaining to exit clauses in the contracts and indicated a desire to replace the Trade Training Centres with alternative arrangements.¹⁷

Comcare

2.17 Opposition senators asked whether regulatory complexity would increase for non-government licensees in moving to the national occupational health and safety system. Officers explained that the issue has been discussed in workshops with the licensees. Additionally, Comcare, with the department, has consulted with senior officials in states and territories to determine possible consequences of the transfer.¹⁸

2.18 Opposition senators referred to an article in the *Public Service News*, 'Comcare calculations add up to problems'¹⁹, and asked how Comcare has overcome the issues identified by the Acting Commonwealth Ombudsman. Officers responded that they welcomed the scrutiny and a number of responses have been implemented, including changes to Comcare's information technology and training systems.²⁰

Safe Work Australia

2.19 Officers from Safe Work Australia stated that they are well advanced in their development of the model work health and safety regulations and priority codes of

14 *Committee Hansard*, 31 May 2010, pp EEWR 91 and 96.

15 *Portfolio Budget Statements*, p. 112.

16 *Committee Hansard*, 1 June 2010, pp EEWR 9 and 13.

17 *Committee Hansard*, 1 June 2010, pp EEWR 24-26.

18 *Committee Hansard*, 1 June 2010, p. EEWR 32.

19 Available online at http://www.psnews.com.au/Page_psn2104.html (accessed on 15 June 2010).

20 *Committee Hansard*, 1 June 2010, p. EEWR 38.

practice. The time line for completion is October-November 2010, which will be followed by a four-month public consultation period and an agreement from the Workplace Relations Ministers' Council during early 2011.²¹

2.20 Opposition senators expressed concerns that the jurisdictional notes contained in the Model Work Health and Safety Bill could produce fundamental jurisdictional differences.²² Officers confirmed that jurisdictional notes allow individual jurisdictions to amend and sometimes delete entire provisions of the model bill, but explained that in most cases this would only occur when there was duplication with an existing law.²³ Officers noted that Safe Work Australia is developing a model explanatory memorandum to aid in consistent interpretation.²⁴

Fair Work Ombudsman

2.21 Senators inquired about the progress of the Shared Industry Assistance Project (SIAP). Grants from this program will be used to develop modern award guidance material in partnership with the Fair Work Ombudsman. Applications close on 15 June and decisions will be made by 30 June 2010.²⁵

2.22 Opposition senators questioned the ambiguity surrounding the model transitional provisions to the modern awards. Officers explained that submissions received through the public consultation process indicated a number of contrary views on certain aspects of the transitional provisions. The Ombudsman stated that these matters would be resolved through Fair Work Australia.²⁶

Fair Work Australia

2.23 The committee asked about the progress of the telephone conciliation trial. Officers replied that the trial has been very satisfactory and has had good settlement rates.²⁷ Since 1 July 2009, more than 90 per cent of conciliations have taken place over the telephone. In addition, of the 6871 matters that have been conciliated, 81 per cent of those have been settled at the conciliation stage. Officers noted that they have received a lot of positive feedback about the process.²⁸

2.24 The committee inquired about the outages in, and efficiencies of, the Case Management System (CMS). Officers explained that the system provides a uniform

21 *Committee Hansard*, 1 June 2010, pp EEWR 40-41.

22 *Committee Hansard*, 1 June 2010, pp EEWR 45-46.

23 *Committee Hansard*, 1 June 2010, pp EEWR 45-46.

24 *Committee Hansard*, 1 June 2010, p. EEWR 47.

25 *Committee Hansard*, 1 June 2010, p. EEWR 57.

26 *Committee Hansard*, 1 June 2010, p. EEWR 59.

27 *Committee Hansard*, 1 June 2010, pp EEWR 95-96

28 *Committee Hansard*, 1 June 2010, p. EEWR 96.

database by which material can be entered and tracked as it moves through the organisation. Officers said that, from general observation, periods of outage have not been excessive, and offered to provide more detail on notice.²⁹

Australian Building and Construction Commission

2.25 The committee noted the pending conclusion of the Hon John Lloyd's term as Commissioner of the Australian Building and Construction Commission (ABCC) on 28 September 2010.³⁰ Senators sought details on the process of both his resignation and the advertisement of the position of commissioner. The department had earlier tabled a letter from the Hon Julia Gillard MP, Minister for Employment and Workplace Relations, outlining that the position was due for advertisement, that Mr Lloyd was welcome to apply and that the appointment would be based on merit.³¹

2.26 Senators asked for an update on active investigations. Officers stated that as at 1 May 2010 the ABCC had 59 active investigations and took further detail on notice.³²

2.27 Senators also asked about arrangements between the ABCC and the Fair Work Ombudsman in relation to sham contracting.³³ Officers explained sham contracting incidents can be allocated to either organisation. This is on a case-by-case basis, according to the broader context surrounding the incident and which organisation has the relevant expertise.³⁴

Outcome 1 (Child care)

2.28 Opposition Senators called for an explanation of the government's decision to not build 222 child care centres. Officers responded that the centres were never a firm commitment, but were subject to monitoring the child care market in the wake of the collapse of ABC Learning. Opposition Senators acknowledged that they were aware that this was the Government's position.³⁵ Data from the first quarter of 2010 showed that 91 per cent of long day care centres across all regions reported having vacancies each day. On the basis of these vacancies, numbering some 65,000 long day care

29 *Committee Hansard*, 1 June 2010, pp EEWR 102-103.

30 *Committee Hansard*, 1 June 2010, p. EEWR 112.

31 Letter from the Hon Julia Gillard MP, Deputy Prime Minister, to the Hon John Lloyd PSM, Australian Building and Construction Commissioner – tabled by Mr Kovacic on 31 May 2010.

32 *Committee Hansard*, 1 June 2010, p. EEWR 115.

33 'Sham contracting is where an employer tries to disguise an employment relationship as an independent contracting relationship. This may be done to avoid having to give the employee their proper entitlements.' See Fair Work Online, <http://www.fairwork.gov.au/Sham-contracts/Pages/default.aspx> (accessed 11 June 2010).

34 *Committee Hansard*, 1 June 2010, p. EEWR 124.

35 Senator Marise Payne, *Committee Hansard*, 2 June 2010, p. EEWR 7.

places each day, the government decided that further supply of child care centres was not warranted.³⁶

2.29 Committee members queried the impact of the government's proposed capping at \$7500 and temporary four year indexation pause of the child care rebate. Officers explained the measure was expected to impact on only three per cent of families in its first year, and that the \$86.3 million savings generated by the measure would partially offset the cost of implementing a National Quality Framework for the child care sector.³⁷

Outcome 3 (Higher education and VET)

Tertiary Education Quality and Standards Agency

2.30 Senators were interested in progress with establishing the Tertiary Education Quality and Standards Agency (TEQSA). The minister representing the Minister for Education indicated that the relevant legislation could be introduced in the spring session of parliament. Senators were told that consultations were occurring with an expert reference group, which included some vice-chancellors, and that while there is some apprehension about the yet-to-be-revealed details of the proposed standards, there is broad support for the general concept of introducing common standards.³⁸

Education Investment Fund

2.31 There was also considerable interest shown in the Education Investment Fund (EIF). The committee heard that the EIF is targeted toward substantial infrastructure projects that have a 'transformative potential for higher education, VET and research systems'.³⁹ It was established that two payments of \$3 billion each had been made to the fund, and that its current balance was \$5.868 billion. Of that sum \$3.95 billion was committed to projects, with \$0.941 billion actually paid out as at 31 March 2010.⁴⁰

Productivity Places Program

2.32 Opposition Senators asked questions about changes that have been made to the Productivity Places Program since its commencement on 1 April 2008. Officers explained that, in response to the global recession, funding was brought forward from future program years to be deployed in areas of high need. States received additional resources and improved flexibility to enable them to respond quickly to local training needs. It was explained that funding was brought forward from the 2013-14 financial

36 *Committee Hansard*, 2 June 2010, pp EEWR 6-7.

37 *Committee Hansard*, 2 June 2010, pp EEWR 27-29.

38 *Committee Hansard*, 2 June 2010, pp EEWR 57- 59.

39 *Committee Hansard*, 2 June 2010, p. EEWR 78.

40 *Committee Hansard*, 2 June 2010, pp EEWR 49-50.

year for this purpose, and that the government would decide in future years whether to replace that funding in 2013-14.⁴¹

Outcome 2 (Schools)

Schools funding review expert panel

2.33 The committee opened its examination of outcome 2 by asking about the expert panel which has been engaged to oversee the review of school funding from late 2010. Officers informed the committee that the panel was selected by the Deputy Prime Minister and that DEEWR offered advice on membership. The committee was told the panel will be fair and open-minded in its deliberations, and that the expectation is that the review process will be 'very open and robust'.⁴² The panel will report its findings in 2011, which will allow enough time to implement changes and for schools to make adjustments before the new funding period starting in 2013.⁴³

Indigenous Boarding Facilities

2.34 Committee members wanted to know what progress had been made on the construction of three Indigenous Boarding Facilities in the Northern Territory. The committee was informed that, a site has been confirmed in Wadeye and negotiations are continuing on sites for facilities in the Warlpiri Triangle and East Arnhem Land.⁴⁴

2.35 Some Senators remarked that progress seemed to be slow for the Indigenous Boarding facilities, which were announced in the 2008-09 Budget. In response, officers described the extensive consultation process that has been undertaken, to ensure that chosen sites are appropriate and that community and family needs are met.⁴⁵

Smarter Schools – Low Socio-Economic Status (SES) School Communities National Partnership

2.36 The committee was interested to hear about progress rolling out the Smarter Schools – Low Socio-Economic Status (SES) School Communities National Partnership. The Commonwealth is contributing \$1.5 million over seven years, with states and territories matching that contribution in their jurisdiction in either new funding or redirected resources.⁴⁶ The object of the partnership is to initiate reforms in

41 *Committee Hansard*, 2 June 2010, pp EEWR 98-102.

42 *Committee Hansard*, 3 June 2010, pp EEWR 6-7.

43 *Committee Hansard*, 3 June 2010, p. EEWR 9.

44 *Committee Hansard*, 3 June 2010, p. EEWR 22.

45 *Committee Hansard*, 3 June 2010, p. EEWR 22.

46 *Committee Hansard*, 3 June 2010, p. EEWR 46.

schools and communities which will support the education and wellbeing of students in low SES communities.⁴⁷

2.37 Senators were told that \$120 million has been paid under the partnership to date and that by the end of 2010, 975 out of the 1683 schools which will ultimately receive support will be actively participating in the partnership. Officers informed the committee that the department's state office network has extensive relationships with schools, school communities and other education stakeholder groups, and that these relationships are central to the department's monitoring and evaluation of the Smarter Schools – Low SES School Communities National Partnership.⁴⁸

Building the Education Revolution – Primary Schools for the 21st Century

2.38 Senators showed considerable interest in the Building the Education Revolution – Primary Schools for the 21st Century (BER - P21) program.

2.39 The committee was told that as at 30 April 2010, 98 per cent (or 10,376 of 10,697) of all P21 projects had commenced.⁴⁹ Senators were also told that as at 7 May 2010, \$7.8 billion has been paid out by the commonwealth to the 22 education authorities⁵⁰, and a further \$2.2 billion is expected to be paid out by the end of July 2010.⁵¹ Of this amount some \$6.16 billion has been committed for expenditure in contracts between education authorities and builders.⁵²

2.40 There was also discussion about the processes that the Commonwealth has in place to ensure that it achieves value for money under the BER program. Officers explained that there were several assurance steps built in to the process: appropriate documentary frameworks were established at the outset of the program; discussions were held with education authorities to discuss value for money in the context of the stimulus prior to establishing agreements; agreement documentation specifically referred to value for money principles in contracting and tendering; and there is a requirement to adhere to government procurement regulations, including ensuring value for money.⁵³ The BER Implementation Taskforce has been established as an 'additional measure of assurance'.⁵⁴

47 Council of Australian Governments, *Smarter Schools – Low SES School Communities National Partnership – Fact Sheet*, p. 1, http://www.coag.gov.au/coag_meeting_outcomes/2008-11-29/docs/20081129_smarter_schools_factsheet.pdf (accessed 10 June 2010).

48 *Committee Hansard*, 3 June 2010, pp EEWR 46-47.

49 *Committee Hansard*, 3 June 2010, p. EEWR 89.

50 *Committee Hansard*, 3 June 2010, p. EEWR 93.

51 *Committee Hansard*, 3 June 2010, p. EEWR 94.

52 *Committee Hansard*, 3 June 2010, p. EEWR 93.

53 *Committee Hansard*, 3 June 2010, pp EEWR 105-106.

54 *Committee Hansard*, 3 June 2010, p. EEWR 99.

2.41 Opposition Senators noted that at the recent Finance and Public Administration estimates the Australian National Audit Office (ANAO) had been critical of value for money assurance mechanisms DEEWR had built into the BER.⁵⁵ Officers from DEEWR commented that the Auditor-General did not make those remarks in the BER Audit Report, and added that they do not agree with the ANAO's remarks and do not accept them.⁵⁶

Senator Gavin Marshall

Chair

55 Finance and Public Administration Committee, *Committee Hansard*, 25 May 2010, p. EEWR 31.

56 *Committee Hansard*, 3 June 2010, p. EEWR 106.

Appendix 1

Departments and agencies for which the committee has oversight

Education, Employment and Workplace Relations portfolio

- Department of Education, Employment and Workplace Relations
- Australian Curriculum, Assessment and Reporting Authority
- Australian Institute for Teaching and School Leadership¹
- Australian Learning and Teaching Council
- Comcare, the Safety, Rehabilitation and Compensation Commission, and the Seafarers' Safety, Rehabilitation and Compensation Authority
- Fair Work Australia
- Fair Work Ombudsman
- Office of the Australian Building and Construction Commissioner
- Safe Work Australia

1 Previously reported as Teaching Australia – Australian Institute for Teaching and School Leadership Limited, prior to being renamed in January 2010.

Appendix 2

Index to Hansard transcripts

Education, Employment and Workplace Relations portfolio

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Appendix 3

Senate Standing Order 8- 13 May 2009

Accountability

8 Public interest immunity claims

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

- (4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.
- (5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.
- (6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.
- (7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).
- (8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(13 May 2009 J.1941)