

The Senate

---

Education, Employment  
and Workplace Relations  
Legislation Committee

---

Budget estimates 2013–14

June 2013

© Commonwealth of Australia 2013  
ISBN 978-1-74229-862-7

This document was produced by the Senate Education, Employment and Workplace Relations Secretariat and printed by the Senate Printing Unit, Parliament House, Canberra.

# **Senate Standing Committee on Education, Employment & Workplace Relations**

## **LEGISLATION COMMITTEE**

### **Membership of the Committee**

Senator Gavin Marshall, Chair	Victoria, ALP
Senator Chris Back, Deputy Chair	Western Australia, LP
Senator Catryna Bilyk	Tasmania, ALP
Senator Bridget McKenzie	Victoria, Nats
Senator the Hon. Kim Carr	Victoria, ALP
Senator Lee Rhiannon	New South Wales, AG

### **Senators in attendance**

Senators Abetz, Boyce, Cash, Edwards, Gallacher, Lines, Ludlam, Mason, Nash, Ronaldson, Siewert, Sinodinos, Sterle, Wright and Xenophon.

### **Secretariat**

Mr Tim Watling, Secretary

Ms Bonnie Allan, Principal Research Officer

Ms Nerissa Stewart, Senior Research Officer

Mr Isaac Overton, Research Officer

Ms Sarah Bainbridge, Administrative Officer

PO Box 6100  
Parliament House  
Canberra ACT 2600  
Ph: 02 6277 3521  
Fax: 02 6277 5706  
E-mail: [ewr.sen@aph.gov.au](mailto:ewr.sen@aph.gov.au)



# TABLE OF CONTENTS

<b>Membership of the Committee .....</b>	<b>iii</b>
<b>Chapter 1.....</b>	<b>1</b>
<b>Overview .....</b>	<b>1</b>
Portfolio coverage .....	1
Hearings.....	1
Public interest immunity claims .....	2
Questions on notice .....	3
Note on Hansard page referencing .....	3
<b>Chapter 2.....</b>	<b>5</b>
<b>Education, Employment and Workplace Relations portfolio .....</b>	<b>5</b>
Fair Work Ombudsman .....	6
Fair Work Building and Construction .....	6
Department of Education, Employment and Workplace Relations – Outcome 3: <i>Enhanced employability and acquisition of labour market skills</i> .....	9
Department of Education, Employment and Workplace Relations – Outcome 4: <i>Safer, fairer and more productive workplaces</i> .....	10
Department of Education, Employment and Workplace Relations – Cross Portfolio.....	11
Australian Curriculum, Assessment and Reporting Authority.....	11
Australian Institute for Teaching and School Leadership .....	12
Department of Education, Employment and Workplace Relations – Outcome 1: <i>Early childhood education</i> .....	13
Department of Education, Employment and Workplace Relations – Outcome 2: <i>Schools and youth</i> .....	13
<b>Appendix 1 .....</b>	<b>17</b>
<b>Committee oversight of departments and agencies.....</b>	<b>17</b>
<b>Appendix 2 .....</b>	<b>19</b>

---

<b>Statement by the Chair .....</b>	<b>19</b>
<b>Appendix 3 .....</b>	<b>21</b>
<b>Index to Proof Hansard transcripts .....</b>	<b>21</b>

# Chapter 1

## Overview

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

1.2 On 14 May 2013<sup>1</sup> the Senate referred the following documents to the 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 2014.
- Particulars of certain proposed expenditure in respect of the year ending on 30 June 2014.
- Particulars of proposed expenditure in relation to the parliamentary departments in respect of the year ending on 30 June 2014.

1.3 Standing committees are required to report to the Senate on 25 June 2013. This report of the Education, Employment and Workplace Relations Legislation Committee is provided to the Senate in fulfilment of that requirement.

### Portfolio coverage

1.4 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.

### Hearings

1.5 The committee conducted four days of hearings, examining Employment and Workplace Relations outcomes and agencies on 3 and 4 June 2013 and Education outcomes and agencies on 5 and 6 June 2013. In total the committee met for 34 hours and 7 minutes, excluding breaks.

1.6 The following outcomes and agencies appeared before the committee:

- Outcomes 1 — 4;
- Fair Work Commission;
- Fair Work Ombudsman;
- Fair Work Building and Construction;
- Comcare;

---

1 *Journals of the Senate No. 89*, 14 May 2013, p. 3914.

- Safe Work Australia;
- Australian Curriculum Assessment and Reporting Authority; and
- The Australian Institute for Teaching and School Leadership.

### **Public interest immunity claims**

1.7 On 13 May 2009, the Senate passed an order relating to public interest immunity claims.<sup>2</sup> The order sets out the processes to be followed if a witness declines to answer a question. The full text of this order has previously been provided to departments and agencies and was incorporated in the Chair's opening statement on the first day of the budget estimates hearing.

1.8 The issue of withholding information on the basis of legal professional privilege was raised during the hearing. On 4 June 2013, Mr Jeremy O'Sullivan, Chief Counsel in the Department of Education, Employment and Workplace Relations, stated during the hearings that:

As Chief Counsel I would not disclose the content of requests for advice to this committee as to do so would waive the legal professional privilege in that advice<sup>3</sup>

1.9 The Chair noted that similar statements had been raised in previous hearings, and had not been satisfactorily resolved. He said Mr O'Sullivan's refusal was unacceptable and made a statement the following day reiterating that the only basis for a witness withholding information from a Senate Committee is by making, and the committee accepting, a claim for public interest immunity.<sup>4</sup> The Chair's statement, formulated on advice from the Clerk of the Senate, appears at Appendix 2. The Secretary, Ms Lisa Paul, responded to the Chair's statement saying:

Thank you for your comments and I will assure you now that the committee will pay very close attention to that question on notice in particular, and of course to the rules which you name, which are well known to us.<sup>5</sup>

---

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

3 *Proof Estimates Hansard*, 4 June 2013, p. 81.

4 *Proof Estimates Hansard*, 5 June 2013, p. 37.

5 *Proof Estimates Hansard*, 5 June 2013, p. 37.



**Questions on notice**

1.10 The committee has drawn the attention of the department and its agencies to the agreed deadline of Friday 19 July 2013 for the receipt of answers to questions taken on notice from this round, in accordance with Standing Order 26.

1.11 For this round, written questions on notice were received from Senators Back, Boyce, Ludlam, McKenzie, Nash, Siewert, Wright and Xenophon.

**Note on Hansard page referencing**

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



## **Chapter 2**

### **Education, Employment and Workplace Relations portfolio**

2.1 This chapter summarises areas of interest and concern raised during the committee's consideration of budget estimates for the 2013–14 financial year. This section of the report follows the order of proceedings and provides an indicative, but not exhaustive, coverage of issues examined.

2.2 The committee heard evidence on Monday 3 and 4 June from the Parliamentary Secretary for School Education and Workplace Relations, Senator the Hon. Jacinta Collins along with officers from areas of the Department of Education, Employment and Workplace Relations (the department) and agencies responsible for employment and workplace relations, including:

- Comcare
- Safe Work Australia
- Fair Work Ombudsman
- Fair Work Commission
- Fair Work Building and Construction

2.3 On 5 and 6 June the committee heard evidence from Senator the Hon. Kate Lundy representing the Minister for School Education, Early Childhood and Youth, and Parliamentary Secretary for School Education and Workplace Relations Senator the Hon. Jacinta Collins, as well as officers from areas of the department and agencies responsible for administering education policy, including:

- Australian Curriculum, Assessment and Reporting Authority;
- Australian Institute of Teaching and School Leadership.

2.4 Senators present over the course of hearings were Senator Marshall (Chair), Senator Back (Deputy Chair), Senators Abetz, Bilyk, Kim Carr, Cash, Edwards, Gallacher, Lines, Ludlam, Mason, McKenzie, Nash, Ronaldson, Siewert, Sinodinos, Sterle, Wright and Xenophon.

## Fair Work Ombudsman

### *Section 457 visas*

2.5 Senator Abetz led questioning of the Fair Work Ombudsman (FWO) raising some concerns about the FWO's involvement in regulating 457 visas. Issues raised by Senator Abetz included:

- the new role of the FWO in monitoring and enforcing compliance with 457 visa conditions;
- the capacity of the FWO to fulfil this new role and concerns over the degree to which the FWO was consulted by government before the decision was made to expand the Ombudsman's responsibilities;
- the operational and policy relationships between the FWO and the Department of Immigration and Citizenship as relating to 457 visa implementation;
- 457 visa complaint statistics and issues concerning unpaid workers with visas.

### *Unpaid work and workplace flexibility arrangements*

2.6 Senators also raised questions about complaints to the FWO in relation to vulnerable employees and unpaid work. In particular, the question of some businesses giving three-day trials to workers and then not offering full-time paid employment was raised. It was noted that there may be some businesses repeatedly engaging in this practice, cycling through voluntary trial employees and never engaging a full-time worker. Officers from the FWO reported that this would be a very concerning practice and would be appropriately investigated if reported. Officers noted that they would follow up with data and advice for the committee on previous cases of this nature.

2.7 Officers from the FWO also addressed questions regarding their publication: *Best Practice Guide: Use of individual flexibility arrangements*.<sup>3</sup> Advice provided included: consultation that was undertaken in the lead up to its publication, the role of non-monetary benefits in flexibility arrangements and the rationale behind the legislation underlying the publication.

## Fair Work Building and Construction

2.8 Senators began by questioning officers from Fair Work Building and Construction (FWBC) on operational efficiencies identified in the Education, Employment and Workplace Relations Portfolio Budget Statement (PBS). Officers noted that although FWBC would need to make some adjustments due to budget savings, investigations and enforcement would remain as the key focus of the agency.<sup>4</sup>

---

3 *Proof Estimates Hansard*, 3 June 2013, p. 27–28.

4 *Proof Estimates Hansard*, 3 June 2013, p. 35.

---

They identified travel, media, public affairs, advertising, printing, publications and office space as areas that would be affected in meeting savings requirements. Senator Abetz expressed concern over FWBC's capacity to maintain performance of the agency's duties in the area of industrial disputation in light of the savings measures and the upward trend in the number of these disputes being brought before the agency.

2.9 Senator Bilyk questioned FWBC officers on operational data including: the number of investigations undertaken, proceedings involving civil penalties and compensation payments, timelines for dealing with investigations and how these statistics compared to FWBC's predecessor the Office of the Australian Building and Construction Commissioner (ABCC).<sup>5</sup>

2.10 Senator Bilyk also questioned FWBC on the legal proceedings involving the Grocon Myer Emporium site in Melbourne. FWBC noted that this matter was still before the courts. Following some of Senator Bilyk's questions, Senator Abetz questioned FWBC regarding penalties for contraventions imposed under the Fair Work Act in comparison with contraventions imposed by the ABCC. Senator Abetz noted that current penalties were less than half of that prescribed under the ABCC and voiced concern that the lesser penalty also lessened the incentive for compliance with the legislation.<sup>6</sup>

## **Comcare**

2.11 Officers from Comcare began by providing an update to senators on the review of the organisation conducted by Mr John Cain. Mr Cain's review particularly addressed the recovery and support services provided to a number of individuals involved in long-term cases with the agency. The review formed part of an ongoing improvement process of the organisation being undertaken by Comcare. Officers noted that the draft report had been provided and that a number of strong recommendations from the report were already being actioned. General findings from the report indicated that individuals involved in long-term cases with Comcare were having difficulties in communicating with Comcare and with navigating the complexity of the systems in place for resolving cases. Officers noted that the organisation was seeking to address these concerns and would seek to be more helpful to people involved in long-term cases.<sup>7</sup>

## ***Asbestos and work health and safety legislation***

2.12 Senator Abetz raised the issue of asbestos management, expressing concern over the way that asbestos in existing infrastructure had been managed in the NBN rollout. The senator questioned Comcare on the management of misdemeanours by contractors involved in installation.

---

5 *Proof Estimates Hansard*, 3 June 2013, p. 40–41.

6 *Proof Estimates Hansard*, 3 June 2013, p. 42–43.

7 *Proof Estimates Hansard*, 3 June 2013, p. 52–53.

2.13 Comcare stated that, under the Work Health and Safety Act, there is a clear line of accountability but that Comcare's interests on this issue particularly related to Telstra, the NBN Co. (the head contractor in the NBN rollout) and Visionstream (another contractor). Comcare noted that it had already conducted system-level audits with Telstra in 2009 and 2010.<sup>8</sup>

### **Safe Work Australia**

2.14 Senator Abetz opened questioning of Officers from Safe Work Australia (SWA) by seeking clarification on answers to questions on notice which had been previously provided. Issues covered in these questions were wide-ranging and covered topics such as implementation of occupational health and safety laws, topical breakdowns of research expenditure by SWA and research and statistics on quad bike fatalities.<sup>9</sup>

2.15 Senators then pursued a further line of questioning on the draft model Work Health and Safety Code of Practice for Preventing and Responding to Workplace Bullying. Questioning addressed issues including ambiguity over how to define bullying, accessibility of the draft code to small businesses, and processes for cases of bullying involving the employer and the employee – particularly if the employer accused the employee of bullying.<sup>10</sup>

### **Fair Work Commission**

2.16 Senator Abetz asked officers from the Fair Work Commission (FWC) for an update on the cost for the name change of the FWC from Fair Work Australia that occurred in December 2012. Officers noted that most of the signage on FWC buildings still refers to Fair Work Australia, and that the reason for the delay in changing the signage was the requirement for formal exemption from the Australian Government branding guidelines.

### ***New bullying jurisdiction for the FWC***

2.17 Officers from FWC responded to questions concerning the proposed expansion of the FWC jurisdiction to cover bullying, a matter currently under consideration by the parliament. Officers noted the difficulty of estimating what the potential increase in workload would be, although officials did say that appropriations of \$5.2 million for 2013–14 and \$21.4 million over four years were made on an estimation of the number of applications that FWC would likely receive per year. These estimates were based on the incidence of workplace bullying that the Productivity Commission found in 2010.<sup>11</sup>

---

8 *Proof Estimates Hansard*, 3 June 2013, p. 53–56.

9 *Proof Estimates Hansard*, 3 June 2013, p. 65–67.

10 *Proof Estimates Hansard*, 3 June 2013, p. 68–72.

11 *Proof Estimates Hansard*, 3 June 2013, p. 81–83.

2.18 Based on the 37 000 current lodgements handled by the FWC, as well as a potential 3500 new applications under the new bullying jurisdiction, Senator Abetz estimated that an additional five commissioners would need to be appointed by FWC to supplement the current number of 54 commissioners. Senator Abetz asked officers whether the agency had reached similar conclusions in assessing the proposed changes. FWC Officers stated that they were not in a position to make such estimates with any real accuracy.<sup>12</sup>

### ***Role of the FWC President***

2.19 Senator Abetz questioned the FWC President on his part-time role as a Justice on the Federal Court, and in particular the potential for him to sit on matters emanating from the FWC. The President responded by saying that he had no particular desire to sit in the Fair Work jurisdiction while acting in his capacity as a judge on the Federal Court, but that ultimately the composition of benches was a matter entirely for the Chief Justice. He also noted that similar situations had arisen in the past on other tribunals.<sup>13</sup>

## **Department of Education, Employment and Workplace Relations – Outcome 3: *Enhanced employability and acquisition of labour market skills***

### ***Job Services Australia***

2.20 Senator Sinodinos opened questioning under Outcome 3 looking at Job Services Australia (JSA) – the government's employment services support system for job seekers and employers. Senator Sinodinos questioned officers from the Department of Education, Employment and Workplace Relations (the department) on various statistics regarding JSA. Other questions ranged across a variety of issues including long-term unemployed individuals receiving support through JSA, and older workers and discrimination in the labour market.<sup>14</sup>

2.21 Officers of the department also reported on the 'Work for the Dole' scheme in response to questions. The scheme provides voluntary opportunities for eligible job-seekers to work with not-for-profit organisations and gain new skills and experience to improve their chances of getting a job. The department provided information on attendance rates by activity type and compliance failure for individuals attending Work for the Dole activities.<sup>15</sup>

---

12 *Proof Estimates Hansard*, 3 June 2013, p. 83.

13 *Proof Estimates Hansard*, 3 June 2013, p. 85.

14 *Proof Estimates Hansard*, 4 June 2013, p. 6–8.

15 *Proof Estimates Hansard*, 4 June 2013, p. 9.

### ***Disability Employment Services***

2.22 Senators questioned the department under Program 3.3 on issues relating to Disability Employment Services. Senator Back began by asking for statistics on employment outcomes for people with certain disability types, and in particular for a comparison between results obtained by specialist and generalist service providers. The department reported that collation of such information was currently being undertaken and would be available in detail by the year's end.<sup>16</sup>

2.23 Senator Siewert also questioned the department on Aboriginal specialist services for Disability Employment Services. Officers of the department noted that 4.8 per cent (7228 job seekers) of the overall proportion of the Disability Employment Services case load comprised Indigenous job seekers. In particular, there are four providers that deliver specialist services for Indigenous Australians located at 15 different sites in New South Wales, Western Australia and South Australia – although these specialist providers only serve 1.9 per cent of the total Indigenous case load.<sup>17</sup>

### ***Newstart allowance***

2.24 Senator Cash asked the department to provide information on recipients who had received exemptions from job seeker participation requirements under the Newstart allowance. Officers from the department noted that total exemptions numbered 74 298. Of these exemptions, Newstart recipients comprised the majority. Other payment types included: the parenting payment single, youth allowance and payments classified as 'other'. On further questioning, officers noted that some reasons behind these exemptions included: injury/illness, disability, temporarily incapacitation and caring responsibilities—including people with four or more children.<sup>18</sup>

### **Department of Education, Employment and Workplace Relations – Outcome 4: Safer, fairer and more productive workplaces**

2.25 Senator Abetz questioned officers of the department extensively on their role in the proposal of the number of Vice-Presidents that should be appointed to the FWC. Senator Abetz put to the officers present that the committee had previously taken evidence on these appointments that was in apparent contrast to evidence given by the FWC President. The department noted previous evidence that had been provided to the committee on this matter, including a Freedom of Information request from Senator Abetz, and argued that the fluid nature of discussions involving the Minister for Employment and Workplace Relations, the President and departmental officials should be accounted for in considering any seeming inconsistencies.<sup>19</sup>

---

16 *Proof Estimates Hansard*, 4 June 2013, p. 42-43.

17 *Proof Estimates Hansard*, 4 June 2013, p. 47.

18 *Proof Estimates Hansard*, 4 June 2013, p. 55.

19 *Proof Estimates Hansard*, 4 June 2013, p. 68-75.



2.26 Senator Abetz sought clarification about the limitations on Commonwealth and State and Territory jurisdiction as regards asbestos management. Officers noted that occupational work health and safety regulation is a state and territory responsibility, but also commented on the role of Comcare and Safe Work Australia from a federal perspective.<sup>20</sup>

2.27 Officers of the department also provided an update on progress with the International Convention on Child Labour, noting that it is currently being considered by the Joint Standing Committee on Treaties. The convention, adopted by the International Labour Organisation in 1973, is the last of the eight internationally recognised fundamental conventions that Australia has not ratified. Senator Collins took on notice questions from Senator Abetz on the rationale for the Government's decision to consider ratification in light of previous decisions by the Whitlam, Hawke, Keating, Howard and Rudd governments not to ratify it.<sup>21</sup>

## **Department of Education, Employment and Workplace Relations – Cross Portfolio**

2.28 Senator Mason questioned officers of the department on the issue of staff absenteeism. The department took on notice questions on absentee statistics disaggregated into categories such as age, job position and classification, gender and days of the week that leave is taken. Senator Mason brought to the attention of the committee the significance of this issue by citing a report by the Queensland Auditor-General. The report, taking the average of 8.5 days unscheduled absences annually per worker, estimated that each one of those days cost the Queensland Public Service \$200 million. Senator Mason further noted that, according to APS State of the Service Statistics, unscheduled absences in the APS are higher. Due to the much larger size of the APS in comparison to Queensland's Public Service, he speculated that this issue was potentially costing the Commonwealth approximately \$1 billion a day for each day of the annual average. Reducing the average therefore by even one or two days could potentially save the government \$2 billion.<sup>22</sup>

## **Australian Curriculum, Assessment and Reporting Authority**

### ***Draft senior secondary curriculum***

2.29 Witnesses updated the committee on progress with the draft senior secondary curriculum. Officers of the Australian Curriculum, Assessment and Reporting Agency (ACARA) had advised in previous estimates hearings that the draft curriculum had cleared the ministerial council in December 2012 and that ACARA officials would be meeting with various state and territory authorities by the end of March 2013. Officers reported that:

---

20 *Proof Estimates Hansard*, 4 June 2013, p. 84–86.

21 *Proof Estimates Hansard*, 4 June 2013, p. 111–112.

22 *Proof Estimates Hansard*, 5 June 2013, p. 6–8.

We have had those meetings. They were aimed at exploring about three or four questions. One was given the curriculum, which is the content and the achievement standards that ministers had endorsed as the basis for this further work last year. We had a discussion with them about what process they had in place, or were planning to have in place, to look at the content and how it could be integrated within local courses and to have a look at the achievement standards and how they related to their current form of assessing and reporting on achievement in the senior years. We also had some discussion with them about a technical process of validating the achievement standards. So we have had the initial round.<sup>23</sup>

2.30 Officers from ACARA further reported that general feedback from the states was that the draft curriculum had a high degree of alignment with their local curriculum. ACARA's focus would be on using this alignment as a basis for greater consistency across the nation. ACARA is due to report back to the ministerial council in November 2013.<sup>24</sup>

### ***NAPLAN cheating and breaches***

2.31 Senator Mason questioned officers from ACARA on the issue of cheating and breaches under the National Assessment Program – Literacy and Numeracy (NAPLAN). Senator Mason brought a high-profile case of cheating to the attention of the committee, and asked questions on how such cases were addressed. More broadly, he also raised questions concerning instances of cheating and breaches. ACARA officers responded by taking on notice details of such instances and also said that the most recent round of testing had given rise to some reports that were under current investigation.<sup>25</sup>

### **Australian Institute for Teaching and School Leadership**

2.32 Senator Mason asked officers from the Australian Institute for Teaching and School Leadership (AITSL) to update the committee on state and territory reporting under the Australian Teacher Performance and Development Framework. AITSL officers reported that:

We can confirm that schools have adopted the framework, and it is my understanding, as a result of feedback through to DEEWR, that they have established their baseline position to support the implementation of the Australian Teacher Performance and Development Framework... The framework provided advice about best practice and identified four essential elements, but it did not dictate to schools, systems or sectors how those four essential elements needed to be implemented. One, for example, to be quite specific, is that teachers need regular and ongoing feedback. How you

---

23 *Proof Estimates Hansard*, 5 June 2013, p. 18.

24 *Proof Estimates Hansard*, 5 June 2013, p. 19.

25 *Proof Estimates Hansard*, 5 June 2013, p. 24–25.

---

organise that within your school is contextual. It is school specific. That you have to have it is non-negotiable.<sup>26</sup>

## **Department of Education, Employment and Workplace Relations – Outcome 1: *Early childhood education***

2.33 Officers from the department began by updating the committee on progress with the Indigenous early childhood education centres in response to questions from Senator Mason. Officers reported that 17 centres had been completed to date, with a further 19 providing interim services. 215 staff operated across a total of 38 sites. They also noted that all centres would be completed by June 2014 according to advice provided by the relevant state and territory agencies.<sup>27</sup>

### ***Early Years Quality Fund***

2.34 Senator Xenophon asked officers of the department about the rationale underpinning the proposed Early Years Quality Fund, which is intended to attract and retain qualified professionals into the long day care sector. In particular, the fund is aimed at maintaining affordability for early childhood education through the supplementation of wages for qualified educators.<sup>28</sup> Officers explained that, as the sector is relatively low-paid, the fund would be intended to raise the professionalism of the sector through wage increases and through engendering an increased focus on early learning.

2.35 Senator Xenophon noted that, of the \$300 million proposed to be made available under the fund, only approximately 40 per cent of industry workers in the sector would be eligible to receive funding under the scheme. Following this, he questioned officers on the criteria that would be used to decide funding recipients. He raised the concern that workers with equivalent or similar qualifications in the sector might miss out or receive benefits under the program purely on the basis of who applied first. Officers of the department reported that an advisory board was proposed to determine the criteria for assessing applicants under the fund, and to advise on issues concerning the operation of the fund more generally.<sup>29</sup>

## **Department of Education, Employment and Workplace Relations – Outcome 2: *Schools and youth***

2.36 Officials reported to the committee on budget allocations for the parental and community engagement program. Allocations for the 2013 calendar year are approximately \$22 million while funding beyond that has not yet been allocated. Senator Back questioned the department on eligibility criteria for funding under the

---

26 *Proof Estimates Hansard*, 5 June 2013, p. 31.

27 *Proof Estimates Hansard*, 5 June 2013, p. 37–38.

28 *Proof Estimates Hansard*, 5 June 2013, p. 42–43.

29 *Proof Estimates Hansard*, 5 June 2013, p. 42–43.

program and the success of the program in achieving outcomes. Officers of the department responded that the objectives of the program were to build parental engagement with schools. Evaluation was primarily based on:

...assessments by project participants in their confidence, knowledge and engagement with schooling. It is primarily qualitative information, feedback and the self-evaluation of engagement and satisfaction levels.<sup>30</sup>

### ***Bullying in schools***

2.37 Senator Mason raised the issue of bullying in schools with officers of the department, particularly in relation to the *Safe Schools Hub* website and the *Bullying. No Way!* website. Officers reported that, following a two-part rollout of the *Safe Schools Hub* website, resources and learning modules were now available for staff in schools and for parents in dealing with bullying issues. Following further questions from Senator Bilyk, officers of the department noted that cyber-bullying issues are also a concern and that as such it was important to be explicit and up-front about these issues in schools.<sup>31</sup>

2.38 Officers also reported to the committee on the National Safe Schools Framework noting that:

The National Safe Schools Framework is a document that was endorsed by all MCEECDYA (Ministerial Council for Education, Early Childhood Development and Youth Affairs) ministers...and is being implemented in schools across the country in a variety of ways. It is a framework that guides safe school activity in schools. Under the National Plan for School Improvement, one of the reform areas indicates that the expectation is that schools will implement elements of the framework. We do not currently collect data or information about how many schools are implementing the framework. We do understand quite a number of them are; it is just that we do not know how many specifically are.<sup>32</sup>

### ***National Partnership for Improving Teacher Quality***

2.39 Senator Gallacher raised questions on the large number of people that were graduating with diplomas of education from Australian universities, and that this constituted an over-supply in light of the relatively small number of vacancies available in the sector. He asked officers of the department to explain how this could be consistent with reports that there is a lack of high-quality teachers available.<sup>33</sup>

2.40 Officers responded by saying that there were a number of factors that explain the discrepancy. One such factor was that the relationship between universities and

---

30 *Proof Estimates Hansard*, 6 June 2013, p. 6–7.

31 *Proof Estimates Hansard*, 6 June 2013, p. 11–13.

32 *Proof Estimates Hansard*, 6 June 2013, p. 13.

33 *Proof Estimates Hansard*, 6 June 2013, p. 47.

---

employers (education departments) needed to be better developed so as to promote clear communication on the types of graduates that the sector required. Where graduates might be numerous in relation to one area (e.g. primary teaching), there may be a shortage in others (e.g. secondary maths teaching). Officers also noted the importance of accounting for temporary and casual vacancies, and the need to fill those when they arose.<sup>34</sup>

**Senator Gavin Marshall**  
**Chair**

---

34 *Proof Estimates Hansard*, 6 June 2013, p. 47–48.



# **Appendix 1**

## **Committee oversight of departments and agencies**

### **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 Leadership Ltd;
- ComCare;
- Fair Work Commission;
- The Fair Work Ombudsman;
- Fair Work Building and Construction; and
- Safe Work Australia.





## **Appendix 2**

### **Statement by the Chair**

Yesterday, during questions to the department, Senator Abetz asked whether it had sought legal advice about compulsory arbitration. Mr O'Sullivan declined to answer on the basis of legal professional privilege but eventually took the question on notice.

It should be well known to officers attending this committee that there is a clear process for seeking not to answer a question, a process which is referred to at the beginning of every set of hearings. Copies are available from the secretariat.

No witness has an independent discretion to decline to answer a question. An officer has a right under Privilege Resolution 1(16) to refer a question to a senior officer or minister. Alternatively, an officer may state the public interest ground on which he or she believes it may not be in the public interest to disclose the information requested AND specify the harm to the public interest that could result from disclosure of the information. The order of the Senate of 13 May 2009, to which I have already referred, then sets out the process to be followed. There is no other basis on which an answer may be withheld from a committee.

It is very difficult to see how the answer to a question whether legal advice has been sought on a matter could attract legal professional privilege, let alone how it could harm the public interest. The public interest in Commonwealth agencies being accountable to committees of this Parliament for their administration of taxpayers' money must, in most cases, prevail.

It has never been accepted in the Senate, nor in any comparable representative assembly, that legal professional privilege provides a ground for a refusal of information in a parliamentary forum. The first question in response to any such claim is: to whom does the legal advice belong, to the Commonwealth or some other party? Usually it belongs to the Commonwealth. Legal advice to the federal government, however, is often disclosed by the government itself. Therefore, the mere fact that information is legal advice to the government does not establish a basis for this ground. It must be established that there is some particular harm to be apprehended by the disclosure of the information, such as prejudice to pending legal proceedings or to the Commonwealth's position in those proceedings. If the advice in question belongs to some other party, possible harm to that party in pending proceedings must be established, and in any event the approval of the party concerned for the disclosure of the advice may be sought.

I suggest that the department should think very carefully in answering the question on notice about where the public interest actually lies.



**Appendix 3**  
**Index to Proof Hansard transcripts**  
**Education, Employment and Workplace Relations portfolio**

<i>Monday, 3 June 2013</i>	<i>Page no</i>
Fair Work Ombudsman	5
Fair Work Building and Construction	34
Comcare	52
Safe Work Australia	65
Fair Work Commission	75
 <i>Tuesday, 4 June 2013</i>	
Outcome 3 – Enhanced employability and acquisition of labour market skills	6
Outcome 4– Safer, fairer and more productive work places	66
 <i>Wednesday, 5 June 2013</i>	
Cross Portfolio	4
Australian Curriculum Assessment and Reporting Authority	16
Australian Institute of Teaching and School Leadership	30
Outcome 1- Early childhood education	37
Outcome 2- Schools and youth	58
 <i>Thursday, 6 June 2013</i>	
Outcome 2- Schools and youth	4