

The Senate

Education and Employment
Legislation Committee

Additional estimates 2019-20

March 2020

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ISBN: 978-1-76093-065-3

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This document was produced by the Senate Standing Committee on Education and Employment and printed by the Senate Printing Unit, Parliament House, Canberra.

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Chapter 1

Overview

1.1 On 13 February 2020 the Senate referred the following documents to the Education and Employment Legislation Committee (the committee) for examination and report:

- particulars of proposed additional expenditure in respect of the year ending on 30 June 2020 [Appropriation Bill (No. 3) 2019–2020];
- particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2020 [Appropriation Bill (No. 4) 2019–2020]; and
- particulars of proposed additional expenditure in relation to the parliamentary departments in respect of the year ending on 30 June 2020.¹

Portfolio coverage

1.2 In accordance with a resolution of the Senate on 31 August 2016, as amended on 12 February 2018 and on 13 February 2020, the committee is responsible for the examination of the expenditure and outcomes of the following portfolios:

- Education, Skills and Employment, including Industrial Relations; and
- Industry, Science, Energy and Resources, excluding Industry, Science, Energy and Resources but including Small Business.²

1.3 A full list of agencies is available at Appendix 1.

Portfolio Additional Estimates Statements 2019–20

1.4 The Portfolio Additional Estimates Statements (PAES) 2019–20 for the Education, Skills and Employment portfolio, the Attorney-General's portfolio (covering Industrial Relations matters) and the Industry, Science, Energy and Resources portfolio (covering Small Business matters) were tabled in the Senate on 13 February 2020.³

Education, Skills and Employment portfolio

1.5 The 2019–20 PAES for the Education, Skills and Employment portfolio provides information on the revised estimates for the portfolio and highlights the

1 *Journals of the Senate*, No. 42, 13 February 2020, pp. 1283–1284.

2 *Journals of the Senate*, No. 42, 13 February 2020, p. 1268.

3 *Journals of the Senate*, No. 42, 13 February 2020, p. 1284.

Australian Government's priorities in respect to education, skills and employment, including:

- a range of measures to support bushfire-affected communities, such as:
 - helping affected families with education expenses;
 - providing increased funding for mental health support in local schools and early childhood services in affected communities;
 - exempting families in bushfire-declared local government areas from Child Care Subsidy activity test debts for the 2019–20 financial year;
 - giving special consideration to students wanting to attend university in bushfire-affected communities if they apply for a scholarship through the Rural and Regional Enterprise Scholarships program; and
 - increasing Community Child Care Fund special circumstance grant funding to support child care services in bushfire-affected areas.
- ensuring the viability of drought-affected non-government schools through the provision of Special Circumstances funding;
- supporting the nationally consistent regulation of quality and safety in early childhood education and care services through ongoing funding of the Australian Children's Education and Care Quality Authority;
- implementing a range of measures to support young people and schools in regional and remote communities, including:
 - funding the Country Education Partnership's Rural Inspire Initiative to develop leadership skills and the knowledge of young people living in rural and remote communities, as well as explore education challenges and opportunities facing rural youth;
 - providing additional funding to support more high-achieving teachers to become school leaders in rural, remote and disadvantaged schools, building on the 2018–19 Budget measure, *High Achieving Teachers Program*;
 - providing funding to extend the removal of *Higher Education Loan Program* (HELP) debt for teachers working in very remote locations of Australia to include early childhood teachers;
 - continuing to trial flexible teaching methods as a means of improving literacy outcomes by extending the *Flexible Literacy for Remote Primary Schools Program* pilot into the 2020 school year; and
 - establishing a further five Regional University Centres (formerly known as Regional Study Hubs), increasing their number from 16 to 21, to create more opportunities for students to undertake higher education while remaining in their local communities;
- supporting the resources sector by establishing a School of Mines and Manufacturing at the Central Queensland University;

-
- encouraging partnerships between universities and industry to undertake innovative projects through the provision of funding;
 - encouraging the take-up of apprenticeships and addressing areas of skill shortages by providing additional support to small businesses employing Australian Apprentices across rural and regional Australia through expansion of the *Australian Apprentice Wage Subsidy Trial*;
 - strengthening the regulation, compliance and quality of the Vocational Education and Training (VET) sector by funding measures including:
 - the continued implementation of the VET FEE-Help Redress measure in 2020;
 - the development of the VET Student Loans IT System;
 - establishing the *Revitalisation TAFE Campuses Across Australia* initiative to improve vocational education infrastructure; and
 - responding to the *Expert Review of Australia's Vocational Education and Training System* and the *Review of the National Vocation Education and Training Regulator Act 2011* by providing \$34.3 million in funding over four years from 2019–20 to further improve the quality of the VET system through a range of measures; and
 - increasing workforce participation, including by:
 - funding the expansion of the *Online Employment Services Trial* program to provide digital employment services nationally to an additional 33,750 job-ready participants;
 - extending the time limitation of the *Transition to Work* program from 12 to 18 months, assisting disadvantaged young people to enter employment by allowing more time to build skills, confidence and work readiness; and
 - establishing a mid-career checkpoint, providing tailored advice on professional development or further skills, to assist up to 40,000 caregivers who have taken time out of their careers to care for family and seek to return to the workforce.⁴

Attorney-General's portfolio

1.6 The 2019–20 PAES for the Attorney-General's portfolio provides information on the revised estimates for the portfolio and outlines the department's outcomes, and those of the 20 entities for which it is responsible.⁵ The relevant outcome for industrial

4 *Portfolio Additional Estimates Statements 2019–20: Education, Skills and Employment Portfolio*, pp. 9–13.

5 *Portfolio Additional Estimates Statements 2019–20: Attorney-General's Portfolio*, pp. 8–12.

relations is Outcome 2: 'Facilitate jobs growth through policies and programs that promote fair, productive and safe workplaces.'⁶

1.7 Changes to the portfolio brought about through an Administrative Arrangements Order (AAO) of 29 May 2019 are also explained. Under the order, industrial relations and workplace safety functions and programs, along with eight entities, were transferred to the Attorney-General's portfolio from the former Jobs and Small Business portfolio.⁷

Industry, Science, Energy and Resources portfolio

1.8 The 2019–20 PAES for the Industry, Science, Energy and Resources portfolio provides information on the revised estimates for the portfolio and highlights the Australian Government's portfolio priorities. In relation to small business, this includes 'facilitating the growth of small and family business'.⁸

1.9 Changes to the portfolio under the AAO of 5 December 2019, which took effect on 1 February 2020, are explained. Under these new arrangements, the Department of Industry, Science, Energy and Resources gained responsibility for small business functions from the former department of Employment, Skills, Small and Family Business.⁹

Hearings

1.10 On 14 November 2019 the Senate resolved that Additional Estimates hearings for the committee would occur on 4 and 5 March 2020.¹⁰ Accordingly, the committee considered the particulars of additional expenditure as follows:

- Employment and Industrial Relations matters, including Small Business—4 March 2020; and
- Education, Skills and Employment matters—5 March 2020.

1.11 The committee elected to arrange the hearings according to the departments' organisational structures, as machinery of government changes that had taken place in 2019 had resulted in portfolios being divided among departments.¹¹

6 *Portfolio Additional Estimates Statements 2019–20: Attorney-General's Portfolio*, p. 8.

7 *Portfolio Additional Estimates Statements 2019–20: Attorney-General's Portfolio*, p. 7.

8 *Portfolio Additional Estimates Statements 2019–20: Industry, Science, Energy and Resources Portfolio*, p. 3, 4.

9 *Portfolio Additional Estimates Statements 2019–20: Industry, Science, Energy and Resources Portfolio*, p. 3.

10 *Journals of the Senate*, No. 27, 14 November 2019, p. 851.

1.12 The first day was therefore focused on employment and industrial relations matters and agencies under the responsibility of the Attorney-General's Department, and on small business matters and small business agencies under the responsibility of the Department of Industry, Science, Energy and Resources. The second day was focused on the matters and agencies under the Department of Education, Skills and Employment, including the department's Employment Division.

1.13 The committee heard evidence from the following Ministers:

- Senator the Hon Marise Payne, representing the Minister for Industrial Relations;
- Senator the Hon Michaelia Cash, Minister for Employment, Skills, Small and Family Business;
- Senator the Hon Simon Birmingham, representing the Minister for Education; and
- Senator the Hon Jonathon Duniam, representing the Minister for Education.

1.14 Evidence was also provided by the following departmental secretaries who were accompanied by officers of the portfolio departments and agencies:

- Mr Chris Moraitis PSM, Secretary, Attorney-General's Department;
- Mr David Fredericks PSM, Secretary, Department of Industry, Science, Energy and Resources; and
- Dr Michele Bruniges AM, Secretary, Department of Education, Skills and Employment.

1.15 The committee extends its appreciation to the Ministers and officers of the departments and agencies who assisted the committee in conducting its 2019–20 Additional Estimates hearings.

1.16 An index of proceedings is available at Appendix 2.

Questions on notice

1.17 In accordance with Standing Order 26(9)(a), the committee agreed that the date for return of answers in response to questions placed on notice from the Additional Estimates 2019–20 hearings on 4 and 5 March would be 24 April 2020.

1.18 Answers to questions on notice are published as they become available on the committee's website: www.aph.gov.au/Parliamentary_Business/Senate_Estimates/ee.

11 Administrative Arrangements Order of 29 May 2019, Summary of Changes, <https://www.pmc.gov.au/sites/default/files/publications/aao-summary-changes-20190529.pdf> (accessed 11 March 2020); Administrative Arrangements Order of 5 December 2019, <https://www.pmc.gov.au/sites/default/files/publications/aao-5-December-2019-effect-1-February-2020.pdf> (accessed 11 March 2020).

Hansard transcripts

1.19 Committee Hansard transcripts are accessible on the committee's website: www.aph.gov.au/Parliamentary_Business/Senate_Estimates/ee/2019-20_Additional_estimates.

1.20 In this report, references to the most recent Committee Hansard are to the proof transcripts. Page numbers may vary between the transcripts of the Proof Hansard and the Official Hansard.

Chapter 2

2.1 This chapter summarises some of the key issues that were discussed during the committee's consideration of additional estimates for the 2019–20 financial year for the Education, Skills and Employment portfolio, Industrial Relations matters under the Attorney-General's portfolio, and Small Business matters under the Industry, Science, Energy and Resources portfolio.

Scope of matters raised

2.2 Over the course of two days of hearings, the committee discussed a broad scope of matters. Some of these, such as the impact of the recent bushfires were raised in relation to each portfolio. Other issues that the committee examined were confined to specific departmental divisions or agencies. These included:

- the nature of appointments of Fair Work Commissioners, and their conduct;
- universities' adoption and implementation of recommendations arising from the *Independent Review of Freedom of Speech in Australian Higher Education Providers* conducted by former Chief Justice Robert French;¹
- the Department of Education, Skills and Employment's (DESE) Seasonal Workers Program;
- internships and apprenticeships; and
- the location of Industry Training Hubs, in particular the process by which these were selected by DESE's Skills and Training Division.

Key theme—COVID-19 (coronavirus)

2.3 A prominent topic raised across the estimates was the anticipated impact of coronavirus and the preparedness of departments and agencies to assist industries and individuals affected by it.

2.4 The following sections outline the committee's examination of specific aspects of the issue as discussed with various departments and agencies, and measures being taken to manage the issue.

1 Robert S French AC, *Report of the Independent Review of Freedom of Speech in Australian Higher Education Providers*, March 2019, https://docs.education.gov.au/system/files/doc/other/report_of_the_independent_review_of_freedom_of_speech_in_australian_higher_education_providers_march_2019.pdf (accessed 11 March 2020).

Employment and Industrial Relations

Communication and advice

2.5 Questions were raised about the role of the Attorney-General's Department and associated agencies in communicating information on workplace issues that are likely to come to the fore during the coronavirus pandemic. The obligations upon employers with respect to affected workers were of considerable interest in this regard.²

2.6 The committee was informed that both the Fair Work Ombudsman and Safe Work Australia have published information and guidance of a general nature regarding employers' obligations on their websites.³ The Fair Work Ombudsman also provides an information line, which may be called by individuals and businesses for advice in relation to specific circumstances.⁴

2.7 Comcare was asked whether there were information dissemination measures to target 'vulnerable' workers, such as contractors, in certain 'high-risk' industries, such as transport and the gig economy.⁵ Ms Sue Weston, Chief Executive Officer, explained that, because Comcare's jurisdiction is limited to employees of the Commonwealth and Commonwealth authorities and licensed corporations,⁶ information provided is general in nature and communicated through social media, Comcare's website and by letter.⁷

2.8 The committee raised questions about disseminating information in multiple languages. Ms Weston informed the committee that she and Mr Justin Napier, General Manager, Regulatory Operations Group, are in contact with the heads of worker compensation authorities and safe work authorities, which would provide an additional avenue through which information about coronavirus may be conveyed to 'small, medium and culturally and linguistically diverse groups' who fall outside Comcare's jurisdiction.⁸

Protections for casual workers and contractors affected by coronavirus

2.9 A prominent line of inquiry concerned the protections available for workers affected by coronavirus who may not ordinarily be entitled to sick leave or other workplace protections, such as casuals and contractors. Particular concern was raised

2 *Committee Hansard*, 4 March 2020, pp. 4, 100.

3 *Committee Hansard*, 4 March 2020, pp. 4, 44, 86–87.

4 *Committee Hansard*, 4 March 2020, pp. 4, 45.

5 *Committee Hansard*, 4 March 2020, p. 100.

6 *Safety, Rehabilitation and Compensation Act 1988*, s. 5(1).

7 *Committee Hansard*, 4 March 2020, p. 100.

8 *Committee Hansard*, 4 March 2020, p. 101.

about gig economy workers, who are identified as 'high-risk' in relation to coronavirus.⁹ Questions were raised about whether gig economy workers would be able to access workers' compensation, whether under state-based legislation or through Comcare, in the event of contracting the virus as a result of their work.¹⁰

2.10 Mr Martin Hehir, Deputy Secretary, Industrial Relations Group, explained that this would depend on a range of factors, including the coverage of workers' compensation legislation in individual state jurisdictions, and the characterisation of contractors, which was a matter for the courts and not the department.¹¹ Mr Hehir observed that contractors should make their own insurance arrangements to cover the potential financial impact of illness.¹²

2.11 The potential impact of coronavirus was compared to that of the recent bushfires. The representing minister was asked whether the government was considering either extending Comcare or engaging with the states and territories to provide assistance similar to that for bushfire victims to gig economy workers financially impacted by the need to undergo a 14-day period of self-isolation.¹³ Subsequently to the hearing, major gig economy companies Uber and Deliveroo announced measures to provide financial support for drivers and riders who are diagnosed with coronavirus and directed to self-isolate or placed in quarantine by a public health authority.¹⁴

Education

Impact on early childhood and schools

2.12 DESE's Corporate and Enabling Services Division was questioned about measures to coordinate with education institutions nationally in planning for the potential suspension of services and closure of schools and universities.¹⁵ Dr Michele Bruniges AM, Secretary, informed the committee that the department's role in relation to the early childhood and schools sector was focused on serving as a central portal of

9 *Committee Hansard*, 4 March 2020, pp. 4–5, 100.

10 *Committee Hansard*, 4 March 2020, p. 5.

11 *Committee Hansard*, 4 March 2020, p. 5.

12 *Committee Hansard*, 4 March 2020, p. 5.

13 *Committee Hansard*, 4 March 2020, p. 5.

14 'Financial cover for sick, quarantined gig workers', *Workplace Express*, 10 March 2020, https://www.workplaceexpress.com.au/nl06_news_selected.php?act=2&nav=10&selkey=58687&utm_source=instant+email&utm_medium=email&utm_campaign=subscriber+email&utm_content=read+more&utm_term=Financial%20cover%20for%20sick%2C%20quarantined%20gig%20workers (accessed 13 March 2020); Nick Bonyhady, 'Uber announces coronavirus compensation as unions demand support for casuals', *The Sydney Morning Herald*, 9 March 2020, <https://www.smh.com.au/politics/federal/uber-announces-coronavirus-compensation-as-unions-demand-support-for-casuals-20200309-p548as.html> (accessed 13 March 2020).

15 *Committee Hansard*, 5 March 2020, p. 6.

information from the Department of Health and Commonwealth Chief Medical Officer and disseminating it to state and territory education departments, peak bodies and other stakeholders.¹⁶

2.13 In relation to the early childhood sector, activities undertaken to date included a stakeholder meeting convened by the Minister for Education with early child care peak bodies.¹⁷ Similar activities were being undertaken in respect to schools.¹⁸ A series of fact sheets and material about preventative strategies, accessed by a dedicated website, have been prepared. The advice in the material is generic in nature, and is not specifically tailored to schools and child care providers.¹⁹

2.14 In response to the committee's inquiries as to what preventative measures against the transmission of coronavirus that education institutions may be directed to take, Dr Bruniges stressed that such decisions were a matter for the states and territories. She indicated that department's role was to ensure linkages between state education departments, and that state-based plans were informed by data flowing from the Commonwealth Department of Health and Chief Medical Officer.²⁰ Dr Bruniges continued:

...the important thing will be for us to bring those representatives from the schooling sector and the early childhood sector together to look at their existing plans, to talk about what's universal and then really take the advice from the health experts in the field.²¹

2.15 To that end, a linkup between state education departments and early childhood sectors, as well as a meeting of senior education officials in Melbourne, were planned for the following week.²²

Impact on higher education and international students

2.16 The committee was informed that DESE was performing an identical role in respect to the higher education sector as in respect to the schools and early childhood sectors: serving as a central portal for information on the coronavirus, as well as coordinating communication between the sector and relevant Commonwealth authorities from other sectors.²³ To this end, the department convened a

16 *Committee Hansard*, 5 March 2020, pp. 7, 8.

17 *Committee Hansard*, 5 March 2020, p. 7.

18 *Committee Hansard*, 5 March 2020, p. 7.

19 *Committee Hansard*, 5 March 2020, p. 7.

20 *Committee Hansard*, 5 March 2020, pp. 7–8.

21 Dr Michele Bruniges, Department of Education, Skills and Employment, *Committee Hansard*, 5 March 2020, 8.

22 *Committee Hansard*, 5 March 2020, p. 7, 9.

23 *Committee Hansard*, 5 March 2020, p. 93.

teleconference of 39 university vice chancellors and their representatives, the Commonwealth Deputy Chief Medical Officer, and Australian Border Force, so that universities could directly pose questions related to both medical and visa matters.²⁴

2.17 The committee also considered the impact of coronavirus on international students. Focusing on students from those countries to which travel restrictions had been applied, it was ascertained that there were, as of 1 February 2020, 106,680 Chinese student visa holders unable to return from outside Australia, as well as 1,842 from South Korea and 132 from Iran as of 1 March 2020.²⁵

2.18 Mr Rob Heferen, Deputy Secretary, Higher Education, Research and International, outlined that the department had supported universities to deal with the impact of coronavirus primarily through the provision of data.²⁶ Other ways in which the department and the Australian Government could assist universities had been discussed at a meeting of deputy vice chancellors of Universities Australia member universities, during which it was conveyed to Mr Heferen that a reduction of those regulatory activities that were within the department's control would be of assistance.

2.19 The committee pursued questions about the department's 'scenario planning', particularly the possibility that students other than international students would be impacted.²⁷ The committee was informed that this work had yet to move beyond the discussion stage, given the highly fluid circumstances, rather than any particular scenario that might arise and its implications for the sector.²⁸ The department was in discussions with universities regarding the delivery of online services to international students unable to enter Australia.²⁹ In response to recent events, whereby concern had shifted towards the spread of coronavirus within Australia, the department was also assisting universities to prepare and update their pandemic plans.³⁰

Other matters

Employment, Industrial Relations and Small Business matters

Review of the Industrial Relations system by the Minister for Industrial Relations

2.20 In June 2019, the Minister for Industrial Relations, the Hon Christian Porter MP launched a major review of the nation's workplace laws. The committee sought an update on the review's scope and ongoing implementation.

24 *Committee Hansard*, 5 March 2020, p. 93.

25 *Committee Hansard*, 5 March 2020, p. 92.

26 *Committee Hansard*, 5 March 2020, p. 92.

27 *Committee Hansard*, 5 March 2020, p. 93.

28 *Committee Hansard*, 5 March 2020, p. 93.

29 *Committee Hansard*, 5 March 2020, pp. 93, 94.

30 *Committee Hansard*, 5 March 2020, p. 94.

2.21 The Attorney-General's Department Corporate and Enabling Services Division provided information about the scope of the review, what matters had already been examined, and what was to be examined in the future.³¹

2.22 Ms Alison Durban, First Assistant Secretary, Employee Conditions Division, informed the committee that the following discussion papers had been issued to date:

- Improving protections of employees' wages and entitlements: future strengthening the civil compliance and enforcement framework;
- Review of the Code for the tendering and performance of Building Work 2016; and
- Cooperative Workplaces – How can Australia capture productivity improvements from more harmonious workplace relations.³²

2.23 The remaining two discussion papers are titled: Attracting major infrastructure, resources and energy projects to increase employment – Project life greenfields agreements as well as Improving protections of employees' wages and entitlements: Strengthening penalties for non-compliance.³³ Ms Durbin informed the committee that the Industrial Relations Minister had 'flagged' an interest in three further topics—enterprise bargaining, the small business dismissal code and casual employment—and the department was at that time providing policy advice on those areas, but that 'whether they turn out to be policy papers will be a matter for the minister'.³⁴

2.24 The consultation process undertaken to inform the Porter review was also examined. The committee was advised that the main mechanism for consultation is through public submissions which inform the discussion papers. Both the submissions (other than confidential submissions) and resulting discussion papers are then published.³⁵ In response to questions about the transparency of the precise process by which submissions inform discussion papers, Mr Hehir explained that the purpose of publishing the discussion papers was to 'engage more broadly with the community', and that inviting and receiving submissions from unions, employers and peak bodies to inform these contributed to a 'very transparent process'.³⁶ Mr Hehir continued:

31 *Committee Hansard*, 4 March 2020, pp. 5–6.

32 *Committee Hansard*, 4 March 2020, p. 6.

33 Attorney-General's Department, *Industrial Relations Consultations*, <https://www.ag.gov.au/Consultations/Pages/industrial-relations-consultation.aspx> (accessed 12 March 2020).

34 *Committee Hansard*, 4 March 2020, p. 6, 11.

35 *Committee Hansard*, 4 March 2020, p. 11.

36 *Committee Hansard*, 4 March 2020, p. 14.

The fact that it is out there, that it is being discussed in public and not behind closed doors is a very good outcome, from our perspective, and it is a very open and transparent process.³⁷

2.25 Minister Payne explained that submissions were considered on the basis of their contribution to the three criteria for potential reforms arising from the review. These were whether they: 1) drive jobs and wages growth; 2) boost productivity and strengthen the economy; and 3) ensure the protection of workers' rights.³⁸ Regarding the two discussion papers that are now finalised, one had received 50 submissions, comprising nine from trade unions, 15 from employer organisations, five from government agencies, 13 from external organisations such as community legal centres and law firms, and eight from individuals.³⁹ Six of these submissions were confidential.⁴⁰ The other discussion paper received 18 submissions, comprising five from trade unions, nine from employer organisations, one from an individual employer, one from a law firm, and two from individuals.⁴¹ In addition to invited submissions, consultation takes place with the states and territories and the Committee on Industrial Legislation (COIL), in accordance with an intergovernmental agreement in relation to industrial relations laws.⁴²

2.26 The committee sought further detail on any consultations that may have taken place, in particular with employer groups, employee groups, and academics.⁴³ Departmental officials could not specifically recall any bilateral meetings with any individual employer or employee group. However, the department had engaged external consultant Boston Consulting Group (BCG), for the purpose of examining end-to-end processing requirements related to single enterprise agreements. BCG had met with 11 employers, two unions, as well as departmental officials and representatives from the Fair Work Commission (FWC) and the Fair Work Ombudsman (FWO).⁴⁴ It was explained that BCG did not consult any academics because the focus of their inquiry was the practical steps involved in forming a single enterprise agreements.⁴⁵ The total cost of the BCG consultation process was \$137,500.⁴⁶

37 *Committee Hansard*, 4 March 2020, p. 14.

38 *Committee Hansard*, 4 March 2020, p. 11.

39 *Committee Hansard*, 4 March 2020, p. 11.

40 *Committee Hansard*, 4 March 2020, p. 14.

41 *Committee Hansard*, 4 March 2020, p. 14.

42 *Committee Hansard*, 4 March 2020, p. 11.

43 *Committee Hansard*, 4 March 2020, p. 12.

44 *Committee Hansard*, 4 March 2020, p. 12.

45 *Committee Hansard*, 4 March 2020, p. 12.

46 *Committee Hansard*, 4 March 2020, p. 14.

2.27 Questions were raised regarding the consultation process relating to the government's planned labour hire registration legislation. Mr Hehir explained that the process included consultation with states and territories as well as discussion with stakeholders, which included both employer and employee representatives.⁴⁷ Whether any wider consultation would take place or a discussion paper released in relation to labour hire registration had not at that point been decided.⁴⁸

Wage theft – recovery by responsible agencies

2.28 A topic to which the committee returned throughout its examination of employment and industrial relations matters was wage theft, with a particular focus on efforts to recover underpaid wages. Questions were raised about the policies guiding decisions on whether and how to pursue suspected wage theft of those agencies—the Australian Building and Construction Commission (ABCC), and the FWO—with responsibility for detecting or penalising breaches of wage entitlements.⁴⁹ The committee was particularly interested in a perceived variance in approaches taken by the respective agencies to litigation.⁵⁰ As each agency is an independent statutory authority, each has responsibility for determining and applying its own policy (developed according to model litigant guidelines) in this respect, and does not report to the Attorney-General's Department on such matters.⁵¹

Australian Building and Construction Commission

2.29 Questions were raised about the ABCC's rate of recovery of underpaid wages in the building and construction industry.⁵² The approaches taken by the ABCC led to a consideration of its internal costs, with 14 per cent of investigation costs allocated to investigating breaches relating to wages and entitlements (\$42,247 out of a total \$301,408).⁵³ ABCC Commissioner, Mr Stephen McBurney clarified that this figure related only to investigation costs—that is, investigations prompted by complaints—which were calculated separately from the cost of the ABCC's proactive audit activities. The majority—85 per cent—of underpaid wages recovered by the ABCC are generated by self-instigated audits of employers.⁵⁴ In the period 2 December 2016 to 31 December 2019, \$1,443,085 in wages was recovered, belonging to 2,582 employees, through proactive audits. In the same period, \$256,874 belonging to 64

47 *Committee Hansard*, 4 March 2020, p. 12, 13.

48 *Committee Hansard*, 4 March 2020, p. 13.

49 *Committee Hansard*, 4 March 2020, p. 23.

50 *Committee Hansard*, 4 March 2020, pp. 23–24.

51 *Committee Hansard*, 4 March 2020, p. 23, 24.

52 *Committee Hansard*, 4 March 2020, p. 35.

53 *Committee Hansard*, 4 March 2020, p. 32.

54 *Committee Hansard*, 4 March 2020, p. 32.

employees was recovered as a result of investigations instigated by complaints, of which 189 were received.⁵⁵

Fair Work Ombudsman

2.30 The committee was informed that the FWO recovered just over \$40 million in unpaid wages in the financial year ending 30 June 2019.⁵⁶ This was contrasted with the \$1.35 billion estimated to be underpaid in Australia each year by the PwC report.⁵⁷ However, Ms Sandra Parker, Fair Work Ombudsman, raised questions about the PwC figure, citing uncertainty about the modelling that it was based on. Ms Parker indicated that:

We were unable to ascertain whether it accurately reflects the total amount of underpayments, and that is because attempting to model economy-wide underpayments is potentially misleading. PwC have said that it's approximately, in their view, \$1.35 billion a year and that wage underpayments affect about 13 per cent of the total workforce. What we would say is: we are unable to determine how they have come to that figure.⁵⁸

2.31 Examination of the FWO's efforts to recover unpaid wages revealed that the agency currently employs 177 inspectors investigating worksite compliance on approximately 1.2 million worksites, and had received additional funding for inspectors.⁵⁹

2.32 Ms Parker informed the committee that the FWO's budget is, appropriately, dictated by the agency's annual appropriation as determined by the government, and prioritises the allocation of expenditure and resources to cover its range of functions, 'from education through to litigation', within that budget.⁶⁰ In respect to the FWO's allocation of resources to detect and penalise wage theft, Ms Parker explained that the agency prioritises its activities according to its assessment of the risk of underpayment. This means that resources are directed towards industries and areas where there are more vulnerable, low-paid, migrant, or young workers, or industry sectors which are simply 'more notorious' for underpaying workers.⁶¹ The committee

55 *Committee Hansard*, 4 March 2020, pp. 32–33.

56 *Committee Hansard*, 4 March 2020, p. 47. The exact figure is \$40,204,976, belonging to 17,718 workers: The Fair Work Ombudsman and Registered Organisations Commission Entity, *Annual Report 18–19*, p. 13.

57 PwC Australia, *Australia Matters: Navigating Australia's industrial relations*, November 2019, <https://www.pwc.com.au/publications/australia-matters/navigating-australias-industrial-relations.html> (accessed 17 March 2020).

58 *Committee Hansard*, 4 March 2020, p. 46.

59 *Committee Hansard*, 4 March 2020, p. 47.

60 *Committee Hansard*, 4 March 2020, p. 50.

61 *Committee Hansard*, 4 March 2020, p. 49.

heard that the FWO prioritises its prosecutorial activities according to a goal of achieving 'maximum deterrence'. Ms Parker informed the committee that: 'We take them to court or institute other compliance and enforcement so that the message will get out there that this is not acceptable.'⁶²

2.33 Ms Parker further noted that garnering 'community pressure' was an important tool in achieving deterrence of wage theft, citing the significant public attention drawn by recent high-profile litigations of non-compliant employers as a 'strong deterrence factor'.⁶³

National Dust Disease Taskforce—re-emergence of silicosis

2.34 The committee's examination of Safe Work Australia (SWA) included discussion of the activities of the National Dust Disease Taskforce (the taskforce), of which SWA's Chief Executive Officer, Ms Michelle Baxter, is a member.⁶⁴ The committee was informed of the taskforce's interim advice to the Minister for Health in relation to silicosis.⁶⁵ SWA indicated concerns about the presence of the disease among workers in the engineered (composite) stone industry.⁶⁶

2.35 The committee heard that, while data relating to the number of cases of silicosis diagnosed in recent years does not exist, SWA does collect data on the amount of compensation claims made for silicosis.⁶⁷ Between the 2010–11 and 2017–18 financial years, there were a total of 60 accepted claims for silicosis. Claims made during the 2017–18 financial year (the most recent period for which data exists) are not included in this total, as that data includes unfinalised claims.⁶⁸ Ms Anthea Raven, Acting Branch Manager, Evidence and Strategic Policy, informed the committee that, due to the lag in currently available data, caution should be taken in interpreting any national trends in the occurrence of silicosis.⁶⁹

2.36 While the finalised data could not be used to indicate any acceleration of the disease, Ms Raven confirmed that anecdotal evidence indicated that more cases are being reported.⁷⁰ This indication was derived from jurisdictions undertaking whole-population health screenings, including Victoria, which has screened or offered health

62 *Committee Hansard*, 4 March 2020, pp. 49–50.

63 *Committee Hansard*, 4 March 2020, p. 50.

64 *Committee Hansard*, 4 March 2020, p. 87.

65 *Committee Hansard*, 4 March 2020, p. 88.

66 Australian Government Department of Health and National Dust Disease Taskforce, *Interim Advice to Minister for Health*, December 2019, p. 3.

67 *Committee Hansard*, 4 March 2020, p. 88.

68 *Committee Hansard*, 4 March 2020, p. 88.

69 *Committee Hansard*, 4 March 2020, p. 88.

70 *Committee Hansard*, 4 March 2020, p. 88.

screening for advanced or accelerated silicosis to the entire population of stonemasons working in the engineered stone benchtop sector.⁷¹

2.37 Given that screening for silicosis is currently undertaken by state governments, and there is no formal mechanism by which states must report their findings to SWA, questions were raised about whether SWA was taking steps to develop a national approach to the screening and treatment of the disease.⁷² The committee heard that SWA was undertaking a number of activities to that end, including:

- republishing its workplace exposure standard in December 2019;
- publishing national guidance on working with silica and silica-containing products in December 2019;
- agreeing to work towards a national code of practice for working with silica, as recommended by the taskforce; and
- agreeing on a national work plan into occupational lung disease, including silicosis in 2019.

2.38 The committee heard that, as part of the national work plan, SWA was undertaking work to develop a comprehensive understanding of the extent of occupational lung diseases nationally. This involves reconciling a range of external data sources, for example, hospitalisations data held by the Australian Institute of Health and Welfare, with the claims data gained from other sources.⁷³

2.39 Ms Baxter informed the committee that SWA's work in relation to silicosis was 'priority work', which was on its work plan for 2020.⁷⁴ However, it was noted that the work had to be carried out in line with governance processes, which required securing approvals for work from SWA members. Ms Baxter also clarified that there is an existing regulatory framework that applies to the engineered stone industry, including model work health and safety laws imposing obligations on persons conducting business or undertakings to manage risks that their workers may encounter.⁷⁵

The Australian Small Business and Family Enterprise Ombudsman – Supply Chain Finance Review

2.40 The committee examined the Australian Small Business and Family Enterprise Ombudsman's (ASBFEO) review into the impact of supply chain financing (SCF) on the small business and family enterprise sector. The ASBFEO released a

71 *Committee Hansard*, 4 March 2020, p. 88.

72 *Committee Hansard*, 4 March 2020, p. 89.

73 *Committee Hansard*, 4 March 2020, p. 89.

74 *Committee Hansard*, 4 March 2020, p. 90.

75 *Committee Hansard*, 4 March 2020, p. 90.

position paper outlining the review's key preliminary findings on 7 February 2020, and will release a final report by the end of March 2020.⁷⁶ The Ombudsman, Ms Kate Carnell AO, informed the committee of the trigger for the review:

The reason we did the inquiry is that we were very concerned that the feedback we were getting from lots of small businesses was that some large businesses were using supply chain finance as a method of having long payment times—pushing out payment times and saying: 'Here it is. We're going to go to 60 days, but do we have a deal for you! All you've got to do is sign here and you can get paid when you should have been paid anyway'—which was 30 days or less—and, by the way, it's going to cost you.⁷⁷

2.41 Ms Carnell distinguished between this misuse of SCF and its legitimate value as a cost-effective source of capital to small-to-medium businesses in certain circumstances.⁷⁸ A misuse of SCF may be detected based on the length of the contractual and actual payment times:

Supply chain finance or reverse factoring...when it's used to get five-day payments when you have a 30-day contract, is absolutely fine. You might need that. But what isn't okay is it being almost forced on small businesses who need to be paid in 30 days or less and they should be paid in that anyway.⁷⁹

2.42 The committee heard that the review had so far received 17 submissions, with a further two expected in the days following estimates. These had been received from a range of large businesses, including Vodaphone, Telstra and ANZ Bank, as well as some supply chain financing companies. In addition, professional bodies, including the Business Council of Australia and Chartered Accountants ANZ, had submitted to the review which had also received submissions from a few small businesses and individuals.⁸⁰

2.43 The committee heard that the review had so far made some 'distressing' findings about the practices of large businesses in relation to SCF, and its impact on small businesses. These include:

- the fact that it is in general used by 'really big businesses' in relation to their small business suppliers;⁸¹

76 Australian Small Business and Family Enterprise Ombudsman, *Review of Supply Chain Financing*, <https://www.asbfeo.gov.au/reviews/supply-chain-financing> (accessed 17 March 2020).

77 *Committee Hansard*, 4 March 2020, p. 118.

78 *Committee Hansard*, 4 March 2020, pp. 118, 120.

79 Ms Kate Carnell AO, Australian Small Business and Family Enterprise Ombudsman, *Committee Hansard*, 4 March 2020, p. 118.

80 *Committee Hansard*, 4 March 2020, p. 118.

81 *Committee Hansard*, 4 March 2020, pp. 118–119.

- the use of artificial intelligence and data to determine how 'desperate' a small business might be to gain cash flow, in order to calculate the size of the discount that a small business might be willing to take;⁸² and
- the use of 'bidding platforms', whereby those small businesses who are willing to accept the greatest discount are granted SCF.⁸³

2.44 The committee was informed of the ASBFEO's input on the planned Payment Times Reporting Framework (PTRF) to address misuse of SCF. It has made submissions to the PTRF consultation process and participated in a round table with DESE to provide feedback on this process.⁸⁴ ASBFEO's submission included a recommendation that any penalty for non-compliance with payment times under the legislation should be calculated according to the days in excess, rather than per instance of non-compliance.⁸⁵

2.45 Ms Carnell expressed ASBFEO's support for 'a transparent reporting framework for large businesses in terms of payment times' which would clarify the proper use of SCF.⁸⁶ However, she stipulated that transparency alone was not a complete solution to the adverse impacts of SCF on small businesses, and that legal limits on the length of payment times in supply contracts, such as have been legislated for in the European Union, are needed to change corporate behaviour. Ms Carnell continued:

[T]he reporting framework legislation—which is different—doesn't require quicker payment times; it just means that you have to disclose your payment times. The dilemma is that big multinationals have said to us that they will continue to have the sorts of payment times they have because they're set in head office and, if there's no legislation in the country that they're operating in, they'll set their payment times in their head office.⁸⁷

Education matters

Prime Minister's Spelling Bee

2.46 The committee's examination of DESE's Schools Division included discussion of a grant made by the department under delegated legislation—the *Financial Framework (Supplementary Powers) Act 1997*—to News Corp to build the 'PM's Spelling Bee' website. The committee heard that the grant of \$345,000 was not made

82 *Committee Hansard*, 4 March 2020, p. 119.

83 *Committee Hansard*, 4 March 2020, p. 119.

84 *Committee Hansard*, 4 March 2020, p. 119.

85 *Committee Hansard*, 4 March 2020, p. 119.

86 *Committee Hansard*, 4 March 2020, p. 120.

87 *Committee Hansard*, 4 March 2020, p. 120.

as a result of a competitive tender process, but was instigated by a proposal put to DESE by News Corp to build the website.⁸⁸

2.47 Questions were raised as to why delegated legislation was used in this instance.⁸⁹ Ms Alex Gordon, Deputy Secretary, Schools, explained that the department requires 'relevant legislative authority' in order to make a grant, and that a spelling bee concords with the kinds of activities that the department ordinarily funds.⁹⁰

2.48 The committee's discussion of the website also raised concern about a media report that its source code had included a symbol known to be used by right-wing extremists to symbolise white pride. Ms Gordon confirmed that the department had become aware of the matter the same day, and that the symbol had been removed from the source code within 30 minutes of the website developer becoming aware of its association with right-wing extremism. Ms Gordon explained that the symbol had been in place as a standard practice in IT website developer coding since before its apparent adoption by right-wing extremist groups.⁹¹

2.49 The committee also heard that the website belongs to News Ltd, which has responsibility for its operation and maintenance, and that neither the department nor the Prime Minister had approved it before its publication.⁹²

Senator the Hon James McGrath

Chair

88 *Committee Hansard*, 5 March 2020, p. 79.

89 *Committee Hansard*, 5 March 2020, p. 80.

90 *Committee Hansard*, 5 March 2020, p. 80.

91 *Committee Hansard*, 5 March 2020, p. 80.

92 *Committee Hansard*, 5 March 2020, p. 81.

Appendix 1

Committee oversight of departments and agencies

Education, Skills and Employment, including Industrial Relations portfolio

Departments and Agencies examined

- Attorney-General's Department – Industrial Relations Group
- Asbestos Safety and Eradication Agency
- Australian Building and Construction Commission
- Coal Mining Industry (Long Service Leave Funding) Corporation
- Fair Work Ombudsman
- Fair Work Commission
- Registered Organisations Commission
- Comcare
- Safe Work Australia
- Department of Education, Skills and Employment
- Australian Skills Quality Authority
- National Centre for Vocational Education Research
- Australian Research Council
- Tertiary Education Quality and Standards Agency
- Australian Curriculum, Assessment and Reporting Authority

Agencies not examined

- Australian Institute for Teaching and School Leadership
- Education Services Australia
- Seafarers Safety, Rehabilitation and Compensation Commission

Industry, Science, Energy and Resources, excluding Industry, Science, Energy and Resources and including Small Business portfolio

Departments and Agencies examined

- Department of Industry, Science, Energy and Resources – Small Business Division

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- Australian Small Business and Family Enterprise Ombudsman

Appendix 2

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