

## Chapter 2

### Jobs and Small Business portfolio

2.1 This chapter summarises certain key areas of interest raised during the committee's consideration of additional estimates for the 2018-19 financial year for the Jobs and Small Business portfolio.

2.2 On 20 February 2019, the committee heard evidence from:

- Senator the Hon. Linda Reynolds, former Assistant Minister for Home Affairs (representing the Minister for Jobs and Industrial Relations, the Hon. Kelly O'Dwyer MP);
- Senator the Hon. Michaelia Cash, Minister for Small and Family Business, Skills and Vocational Education;
- Senator the Hon. Matthew Canavan, Minister for Industry, Science and Technology (representing the Minister for Jobs and Industrial Relations); and
- Senator the Hon. Marise Payne, Minister for Foreign Affairs (representing the Minister for Jobs and Industrial Relations).

2.3 The committee also heard evidence from officers from the Department of Jobs and Small Business (the department) and several agencies responsible for administering jobs and small business policy. These agencies were:

- the Australian Small Business and Family Enterprise Ombudsman;
- the Fair Work Commission;
- Comcare;
- the Registered Organisations Commission;
- the Australian Building and Construction Commission; and
- the Fair Work Ombudsman.

#### Department of Jobs and Small Business

##### *Cross-portfolio*

2.4 The committee commenced its examination of cross-portfolio issues by enquiring into the advertising campaign for government incentives for employers who hire apprentices and trainees. When questioned on the budget for the advertising campaign, it was noted that there was no specific budget for the apprenticeship component, but rather a budget for 'a campaign promoting employment services generally'.<sup>1</sup> Dr Jill Charker, Deputy Secretary, Corporate, noted that:

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1 *Committee Hansard*, 20 February 2019, p. 9.

A total of \$27.81 million of administered funding over three years was repurposed, and there is another \$1 million in administered funding specifically for the campaign, so the total funding over the years is \$28.81 million.<sup>2</sup>

2.5 Information was sought regarding the specifics of the program for government incentives for employers who hire apprentices and trainees. When questioned on the circumstances by which an employer would be eligible for the full \$20 500 incentive, Ms Meredith Fairweather, Branch Manager, People, Communication and Assurance Group, responded:

That is a combination of wage subsidies—that is through the Department of Jobs and Small Business; the providers are the medium for that—and also incentives from the Department of Education and Training specifically for taking on apprentices. So it's a combination. That's a maximum of a combination of incentives that could be obtained by an employer for taking on an apprentice.<sup>3</sup>

2.6 Upon further questioning, Ms Fairweather additionally noted that 'for the employer, the full amount of \$20,500 would require the full wage subsidy plus incentives from the apprenticeship'.<sup>4</sup>

### ***Outcome 1***

2.7 Enquiries were made into the number of businesses that signed up to host Youth Jobs PaTH (Prepare-Trial-Hire) interns since the commencement of the program on 1 April 2017. Mr Nathan Smyth, Deputy Secretary, Employment, noted that as of 31 January 2019, 3933 businesses were hosting Youth Jobs PaTH internships.<sup>5</sup> When questioned about the original intention to have between 18 000 and 20 000 businesses hosting internships, Mr Smyth noted that the program is currently 'not near the cap'.<sup>6</sup> Minister Reynolds noted however that there were 8913 internship placements within the 3933 businesses and that '70 per cent of the young people who participated in the Youth Jobs PaTH internship were employed when surveyed three months later'.<sup>7</sup>

2.8 Further enquiries were made into the Targeted Compliance Framework (TCF). This included questions around Aboriginal and Torres Strait Islander involvement under the jobactive scheme. Mr Smyth noted that approximately 25 per cent of individuals who were in the 'penalty zone' for jobactive were indigenous.<sup>8</sup>

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2 *Committee Hansard*, 20 February 2019, p. 9.

3 *Committee Hansard*, 20 February 2019, p. 11.

4 *Committee Hansard*, 20 February 2019, p. 11.

5 *Committee Hansard*, 20 February 2019, p. 16.

6 *Committee Hansard*, 20 February 2019, p. 16.

7 *Committee Hansard*, 20 February 2019, p. 17.

8 *Committee Hansard*, 20 February 2019, p. 33. The penalty zone refers to jobactive participants who have had their jobactive payments either reduced or cancelled due to non-compliance.

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Mr Smyth further noted that there are a similar number of ex-offenders in the 'penalty zone'.<sup>9</sup>

2.9 Senators also raised the issue of the death of a worker on a Work for the Dole site and the subsequent steps taken to improve the safety of the program. Ms Janine Pitt, Group Manager, Activation and Work for the Dole Group, noted that steps included 'communication with CEOs and with providers about their obligations under the contract in terms of work health and safety' as well as the development of a 'host organisation handbook, which also identifies work health and safety obligations of Work for the Dole host organisations'.<sup>10</sup> Ms Pitt also noted:

We've put up advice on our provider portal about specific work health and safety issues. We've liaised with other safety organisations, like Safe Work Australia and the Federal Safety Commissioner, in terms of contemporary work health and safety approaches. We're constantly looking to improve the program in that respect, so we're doing a whole range of things.<sup>11</sup>

## ***Outcome 2***

2.10 Enquiries were made about the current Australian employment figures. On casual employment, Ms Kerri Hartland, Secretary, stated that casual employment as a proportion of total employees has remained 'steady over the past two decades' at around 25 per cent.<sup>12</sup> On labour hire figures, Mr Martin Hehir, Deputy Secretary, Workplaces and Small Business, noted that 'over the last decade labour hire workers as a proportion of all employees have been stable at just under two per cent'.<sup>13</sup>

2.11 Questions were asked in relation to the Fair Entitlements Guarantee (FEG) and so-called 'sharp corporate practices'. Ms Sue Saunders, Branch Manager, Workplace Relations Programs Group, noted that:

Sharp corporate practices are a range of methods and approaches adopted by company representatives, company owners or other parties involved in corporate restructures and insolvencies which seek to prevent, avoid or reduce the payment of obligations to creditors, including employees for their employee entitlements.<sup>14</sup>

2.12 Ms Saunders further noted that of the total FEG cases, approximately one in seven 'presented indications of sharp practice'.<sup>15</sup>

2.13 Senators raised the implementation of the Fair Work Amendment (Casual Loading Offset) Regulations 2018. When questioned if the regulations change existing

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9 *Committee Hansard*, 20 February 2019, p. 34.

10 *Committee Hansard*, 20 February 2019, p. 41.

11 *Committee Hansard*, 20 February 2019, p. 41.

12 *Committee Hansard*, 20 February 2019, p. 54.

13 *Committee Hansard*, 20 February 2019, p. 54.

14 *Committee Hansard*, 20 February 2019, p. 63.

15 *Committee Hansard*, 20 February 2019, p. 63.

law, Ms Janey Kuzma, Group Manager and Chief Counsel, Workplace Relations Legal Group, replied that the intention of the regulations was 'to declare the existing law'.<sup>16</sup>

2.14 The contribution of small business to the Australian economy was also discussed. Mr Peter Cully, Group Manager, Small Business and Economic Strategy Group, noted that in 2015-16, 'small business accounted for slightly less than 5.7 million employees and around 50 per cent of Australia's employment'.<sup>17</sup> In terms of the impact of economic growth caused by small business, Ms Rose Verspaandonk, Branch Manager, Small Business and Economic Strategy Group, stated that small business accounted for 'over a third of the \$1.1 trillion economic output produced by the private sector' in 2016-17.<sup>18</sup>

### **Australian Small Business and Family Enterprise Ombudsman**

2.15 The committee discussed the implementation of a new contract clause in the Commonwealth contracting suite which requires 'all subcontractors working on government projects to have the same terms and conditions as the prime contractor on the project'.<sup>19</sup> When queried as to why this contract clause was added, Ms Kate Carnell, Ombudsman, responded:

That is because the federal government had announced they would pay their bills in 20 days, from 1 July this year, and they have said that they're paying in 30 days to the primes, but, down the supply chain, that's not happening. It is our experience that the smaller guys are not being paid in the same time lines or, in some cases, on the same terms—for example, is it from invoice or is it from end of month?

We believed it was really important that if a prime was paid in 30 days from invoice or 30 days from end of month then that should be reflected to the smaller people in the supply chain.<sup>20</sup>

### **Fair Work Commission**

2.16 The committee commenced the questioning of the Fair Work Commission by discussing remuneration for the commission's six deputy presidents and commission. Ms Bernadette O'Neill, General Manager, noted the 'total remuneration for a deputy president is presently \$461,850 each' and the 'current remuneration of a commissioner is \$385,350'.<sup>21</sup>

2.17 The committee further questioned the FWC on the significant increase in the time taken to approve enterprise agreements. The committee heard that the median

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16 *Committee Hansard*, 20 February 2019, p. 66.

17 *Committee Hansard*, 20 February 2019, p. 68.

18 *Committee Hansard*, 20 February 2019, p. 69.

19 *Committee Hansard*, 20 February 2019, p. 72.

20 *Committee Hansard*, 20 February 2019, p. 76.

21 *Committee Hansard*, 20 February 2019, p. 79.

approval time for these agreements in 2017-18 was 76 days, more than double the key performance indicator set by the FWC of 32 days. When questioned about whether FWC staff took significant overtime in an attempt to reduce enterprise agreement approval time, Mr Murray Furlong, Executive Director, Tribunal Services, noted that 'there has been a significant amount of overtime worked, certainly in the first half of the cycle'.<sup>22</sup>

## **Comcare**

2.18 Questioning of Comcare related to its financial performance, workload and the internal management system structures.<sup>23</sup>

## **Registered Organisations Commission**

2.19 A line of questioning was undertaken regarding changing investigation procedures by the Registered Organisations Commission (ROC) in response to the ongoing legal proceedings with the Australian Workers' Union. Mr Mark Bielecki, Commissioner, noted that procedures within the ROC are consistently and continually changing and improving.<sup>24</sup> Mr Bielecki further stated that the 'procedures and protocols for conducting investigations' have, however, not changed recently.<sup>25</sup>

2.20 The committee enquired into the current legal costs of the ongoing proceedings between the ROC and the Australian Workers' Union. Mr Bielecki stated that 'the total litigation costs to date are \$507,182.70'.<sup>26</sup> Mr Bielecki further noted that the ROC had received additional invoices 'in the sum of \$42,903.01' that had currently not yet been paid.<sup>27</sup>

2.21 When questioned on the likelihood of further expenditure on legal costs, Mr Bielecki replied:

Yes. The trial is ongoing. As you know, or you may not know, there's been over 20 interlocutory hearings in the matter and it's been necessary for the ROC to have been represented by counsel and solicitors at 19 of those. We've been in trial all of last week, and there are more hearing days.<sup>28</sup>

## **Australian Building and Construction Commission**

2.22 The committee enquired into measures in the Mid-Year Economic and Fiscal Outlook (MYEFO) which impacted upon funding for the Australian Building and Construction Commission (ABCC). Mr Stephen McBurney, Commissioner, responded:

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22 *Committee Hansard*, 20 February 2019, p. 83.

23 *Committee Hansard*, 20 February 2019, pp. 86–87.

24 *Committee Hansard*, 20 February 2019, p. 99.

25 *Committee Hansard*, 20 February 2019, p. 99.

26 *Committee Hansard*, 20 February 2019, p. 101.

27 *Committee Hansard*, 20 February 2019, p. 101.

28 *Committee Hansard*, 20 February 2019, p. 101.

Yes, there has been an announcement by the minister of additional funding for the ABCC. That announcement was made on 12 December 2018. The minister committed additional funding of \$3.7 million over four years, commencing in 2019-20. The funding has been earmarked to engage additional resources. Part of those additional resources are to help safeguard workers' entitlements.<sup>29</sup>

2.23 Information was also sought regarding the status of ongoing investigations by the ABCC into alleged unlawful industrial action related to the Change the Rules rallies. Mr Cliff Pettit, Deputy Commissioner, Operations, noted that the ABCC has 'six investigations ongoing in relation to the alleged unlawful industrial action of workers in leaving their worksite to attend the Change the Rules rallies'.<sup>30</sup> When questioned about whether the six investigations were into individual companies, Mr Pettit responded that 'some of the investigations relate to an individual employer. Others relate to a project on which there were multiple employers'.<sup>31</sup>

2.24 Further information was sought on the expected timeframe of these ongoing investigations. Mr Pettit noted that 'the majority of the remaining six [investigations] will be finished by the middle of the year [2019]'.<sup>32</sup>

2.25 There were also follow-up questions from the 2018-19 Supplementary Budget Estimates round regarding the status of investigations on the Royal Hobart Hospital site. Mr McBurney noted:

I received correspondence from the committee asking that very question and asking for a reply as soon as possible. I responded to that letter on 18 February 2019. I wrote to the committee and I said: 'The investigation into the underpayment of wages is currently expected to run until at least April 2019.' I said: 'The investigation into the payment of induction fees is currently expected to be completed by the end of February 2019.' I separated out those two matters because the letter I received from this committee asked me to inform the committee as soon as each investigation is completed and to give an indication of the likely duration of the ongoing investigations into both allegations.<sup>33</sup>

## **Fair Work Ombudsman**

2.26 The committee opened its examination of the Fair Work Ombudsman by enquiring into comments made by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry regarding enforceable undertakings. Ms Sandra Parker, Fair Work Ombudsman, noted that 'there are definitely lessons, I would have thought, for all regulators from the Hayne royal

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29 *Committee Hansard*, 20 February 2019, p. 107.

30 *Committee Hansard*, 20 February 2019, p. 107.

31 *Committee Hansard*, 20 February 2019, p. 112.

32 *Committee Hansard*, 20 February 2019, p. 114.

33 *Committee Hansard*, 20 February 2019, p. 115.

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commission' before stating 'we've currently got a little team reviewing those recommendations and asking: what do they mean for the Fair Work Ombudsman?'<sup>34</sup>

2.27 The committee also enquired into the funding arrangements for the Community Engagements Grants Program. Mr Tom O'Shea, Executive Director, Strategic Engagement and Stakeholder Relations, responded that the program is a 'four-year rolling program of grants' and funding totalled \$1.8 million to six different recipients at 'the Northern Territory Working Women's Centre, the Employment Law Centre of Western Australia, the South Australian Working Women's Centre, Growcom, JobWatch and the Redfern Legal Centre'.<sup>35</sup>

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34 *Committee Hansard*, 20 February 2019, p. 118.

35 *Committee Hansard*, 20 February 2019, p. 119.

