

Chapter 3

Employment portfolio

3.1 This chapter summarises certain key areas of interest raised during the committee's consideration of additional estimates for the 2014–15 financial year for the Employment Portfolio. It follows the order of proceedings and is an indicative, not exhaustive, account of issues examined.

3.2 The committee heard evidence on 26 February and 10 April 2015 from Senator the Hon Eric Abetz, Minister for Employment, along with officers from the Department of Employment (the Department) and agencies responsible for administering Employment policy, including:

- Fair Work Commission;
- Office of the Fair Work Ombudsman;
- Safe Work Australia;
- Comcare (including the Safety, Rehabilitation and Compensation Commission, and the Seafarers Safety, Rehabilitation and Compensation Authority);
- Asbestos Safety and Eradication Agency;
- Workplace Gender Equality Agency; and
- Office of the Fair Work Building Industry Inspectorate (Fair Work Building and Construction).

Cross-portfolio matters

Penalty rates

3.3 The committee asked the Minister for Employment, Senator the Hon Eric Abetz, about the possibility of changes to penalty rates. The Minister explained that the Fair Work Commission (FWC) is the appropriate body to make decisions about penalty rates and advised that the FWC is currently considering penalty rates as part of a four-year review of modern awards.¹

3.4 The committee also discussed the Productivity Commission's inquiry into the workplace relations framework. While there is no explicit reference to penalty rates, the terms of reference are sufficiently broad that penalty rates could be included and the Productivity Commission has interpreted them in this way.²

1 Senator the Hon Eric Abetz, Minister for Employment, *Estimates Hansard*, 26 February 2015, p. 3.

2 Senator the Hon Eric Abetz, Minister for Employment, *Estimates Hansard*, 26 February 2015, p. 7.

Departmental staffing

3.5 The Secretary of the Department, Ms Renée Leon, indicated that the Department has engaged a number of non-ongoing employees to assist with the tender for Employment Services 2015.³ Ms Leon explained that recruitment is underway for the Chief Financial Officer (CFO) position, following the transfer of the previous CFO to another department, and also noted that a number of positions in the Department are currently filled on an acting basis as the substantive occupant has been transferred to the employment services tender taskforce.⁴ The committee heard that the Department accepted 69 voluntary redundancies in previous year, but was not planning any further voluntary or involuntary redundancies.⁵

Shared Services centre

3.6 The committee sought an update on the performance of the Shared Service Centre (SSC), a joint initiative of the Departments of Employment and Education and Training. The Minister stated:

This Shared Services Centre is being highly praised throughout the Public Service. I know in my discussions with the Public Service Commission and other areas that they are, in fact, looking at this as a potential model to save considerable money for the taxpayer while still ensuring excellent service delivery. It is an excellent model that I would commend to other departments.⁶

3.7 The committee heard that the SSC has expanded its operations to provide services to other departments and agencies, including the Department of Prime Minister and Cabinet, the Workplace Gender Equality Agency and the Public Service Commission, on a fee-for-service basis.⁷

Enterprise bargaining agreement negotiations

3.8 In response to a question about the Department's enterprise bargaining agreement negotiations, Ms Leon advised that a ballot was conducted in December 2014 following four months of consultation with staff, but the ballot was unsuccessful.⁸ Ms Leon explained that the department would undertake further

3 Ms Renée Leon, Secretary, Department of Employment, *Estimates Hansard*, 26 February 2015, p. 14.

4 Ms Renée Leon, Secretary, Department of Employment, *Estimates Hansard*, 26 February 2015, p. 14.

5 Ms Renée Leon, Secretary, Department of Employment, *Estimates Hansard*, 26 February 2015, p. 17.

6 Senator the Hon Eric Abetz, Minister for Employment, *Estimates Hansard*, 26 February 2015, p. 16.

7 Ms Renée Leon, Secretary, Department of Employment, *Estimates Hansard*, 26 February 2015, p. 16.

8 Ms Renée Leon, Secretary, Department of Employment, *Estimates Hansard*, 26 February 2015, p. 20.

discussion with staff and the Community and Public Sector Union before presenting a revised agreement.⁹

Fair Work Commission

Compliance reporting and assessment

3.9 The committee heard evidence in relation to the FWC's oversight of registered organisations. Ms Bernadette O'Neill, General Manager, advised the committee that in the 2013–14 financial year, the voluntary compliance level across 398 reporting units was 89 per cent, rising to 98 per cent following intervention by the FWC.¹⁰ Ms O'Neill confirmed that there is an increasing trend of voluntary, on-time compliance since the 2009–10 financial year.¹¹ The committee was informed that the FWC has undertaken a range of initiatives to assist entities to comply with their statutory obligations, including online educational seminars.¹²

Right of entry permits

3.10 The committee discussed the granting, suspension and revocation of right of entry permits. The Director of Regulatory Compliance, Mr Chris Enright, explained that a registered organisation must apply for a right of entry permit on behalf of the proposed permit holder, with both the organisation and the individual required to make declarations in relation to the application.¹³ Mr Enright described the matters that may affect whether an applicant is a fit and proper person to hold a permit, including the training they have received, any contraventions of industrial relations law, and whether they have had a previous permit revoked or cancelled.¹⁴ The committee heard also heard evidence in relation to the suspension and revocation of permits.¹⁵

Office of the Fair Work Ombudsman

Small Business Helpline

3.11 The Fair Work Ombudsman (FWO), Ms Natalie James, advised the committee that since commencing operation in December 2013, the Small Business

9 Ms Renée Leon, Secretary, Department of Employment, *Estimates Hansard*, 26 February 2015, pp 21–2.

10 Ms Bernadette O'Neill, General Manager, Fair Work Commission, *Estimates Hansard*, 26 February 2015, p. 35.

11 Ms Bernadette O'Neill, General Manager, Fair Work Commission, *Estimates Hansard*, 26 February 2015, p. 37.

12 Ms Bernadette O'Neill, General Manager, Fair Work Commission, *Estimates Hansard*, 26 February 2015, p. 36.

13 Mr Chris Enright, Director, Regulatory Compliance, Fair Work Commission, *Estimates Hansard*, 26 February 2015, pp 40–41.

14 Mr Chris Enright, Director, Regulatory Compliance, Fair Work Commission, *Estimates Hansard*, 26 February 2015, p. 41.

15 *Estimates Hansard*, 26 February 2015, pp 43–5, 50.

Helpline received over 160 000 calls, almost 85 per cent of which were from businesses with 14 or fewer employees.¹⁶

417 visas

3.12 The committee heard that there has been a dramatic increase in the number of complaints made in relation to working holiday visas, or 417 visas.¹⁷ The Deputy Fair Work Ombudsman, Mr Michael Campbell, described the broader inquiry work the FWO is undertaking in this area:

We are trying to get a better grasp on some of the drivers of non-compliance when it comes to the 417 visa holders, particularly given their circumstances where they are working in the country, generally in regional Australia. Just to give you some of the headlines. We are trying to understand the employment relationships that are leading to the circumstances where the visa holder is being underpaid. We are trying to clarify the boundaries between the employment relationship which applies to the 417 visa holders while they are in country. Ultimately we are trying to do that to give us a better handle on not only the drivers but what our intervention can be to hopefully change those practices and build a better culture of compliance when it comes to the visa holders.¹⁸

Young workers

3.13 Mr Campbell told the committee that young workers form a significant part of the FWO's compliance work and a specialist team has been established to deal with complaints from young workers.¹⁹ In the previous financial year, the Office received 6 257 complaints from workers aged 25 and under and recovered a total of \$2 388 603 in unpaid or underpaid wages.²⁰ In addition to helping to resolve workplace complaints from young workers, the FWO engages in preventative work:

A lot of our work at the front end of our business is about trying to influence those relationships before they fall over. The vast majority of our work is about proactive work, whether it be on the phones or out in the field, in trying to influence those relationships before they break down and resolve any issues that might be in place in a particular workplace.²¹

16 Ms Natalie James, Fair Work Ombudsman, *Estimates Hansard*, 26 February 2015, p. 65.

17 Ms Natalie James, Fair Work Ombudsman, *Estimates Hansard*, 26 February 2015, pp 66–67.

18 Mr Michael Campbell, Deputy Fair Work Ombudsman, *Estimates Hansard*, 26 February 2015, p. 67.

19 Mr Michael Campbell, Deputy Fair Work Ombudsman, *Estimates Hansard*, 26 February 2015, p. 67.

20 Mr Michael Campbell, Deputy Fair Work Ombudsman, *Estimates Hansard*, 26 February 2015, p. 68.

21 Mr Michael Campbell, Deputy Fair Work Ombudsman, *Estimates Hansard*, 26 February 2015, p. 68.

The FWO online learning centre offers a number of modules covering topics relevant to young workers, such as starting a new job and managing difficult conversations.²²

Safe Work Australia

Workplace fatalities

3.14 The committee followed up on evidence presented in previous estimates hearings in relation to workplace fatalities. The committee heard that the total number of workplace fatalities decreased from 50 in 2013 to 46 in 2014, but had increased in certain sectors including mining and construction.²³ The committee also heard evidence from the Federal Safety Commissioner, Mr Alan Edwards, about his regulatory and accreditation powers.²⁴

Comcare

ACT exiting the Comcare scheme

3.15 The committee discussed the Australian Capital Territory (ACT) seeking to exit the Comcare scheme. Ms Jennifer Taylor, Chief Executive Officer of Comcare, confirmed that discussions had taken place with the ACT government, but further assessment, consultation and negotiation would be required before any decisions could be made.²⁵

Asbestos Safety and Eradication Agency

Asbestos in imported goods

3.16 In response to a question about allegations that contaminated goods are entering Australia from China, the Chief Executive Officer of the Asbestos Safety and Eradication Agency (ASEA), Mr Peter Tighe, acknowledged that there were 'a number of instances of products coming in from China with a variety of exposure to asbestos'.²⁶ Both Mr Tighe and the Minister emphasised the obligation on importers to ensure that goods they import are asbestos-free.²⁷

22 Mr Michael Campbell, Deputy Fair Work Ombudsman, *Estimates Hansard*, 26 February 2015, p. 68.

23 Ms Amanda Grey, Branch Manager, Policy and Services, Safe Work Australia, *Estimates Hansard*, 26 February 2015, p. 78.

24 Mr Alan Edwards, Federal Safety Commissioner, *Estimates Hansard*, 26 February 2015, p. 82.

25 Ms Jennifer Taylor, Chief Executive Officer, Comcare, *Estimates Hansard*, 26 February 2015, pp 84–5.

26 Mr Peter Tighe, Chief Executive Officer, Asbestos Safety and Eradication Agency, *Estimates Hansard*, 26 February 2015, p. 89.

27 Mr Peter Tighe, Chief Executive Officer, Asbestos Safety and Eradication Agency, *Estimates Hansard*, 26 February 2015, pp 90–91; Senator the Hon Eric Abetz, Minister for Employment, *Estimates Hansard*, 26 February 2015, pp 90–91.

Workplace Gender Equality Agency

Staffing

3.17 The committee heard that the head of the Workplace Gender Equality Agency (WGEA) would be leaving and Ms Louise McSorley had been appointed in an acting capacity for 12 months.²⁸

'Daughter Water' campaign

3.18 The committee discussed the 'Daughter Water' pay equity campaign. Yolanda Beattie, Public Affairs Executive Manager, advised that the campaign video was viewed 70 000 times and the website received almost 30 000 unique visitors.²⁹ Ms Beattie gave evidence that the number of pay equity ambassadors had doubled to 62, with the WGEA aiming to have 100 ambassadors by September 2015.³⁰

Employer reporting

3.19 Ms Beattie advised the committee that approximately one third of employers had downloaded their benchmark reports, which she described as the 'critical output' of the data received by the WGEA from employers, and said that the number was expected to increase over time.³¹ In addition, the data was the subject of approximately 150 media clips when released in November 2015.³²

3.20 The committee also heard that 523 employers provided feedback on the pay equity reporting process, identifying the calculation of total remuneration and the classification of employees by manager and non-manager categories as the most difficult aspects of reporting.³³

Fair Work Building and Construction (FWBC)

Compulsory powers

3.21 The committee queried the nature and operation of Fair Work Building and Construction's (FWBC) compulsory powers. The Director, Nigel Hadgkiss, explained that FWBC's powers were modelled on those of the Australian Competition and

28 Ms Sandra Parker, Deputy Secretary, Department of Employment, *Estimates Hansard*, 26 February 2015, p. 93.

29 Ms Yolanda Beattie, Public Affairs Executive Manager, Workplace Gender Equality Agency, *Estimates Hansard*, 26 February 2015, p. 93.

30 Ms Yolanda Beattie, Public Affairs Executive Manager, Workplace Gender Equality Agency, *Estimates Hansard*, 26 February 2015, p. 94.

31 Ms Yolanda Beattie, Public Affairs Executive Manager, Workplace Gender Equality Agency, *Estimates Hansard*, 26 February 2015, p. 96.

32 Ms Yolanda Beattie, Public Affairs Executive Manager, Workplace Gender Equality Agency, *Estimates Hansard*, 26 February 2015, p. 96.

33 Ms Sandra Parker, Deputy Secretary, Department of Employment, *Estimates Hansard*, 26 February 2015, p. 96.

Consumer Commission, albeit with 'much greater safeguards'.³⁴ Mr Hadgkiss gave evidence that these compulsory powers are needed to ensure the FWBC has the necessary evidence for prosecutions.³⁵

Staff safety

3.22 In response to a question about the behaviour of Construction, Forestry, Mining and Energy Union officials towards FWBC staff, Mr Hadgkiss advised the committee that he was aware of 11 instances of abuse and 3 cases of assault since commencing in his role in October 2013.³⁶ Mr Hadgkiss described a further 25 cases of 'serious security matters'.³⁷

Outcome 1

Job service providers

3.23 The committee questioned the Department in relation to its monitoring, oversight and rating of job service providers. The committee heard that the Department is working to strengthen compliance arrangements:

For the new contract, we are adding in a specific compliance factor that will be part of the calculation. It will be used as part of the overall star rating. We are working on the actual techniques at the moment, but we are specifically strengthening it. So, where we find noncompliance, it will have a stronger impact on the star ratings. It is an area where we have identified we want to strengthen the contract relationship and send a very clear signal to providers that, where we see noncompliance, we are going to make sure it is recorded accurately and demonstrated in their star rating.³⁸

Jobactive tender

3.24 The committee sought information in relation to the *jobactive* tender and the Department undertook to provide confidential briefings on the matter.³⁹

Outcome 2

Building and Construction Industry (Fair and Lawful Building Sites) Code 2014

3.25 The committee discussed the Building and Construction Industry (Fair and Lawful Building Sites) Code 2014 (the code). The committee heard that the code is a

34 Mr Nigel Hadgkiss, Director, Fair Work Building and Construction, *Estimates Hansard*, 26 February 2015, p. 120.

35 Mr Nigel Hadgkiss, Director, Fair Work Building and Construction, *Estimates Hansard*, 26 February 2015, p. 121.

36 Mr Nigel Hadgkiss, Director, Fair Work Building and Construction, *Estimates Hansard*, 26 February 2015, p. 122.

37 Mr Nigel Hadgkiss, Director, Fair Work Building and Construction, *Estimates Hansard*, 26 February 2015, p. 125.

38 Mr Martin Hehir, Deputy Secretary, Department of Employment, *Estimates Hansard*, 10 April 2015, p. 5.

39 *Estimates Hansard*, 10 April 2015, p. 21.

voluntary, opt-in scheme, but its adoption is a prerequisite to tender for Commonwealth-funded building work.⁴⁰

Senator Bridget McKenzie

Chair

40 Ms Sandra Parker, Deputy Secretary, Department of Employment, *Estimates Hansard*, 10 April 2015, p. 39; Senator the Hon Eric Abetz, Minister for Employment, *Estimates Hansard*, 10 April 2015, p. 44.