

The Senate

Education, Employment
and Workplace Relations
Legislation Committee

Additional Estimates 2012-13

March 2013

© Commonwealth of Australia 2013

ISBN 978-1-74229-768-2

This document was produced by the Senate Standing Committees on Education, Employment and Workplace Relations and printed by the Senate Printing Unit, Parliament House, Canberra

Membership of the committee

Members

Senator Gavin Marshall, **Chair**, ALP, Vic.
Senator Chris Back, **Deputy Chair**, LP, WA
Senator Catryna Bilyk, ALP, Tas
Senator Bridget McKenzie, Nat., Vic.
Senator Lee Rhiannon, AG, NSW
Senator Matt Thistlethwaite, ALP, NSW

Participating Senators

Senator the Hon. Eric Abetz, LP, Tas
Senator the Hon. George Brandis SC, LP, QLD
Senator Michaelia Cash, LP, WA
Senator Alex Gallacher, ALP, SA
Senator Sarah Hanson-Young, AG, SA
Senator Barnaby Joyce, Nat., QLD
Senator the Hon. Brett Mason, LP, QLD
Senator Fiona Nash, Nat., NSW
Senator Stephen Parry, LP, Tas
Senator the Hon. Nigel Scullion, Nat., NT
Senator Rachael Siewert, AG, WA
Senator Arthur Sinodinos SO, LP, NSW
Senator Penny Wright, AG, SA
Senator Nick Xenophon, Ind., SA

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: eewr.sen@aph.gov.au

Table of Contents

Membership of the committee	iii
Chapter 1.....	1
Overview	1
Portfolio coverage	1
Portfolio Additional Estimates Statements (PAES) 2012–13	1
Hearings.....	1
Public interest immunity claims	2
Questions on notice	2
Note on Hansard page referencing	2
Chapter 2.....	3
Education, Employment and Workplace Relations portfolio	3
Fair Work Commission	3
Fair Work Ombudsman	4
Safe Work Australia	5
Comcare.....	6
Office of the Fair Work Building Industry Inspectorate	6
Department of Education, Employment and Workplace Relations: Outcome 3 – Employment and training services	7
Department of Education, Employment and Workplace Relations: Outcome 4 – Safer and more productive workplaces	7
Department of Education, Employment and Workplace Relations: Outcome 1 – Early Childhood Education	8
Australian Curriculum, Assessment and Reporting Authority.....	10
Australian Institute for Teaching and School Leadership	11
Department of Education, Employment and Workplace Relations: Outcome 2 – Schools and Youth.....	11
Appendix 1	13

Committee oversight of departments and agencies	13
Appendix 2	15
Index to Proof Committee Hansard transcripts	15

Chapter 1

Overview

1.1 On 7 February 2013¹ 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 additional expenditure in respect of the year ending on 30 June 2013 [Appropriation Bill (No. 3) 2012–13];
- Particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2013 [Appropriation Bill (No. 4) 2012–13];
- Final budget outcome 2011–12 Report by the Treasurer (Mr Swan) and the Minister for Finance and Deregulation (Senator Wong), October 2012; and
- Issues from the advances under the annual Appropriation Acts—Report for 2011-12.

1.2 Standing legislation committees are required to report to the Senate on 19 March 2013.

Portfolio coverage

1.3 The committee has responsibility for examining the expenditure and outcomes of the Education, Employment and Workplace Relations portfolio. Appendix 1 lists the department and agencies under this portfolio.

Portfolio Additional Estimates Statements (PAES) 2012–13

1.4 The Portfolio Budget Statements (PBS) and the Portfolio Additional Estimates Statements (PAES) inform senators of the proposed allocation of funding to government outcomes by agencies within the portfolio. However, unlike the PBS, the PAES summarise only the changes in funding by outcome since the Budget. The PAES provides information on new measures and their impact on the financial and/or non-financial planned performance of programs supporting those outcomes.

1.5 The PAES 2012–13 notes that there have been no changes to the overall outcomes of the portfolio. The PAES does not list any new measures since the May 2012 Budget.

Hearings

1.6 The committee conducted two days of hearings, examining Employment and Workplace Relations outcomes and agencies on 13 February 2013 and Education

1 *Journals of the Senate No.132*, 7 February 2013, p. 3606.

outcomes and agencies on 14 February 2013. In total the committee met for 20 hours and 29 minutes, excluding breaks.

1.7 The following outcomes and agencies appeared before the committee:

- Outcomes 1, 2, 3 and 4
- Australian Curriculum, Assessment and Reporting Authority
- Australian Institute of Teaching and School Leadership
- Comcare
- Office of the Fair Work Building Industry Inspectorate
- Fair Work Commission
- Fair Work Ombudsman
- Safe Work Australia

Public interest immunity claims

1.8 On 13 May 2009, the Senate passed an order relating to public interest immunity claims.² 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 each day of the additional estimates hearing.

Questions on notice

1.9 The committee has drawn the attention of the department and its agencies to the agreed deadline of Friday 12 April 2013 for the receipt of answers to questions taken on notice from this round, in accordance with Standing Order 26.

1.10 For this round, written questions on notice were received from Senators Abetz, Back, Cash, Hanson-Young, McKenzie, Nash, Sinodinos and Xenophon.

Note on Hansard page referencing

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

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

Chapter 2

Education, Employment and Workplace Relations portfolio

2.1 This chapter summarises key areas of interest raised during the committee's consideration of additional budget estimates for the 2012–13 financial year. This chapter of the report follows the order of proceedings and is an indicative, but not exhaustive, account of issues examined.

2.2 The committee heard evidence on 13 February 2013 from Senator the Hon. Jacinta Collins, as the Parliamentary Secretary for School Education and Workplace Relations, along with officers from areas of the Department of Education, Employment and Workplace Relations (DEEWR) and agencies responsible for employment and workplace relations, including:

- Fair Work Commission;
- Fair Work Ombudsman;
- Office of the Fair Work Building Industry Inspectorate;
- Comcare; and
- Safe Work Australia.

2.3 On 14 February 2013 the committee heard evidence from Senator the Hon. Kim Carr, Minister for Human Services, Senator the Hon. Jacinta Collins, as the Parliamentary Secretary for School Education and Workplace Relations and officers from areas of DEEWR and agencies responsible for administering education policy. In addition to departmental officials, officers from the Australian Curriculum, Assessment and Reporting Authority (ACARA) and the Australian Institute of Teaching and School Leadership (AITSL) were examined by the committee.

2.4 Senators present over the two days of hearings include Senator Marshall (Chair), Senator Back (Deputy Chair), Senators Abetz, Bilyk, Brandis, Cash, Gallacher, Joyce, Mason, McKenzie, Nash, Parry, Scullion, Siewert, Sinodinos, Thistlethwaite and Wright.

Fair Work Commission

Review of key activities

2.5 Representatives from the Fair Work Commission (FWC) responded to questions on FWC's operations. These questions included coverage of the following issues:

- Reporting obligations under section 653 of the *Fair Work Act 2009* and updates on progress of these reports;

- Implementation of amendments to the *Fair Work Act 2009* regarding provisions for unfair dismissals;
- Costing and rationale for the name change of the Fair Work Commission from its previous name 'Fair Work Australia'; and
- The capacity for FWC to undertake new responsibilities regarding bullying issues in light of current financial constraints.

Appointment of Vice Presidents for FWC

2.6 FWC responded to questions over the decision to appoint two Vice Presidents to the Commission, as well as other issues associated with the application process and selection process for these positions. Concerns raised included a lack of information in the recruitment process outlining remuneration and the effect that this may have had on attracting quality applicants.¹

Health Services Union investigations

2.7 Senators questioned FWC in regard to its capacity to investigate and audit registered organisations and particularly in relation to issues of jurisdiction. Concerns were raised over the organisation's capacity to investigate alleged breaches in reporting, particularly in light of current investigations into the Health Services Union. Additionally, FWC was queried in regard to any involvement it had with legal proceedings into the conduct of the Member for Dobell, Mr Craig Thomson MP.²

Fair Work Ombudsman

Compliance in the restaurant and catering industry

2.8 The Fair Work Ombudsman (FWO) provided information on its activities relating to compliance in the restaurant and catering industry. Senators highlighted concerns that a large portion of restaurants within the industry were failing to comply with official pay rates, leaving compliant restaurants at a significant disadvantage.

2.9 FWO informed the committee of a three-year campaign it has undertaken across the hospitality sector. The campaign is in its second year and activities now being undertaken include consultation and preparation for audits in the near future. FWO also highlighted a number of other campaigns across the sector that it had been involved with.³

Voluntary work legislation and payment issues

¹ *Proof Estimates Hansard*, 13 February 2013, p. 11-12.

² *Proof Estimates Hansard*, 13 February 2013, p. 20-23.

³ *Proof Estimates Hansard*, 13 February 2013, p. 28-32.

2.10 The committee was informed that research has been undertaken regarding unpaid work trials and internships; particularly a report produced for FWO by the University of Adelaide Law School. FWO reported on difficulties in identifying appropriate boundaries for potential pay arrangements, and in particular the point at which work experience becomes exploitation of volunteer workers.

2.11 FWO said that forums had been organised to consult with industrial parties, major employer groups and unions on the issues, and to seek their views on potential options for further progress.

Safe Work Australia

Research and development costing

2.12 The committee began its examination of Safe Work Australia (SWA) looking at employment statistics and annual spending on research and development. SWA reported that its research comprises two main areas: evaluation programs; and hazards and perceptions on work health and safety. SWA outlined current activities relating to the collection of baseline data across state jurisdictions examining perceptions of work health and safety.

Workplace health and safety in relation to bullying issues

2.13 The committee heard that, as mental and psychological health are both referred to under the Work Health and Safety Act, bullying is a relevant issue in relation to workplace health and safety. SWA stated that such concerns are being addressed through the development of codes of practice for adoption by states, territories and the Australian Government. SWA also stated that although management of this issue occurs at the state and territory level, there is a role for a body such as FWC to provide complimentary work in the area.

Workplace safety and legislation regarding use of quad bikes

2.14 SWA noted that it is currently assisting the Minister for Employment and Workplace Relations to improve quad bike safety in the workplace. Discussion focused on issues of banning children who are sixteen years and under from using quad bikes. SWA confirmed that this was the intention of these changes. Senators raised concerns over the viability of banning the use of quad bikes in light of ambiguity over whether a place is a workplace or a private property. In addition, senators noted that enforcement of this measure could be problematic and said that provision should be made for exemptions under certain circumstances.⁴

⁴ *Proof Estimates Hansard*, 13 February 2013, p. 46-49.

Comcare

Longstanding unresolved compensation claims

2.15 Senator Bilyk noted that in previous estimates hearings senators had suggested a review of longstanding unresolved compensation claims. She further noted that such a measure had been raised in the draft terms of reference for the review of the *Safety, rehabilitation and Compensation Act 1988* currently being conducted by Mr Peter Hanks QC and Mr Allan Hawke AC.

2.16 Comcare confirmed that it had been decided that this review would be conducted separately to the review of the legislation and that Former Victorian Attorney-General the Hon. John Cain was conducting the review.

2.17 Senator Bilyk raised concerns as to the review process, including the need for claimants involved in unresolved claims to have the opportunity to provide input. She further noted that the reviewer did not have access to complete records in regard to analysing the longstanding unresolved compensation claims examined in the review.

Office of the Fair Work Building Industry Inspectorate

Investigations update, agency office resourcing and other matters⁵

2.18 Senator Abetz led questioning of the Office of the Fair Work Building Industry Inspectorate (OFWBII) with discussion covering a variety of issues. These included:

- Current status of certain inspections and investigations for the OFWBII – including in relation to the Queensland Royal Children's Hospital and proceedings in the Federal Court regarding the Myer Emporium;
- Decisions and issues regarding office relocations (OFWBII officials noted that although opportunities to reduce property holdings were regularly considered, no current proposals had been brought forward); and
- Media comment by Mr Leigh Johns, Chief Executive of the OFWBII. Senator Abetz raised issues concerning the appropriateness of these comments in light of Mr Johns' official capacities and responsibilities in the OFWBII.

⁵ *Proof Estimates Hansard*, 13 February 2013, p. 54-60.

Department of Education, Employment and Workplace Relations: Outcome 3 – Employment and training services

Job Services Australia

2.19 Senator Sinodinos opened questioning under Outcome 3 requesting details on the current caseload for Job Services Australia (JSA), unemployment statistics and associated percentage changes. He also raised questions about the effectiveness of JSA in addressing underlying causes of unemployment such as mental illness or alcohol abuse. Ms Lisa Paul, DEEWR Secretary, noted that the Employment Pathway Fund gives JSA providers opportunities to address these underlying causes⁶.

2.20 Senator Sinodinos also raised the issue of compliance, seeking statistics on compliance failures, assessments and financial penalties. Senator Siewert raised the issue of assistance provided to single parents and the impacts of any changes that had been made regarding Newstart streams⁷.

2.21 Further questioning also addressed the Building Australia's Future Workforce package and funding amendments outlined in the Portfolio Additional Estimates Statements 2012–13 for the EEWR portfolio.

Disability Employment Services

2.22 Senators raised a number of issues regarding disability employment services including caseloads for these services over time; expenditure and allocation; and particular details on contracts offered in the last tender round.⁸

2.23 Particular concern was raised regarding the tendering of disability employment support services and the impact that this would have on an estimated 35,000 people with disabilities having to move employment providers. It was noted that in one instance a service provider had said that some of their clients had been with the organisation for 28 years. DEEWR officials responded by saying that these transitions were strongly backed by the consumer sectors and the Australian Federation of Disability Organisations as they represent an opportunity to enhance the quality of providers.

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

Appointment of the Fair Work Commission Vice Presidents

2.24 Senator Abetz queried DEEWR about the process of appointing two Vice Presidents for the Fair Work Commission (FWC). He particularly queried DEEWR

⁶ *Proof Estimates Hansard*, 13 February 2013, p. 60-3.

⁷ *Proof Estimates Hansard*, 13 February 2013, p. 66-7.

⁸ *Proof Estimates Hansard*, 13 February 2013, p. 75-6.

officials on what he saw as the disparity between public comments from the President of FWC indicating that he requested the appointment of one Vice President, and other public comment indicating that the President was supportive of two appointments. DEEWR indicated that this question had been addressed in previous hearings but also agreed to take questioning on the particular details of this disparity on notice.⁹

Progress on dealing with asbestos safety matters

2.25 Senator Abetz discussed with witnesses progress relating to the establishment of a body to handle asbestos safety issues. DEEWR officials indicated that, although this matter was a matter for the consideration of government at this stage, some advice has been provided to the Minister for Employment and Workplace Relations and the minister had indicated that he wanted the national strategic plan in place by 1 July 2013.¹⁰

Leave arrangements for expectant mothers

2.26 DEEWR officials gave evidence on the proposed amendment to provide pregnant women in the workplace the capacity to exercise a right to move to a safe job in the event that continuing in their normal job posed a threat to the health of the mother and the child. It was submitted that, under the proposal, if no appropriate safe job is available, then the employee would be entitled to take paid, 'no-safe-job leave' for the risk period providing that certain criteria are met.

2.27 Senators raised concerns that these measures would place too great a burden on employers who may be required to pay for such leave in the event that no appropriate safe job was available for employees. Other concerns related to the implications that these changes might have for selecting employees.¹¹

Department of Education, Employment and Workplace Relations: Outcome 1 – Early Childhood Education

Childcare management system

2.28 The committee discussed with representatives of DEEWR the number of qualified staff currently in the childcare system. Senators questioned the department on:

- the number of qualified staff that will be required in the future;
- capacity in the training system to meet demand;
- complaints to the department about problems faced by centres in regard to the

⁹ *Proof Estimates Hansard*, 13 February 2013, p. 87–8.

¹⁰ *Proof Estimates Hansard*, 13 February 2013, pp 95–6.

¹¹ *Proof Estimates Hansard*, 13 February 2013, p. 97–109.

approval of supervisors;

- increases in how many approved supervisors are required; and
- uniformity in requirements across states.

2.29 The committee also questioned officials on the Community Support Program for childcare services. These questions covered the revised budget from additional estimates, data on the specific use of the inclusion support subsidy, and use of services under the subsidy as they relate to bringing on additional support staff for children.

National Quality Framework

2.30 DEEWR responded to questions on a range of issues regarding the National Quality Framework (the framework), which aims to raise quality and drive continuous improvement in education and childcare services. In particular, senators questioned DEEWR on feedback from states and territories regarding implementation of the framework, and whether any concerns were raised.

2.31 DEEWR noted that it meets with states and territories regularly on a whole range of issues through the early childhood development working group and that there are additional mechanisms for feedback including Ministerial involvement through a ministerial council.¹²

Indigenous pre-school access and early childhood education centres

2.32 Senators canvassed an array of issues regarding indigenous preschool access and early childhood education centres. Issues raised included:

- data on enrolment numbers and attendance of indigenous children;
- access to trained and qualified early childhood staff;
- future funding arrangements for community centres;
- current implementation and reporting on the use of funding provided for universal access in centres;
- reporting milestones, and penalties for state and territories not meeting targets; and
- progress on construction of Indigenous early childhood centres in Roebourne and the Swan region in Western Australia, as well as progress with other centres – including details on current staffing levels.

2.33 DEEWR officials brought to the attention of the committee the National Partnership for Indigenous Early Childhood Development, a partnership running until June 2014 and providing funding to states and territories for the construction of

¹² *Proof Estimates Hansard*, 14 February 2013, p. 21–22.

children and family centres. The department stated that ten of a planned twenty-two early childhood education centres have been completed.

Australian Curriculum, Assessment and Reporting Authority

My School website

2.34 Australian Curriculum, Assessment and Reporting Authority (ACARA) officials were questioned on the potential to provide transparency and accountability of financial assets through the My School website. ACARA officials responded by saying that a number of measures were in place that contribute to that. These measures included:

- a new feature showing an accumulation of capital expenditure over time; and
- ongoing discussions seeking common ground for comparing accounting methods across independent, government and other schools.

2.35 ACARA noted that there are significant difficulties associated with reaching a definitional consensus across the education sector on this issue.

National Assessment Program – Literacy and Numeracy

2.36 Senator Mason posed a number of questions on cultural disadvantage in relation to the National Assessment Program – Literacy and Numeracy (NAPLAN). In particular, he cited Meadow Heights Primary School, which has 75 per cent of its 600 students coming from non-English speaking backgrounds. He noted that students from the primary school were still required to sit NAPLAN alongside everyone else, despite never having received schooling prior to arriving Australia.

2.37 Senator Carr and DEEWR officials responded by saying that withdrawal by some schools from NAPLAN would be an inappropriate way of dealing with such disadvantage, and that NAPLAN results assist in identifying the areas requiring the most improvement in the education system.¹³

2.38 Other concerns raised included the amount of time required by teachers in preparing for NAPLAN, and participation trends and outcomes. Senator Back raised further concerns over the timeliness and relevance of test results. DEEWR officials noted that they are making efforts to shorten the timelines between testing and making results available.

¹³ *Proof Estimates Hansard*, 14 February 2013, pp 37–9.

Australian Institute for Teaching and School Leadership

Update on programs and activities

2.39 Senators questioned officials from the Australian Institute for Teaching and School Leadership (AITSL) across a range of issues.

2.40 Senators raised questions on delays with the National Partnership on improving teacher quality. AITSL responded by noting that reassessment of milestones and renegotiations with states and territories under the national partnership has meant that timelines were necessarily revised. An independent contractor has been working with states and territories to look at milestones and rework them.

2.41 Senators also sought updates and further information on the implementation of the Teacher Performance and Development Framework, and the expenditure of \$1.25 million under the Empowering Local Schools program. AITSL noted that a consultation report had been finalised on the Teacher Performance and Development Framework and that implementation of the framework had now begun. In addition, AITSL provided information outlining the intent of the Empowering Local Schools program, in particular that it attempts to give leaders the required skills for managing and leading autonomously. Activities under the program included conferences, group and project work and opportunities for national and international experience.¹⁴

Department of Education, Employment and Workplace Relations: Outcome 2 – Schools and Youth

Accountability for government and nongovernment schools funding

2.42 Senator Wright led a line of questioning on various accountability measures and statistics on funding for government and non-government schools.

2.43 In response to questioning on the obligations of non-government schools to provide annual audited financial statements to DEEWR, the Department provided information on the annual census of nongovernment schools, and the collection of financial information from schools on expenditures.¹⁵

2.44 Senator Wright also questioned DEEWR on compliance, and in particular the sample and percentage size of school spending that is verified through compliance auditing, as well as the number of 'extended' compliance audits, which went further than basic compliance checks.

¹⁴ *Proof Estimates Hansard*, 14 February 2013, pp 48-9.

¹⁵ *Proof Estimates Hansard*, 14 February 2013, pp 50-1.

National Plan for School Improvement tool

2.45 In December 2012, the Standing Council on School Education and Early Childhood endorsed the National Plan for School Improvement tool. DEEWR responded to questions regarding the implementation of the tool.

2.46 Senators expressed concern over the tool's focus on self-assessment instead of independent auditing. It was suggested that an independent external quality assurance authority would be more appropriate for ensuring expenditure accountability to the public. DEEWR officials responded by saying that these sorts of accountability measures are the responsibility of state governments and school authorities.

Community attitudes towards teaching and the teaching profession

2.47 Senator Mason raised a number of measures proposed in the report by Mr Gonski which aimed to foster the development of community attitudes that better value teachers and the teaching profession. DEEWR officials submitted that there are a range of proposals up for discussion in this regard, including:

- the teacher performance framework which better enables teachers to work cooperatively;
- developing strong links between the schools and their communities through measures such as the increased use of school utilities; and
- supporting research outlining the significance of better engagement with the parent body and the community – and specifically the observable positive benefits that these factors had on student results.

Senator Gavin Marshall

Chair

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
- ComCare
- The Safety, Rehabilitation and Compensation Commission
- The Seafarers' Safety, Rehabilitation and Compensation Authority (Seacare)
- Fair Work Commission
- Fair Work Ombudsman
- Office of the Fair Work Building Industry Inspectorate
- Safe Work Australia
- Coal Mining Industry (Long Service Leave Funding) Corporation

Appendix 2

Index to Proof Committee Hansard transcripts

Education, Employment and Workplace Relations portfolio

<i>Wednesday, 13 February 2013</i>	<i>Page no</i>
Fair Work Commission.....	5
Fair Work Ombudsman.....	28
Safe Work Australia.....	41
Comcare.....	50
Office of the Fair Work Building Industry Inspectorate.....	54
Outcome 3 – Employment.....	60
Outcome 4 – Workplace Relations and Economic Strategy.....	87
<i>Thursday, 14 February 2013</i>	
Cross Portfolio.....	5
Outcome 1- Early childhood, Working Age and Indigenous Participation....	13
Australian Curriculum, Assessment and Reporting Authority (ACARA)....	32
Outcome 2- Schools and youth.....	50