

## Chapter 3

### Employment and Workplace Relations portfolio

#### Introduction

3.1 This chapter summarises areas of interest and concern raised during the committee's consideration of the Additional Budget Estimates of the Employment and Workplace Relations portfolio for the 2006-2007 financial year. This section of the report follows the order of proceedings and is an indicative, but not exhaustive, list of issues that received consideration during the estimates' hearings.

3.2 Evidence was heard from Senator the Hon. Eric Abetz as the Minister representing the Minister for Employment and Workplace Relations and from officers of the Department of Employment and Workplace Relations (DEWR) and related agencies, including:

- Office of the Australian Building and Construction Commissioner (ABCC);
- Australian Fair Pay Commission (AFPC);
- Comcare; Office of the Employment Advocate (OEA); and
- Office of Workplace Services (OWS).

3.3 Senators present at the hearing were Senator Troeth (Chairman), Senator Marshall (Deputy Chair) and Senators Barnett, Crossin, Fifield, Lightfoot, Lundy, McEwen, McGauran, Patterson and Siewert.

#### Department of Employment and Workplace Relations

*Outcome 1 — Efficient and effective labour market assistance*

*Outcome 3 — Increased workforce participation*

3.4 Senator Wong began the questioning of the department on the budget allocations for vocational rehabilitation services and the \$22 million increase in the portfolio additional estimates 2006-07. This questioning lead to the issue of forward estimates. The Secretary, Dr Peter Boxall, declined to provide the figures, in keeping with previous decisions, citing that it is not government policy to publish them.

3.5 Other topics discussed included:

- Job Network;

- Newstart Allowance;
- Cyclone Larry wage assistance; and
- Textile, Clothing and Footwear structural adjustment package

3.6 A lengthy discussion followed on the membership of the Disability Advisory Group and the compulsory confidentiality agreement. Senator Wong questioned DEWR officials about the peak disability group—Australian Federation of Disability Organisations—not being represented because of their refusal to sign a confidentiality agreement. Senator Wong wanted to know more about this confidentiality agreement and her questions were taken on notice by the minister and the department. The procedural matters arising from this line of questioning are described later in this report.

3.7 Further questioning concerned the Community Development Employment Projects and the Australian Indigenous Leadership Centres. Senator Crossin raised matters regarding leadership training courses, capacity building plans, governance training and risk assessment.

3.8 Senator Siewert questioned the department in regard to answers received previously on Newstart Allowance, principal career and foster carer arrangements.

3.9 Final issues raised by the committee included:

- Disability Employment Network;
- Job Capacity Assessments;
- Job Seeker Accounts;
- Jobs in Jeopardy;
- Workplace Modifications Scheme;
- Disability Support Pension;
- Pensioner Education Supplement;
- Mobility Allowance; Personal Support Programme; and
- Social Security Appeals Tribunal appeals.

### **Office of the Employment Advocate**

3.10 The OEA was asked why the committee was yet to receive a single answer to questions taken on notice at the previous estimates hearing. The Employment Advocate, Mr Peter McIlwain, explained that all answers had been provided to the department before the deadline. The responsibility of tabling the answers rested with the minister's office and not the OEA. Committee members

agreed that senators should not ask the same questions again if they were placed on notice at the previous hearing.

3.11 Much of the questioning of the OEA focussed on Australian Workplace Agreements (AWAs), dealing with such matters as the number and content of AWAs, lack of data collection and methodology for analysing that data. Senator McEwen also questioned the officers on the Agreement-Making Partnership Program and the membership of the OEA partner program.

3.12 The committee also heard that the directive to cease collecting AWA data, including effects on protected award conditions, was given to the OEA in late June 2006. The OEA further advised that there is no formal project underway as yet to develop new methodology to again collect and analyse AWA statistics. The OEA advised, however, that data is still being collected on the number of AWAs lodged by electorate. This discussion generated articles in the press relating to the absence of data on the effects AWAs are having on workers' conditions.

### **Australian Building and Construction Commission**

3.13 Questioning commenced with Senator McEwen inquiring into the number of inspectors in each state and territory as well as the number of prosecutions since Work Choices commenced. Senator Marshall followed with questions about the details of the inspection process, covering the following matters: interview process, compliance powers, prohibited contents of side agreements and penalties incurred for breaches.

3.14 Further questioning covered compliance by employers with the Workplace Relations Act and the ABCC compliance monitoring processes. Questions also dealt with the ABCC's future compliance and prosecution roles under the new Independent Contractors Act.

3.15 Finally, questions were asked on the appointment of union officials as OH&S inspectors in the Tasmanian building and construction industry. Senator Barnett sought an update on the status of this trial after concerns were raised by the Master Builders Association and other organisations.

### **Australian Fair Pay Commission**

3.16 The committee asked about the wage review timetable and the consultation process that the secretariat has set for 2007. Other issues canvassed included vacant positions, commissioned research, focus groups and junior wage consultations.

## **Office of Workplace Services**

3.17 Senator Lundy asked questions about restaurant audits in Canberra, inquiring into how much money has been recovered and paid to employees. Questions were also asked on the progress of the national audit of the restaurant industry and the process for the selection of restaurants to be audited.

3.18 Senator Marshall followed with questions on the procedure for initiating prosecutions and whether the government or DEWR has any involvement therein. Questioning then moved to the current investigation of Tristar. Senator Marshall finished with questions about 457 visa workers and OWS's jurisdiction for enforcement in this area.

3.19 Final questioning revolved around general OWS operating issues and the additional appropriations allocated to expand compliance and enforcement activities in regional areas.

## **Comcare**

3.20 There were questions on the number of investigators operating nationwide and the extent of their investigative powers.

3.21 Senator Marshall continued with questions on deeming rates for compensation claims. A document was tabled by the CEO of Comcare giving a specific example of the effect of a variable deeming rate on compensation payments.

## **Department of Employment and Workplace Relations (continued)**

### ***Cross-portfolio***

3.22 During the day's proceedings there were a number of questions regarding the late submission of answers to questions taken on notice at the previous estimates hearing.<sup>1</sup> The Chairman expressed the committee's concern that some 400 answers remained outstanding. The committee acknowledged that an unusually large amount, some 800 questions, were taken on notice and requested that greater attention be paid to outstanding questions on notice.<sup>2</sup> DEWR responded by saying that answers are sent to the minister's office as soon as practicable.

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1 See Appendix 4 for Question on Notice statistics from the Supplementary Estimates

2 Senator Judith Troeth, *Committee Hansard*, 15 February 2007, p.109

3.23 A discussion followed on advertising expenditure for the department, specifically the Work Choices campaign. The department responded by referring the senator to the additional estimates statements which showed that the Employer Advisory Program is the only additional funding for this financial year. Further questions followed about the participants and organisation of the Employer Advisory Program.

3.24 Senator Marshall continued with questions concerning the AWA database and the report scheduled for tabling by 30 June 2007. The discussion centred on whether the department had sufficient data to compile a report to sufficiently meet the standards as required by law. Senator Wong and Marshall asked questions at length about the content of the DEWR database and the process for analysing AWAs. DEWR took questions on notice regarding what conditions and changes tracked in the database and the date this database was designed.

3.25 Other matters raised were:

- Expenditure on Welfare to Work advertising campaigns;
- Modelling undertaken by DEWR in regards to Work Choices;
- Ministerial advice regarding the dispute at Tristar Steering and Suspension; and
- DEWR staffing issues including staff travel

### ***Outcome 2 — Higher productivity, higher pay workplaces***

3.26 DEWR was asked a series of questions in relation to mines and occupational health and safety, including DEWR research or other activities in relation to the development of a national safety scheme. Questions were also asked on mine managers' liability and the shortage of mine managers.

3.27 The committee asked further questions in relation to amendments to the Work Choices legislation, including:

- Stand-downs;
- Provision of the Information Statement;
- Redundancy entitlements;
- Disputed redundancy matters; and
- AWA duress

## **Matters of procedural significance**

3.28 Before proceeding to outline matters examined during the hearing, the Committee draws attention to a matter of procedural significance that arose while taking evidence.

### ***Refusal to answer questions***

3.29 During the committee's examination of outcomes 1 and 3, the department again refused to answer questions regarding the timeframe in which matters are dealt with by the minister's office. The department had previously refused to answer such questions at the budget estimates hearings in June 2006, as described in the 2006-07 budget estimates report of this committee.<sup>3</sup>

3.30 This round, Senator Wong again asked questions in relation to dates when legal advice had been sought, this time about confidentiality agreements for the Disability Advisory Group. There was also an additional question about when the Minister first requested the preparation of a confidentiality document. Once again Mr Jeremy O'Sullivan, answering for the department, refused to answer these questions by invoking subsection 13(6) of the *Public Service Act 1999*. This subsection requires an Australian Public Service employee to maintain 'appropriate confidentiality' in dealings with ministers or their staff.

3.31 In pursuit of an answer, Senator Wong pointed out that it was common practice for other departments to provide answers about when legal advice was sought or given. Senator Wong tabled procedural advice from the Clerk of the Senate. This advice had been sought after the statements made by Mr O'Sullivan at the budget estimates, and is attached at Appendix 3. In this advice, the Clerk notes that in 2003 the Government accepted the long-held principle that a general statutory secrecy provision does not apply to the disclosure of information in parliament or any of its committees unless the provision is framed to have such an application.

3.32 Further questioning continued after the morning tea break where Mr O'Sullivan reiterated that he objected to answering the questions, based on his reading of the Public Service Act, and also on the grounds of a possible breach of legal professional privilege. The committee heard no basis for this latter claim. After a few more exchanges, the chairman confirmed that the committee accepted Mr O'Sullivan's objections, which provoked dissent from Senators Wong and

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3 Report of the Senate Employment, Workplace Relations and Education Committee, *Budget Estimates 2006-07*, June 2006, p. 3

Marshall. The chairman called for a private meeting of the committee at a later hour to consider the matter.

3.33 At the subsequent private meeting the committee agreed to the proposal that a statement be read into Hansard to counter the possibility of the dispute arising at future estimates hearings. The chairman read the following statement:

The committee met in private before lunch today to discuss the issue which arose from Senator Wong's questioning of the department on the date on which legal advice had been sought. It notes the claim by Mr O'Sullivan that an attempt to answer the question would involve him in a breach of section 13(6) of the Public Service Act. It noted advice to Senator Wong from the Clerk of the Senate on 6 June 2006, which was tabled at the hearing, which includes advice from the Solicitor-General. However, in view of the possibility that such a dispute may arise again, the committee has agreed that in future, officers should not rely on such a claim. The committee notes that the opportunity already exists for officers to refer a matter to the minister at the table. In the meantime, the committee draws the attention of the Clerk's advice to the department.<sup>4</sup>

3.34 The committee will monitor proceedings at the budget estimates hearings to satisfy itself that notice has been taken of this statement.

### **Acknowledgements**

3.35 The committee thanks the ministers, departmental secretaries and officers for their assistance and cooperation during the hearings.

**Senator Judith Troeth**

**Chairman**

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4 Senator Judith Troeth, *Committee Hansard*, 15 February 2007, p. 51

