



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ECONOMY AND GENDER AND ECONOMIC EQUALITY

Ms Nicole Lawder MLA (Chair), Ms Suzanne Orr MLA (Deputy Chair),

Mr Johnathan Davis MLA

Standing Committee on Economy and Gender and Economic Equality

Inquiries into Annual and Financial Reports 2019–2020 and
ACT Budget 2020–2021

Responses to **questions on notice** following public hearing of 23 February 2021

Industrial Relations and Workplace Safety portfolio

ACT Standing Committee on Economy and Gender and Economic Equality

Inquiries into Annual and Financial reports 2019–20 and ACT Budget 2020–21

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Industrial Relations and Workplace Safety portfolio

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LEGISLATIVE ASSEMBLY
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QON No. IRWS1

STANDING COMMITTEE ON ECONOMY AND GENDER AND ECONOMIC EQUALITY

Ms NICOLE LAWDER MLA (CHAIR), Ms SUZANNE ORR MLA (DEPUTY CHAIR), Mr JOHNATHAN DAVIS MLA

Inquiries into Annual and Financial Reports 2019–20 and ACT Budget 2020–21
ANSWER TO QUESTION ON NOTICE

Peter Cain MLA: To ask the Minister for Industrial Relations and Workplace Safety

[Ref: Budget Statements B, 2020–21]

In relation to: EBT Class 1 (EBTL1) Public Sector Workers Compensation Fund

1. Budget Statements B, note two on p. 290 states the Fund was unable to meet the Accountability Indicator on maintaining a PSWC fund asset to liability ratio greater than or equal to 100 per cent. The reason given for this is due the transfer of assets from Comcare to the PSWC Fund not completed as at 31 December 2020.

- a. Why hasn't the transfer of assets been completed?
- b. What has been the total cost associated with transferring from Comcare to the PSWC Fund?
- c. When is the PSWC Fund expected to reach an asset to liability ratio of 100 per cent?

2. On page 291 of Budget Statements B, with respect to the PSWC Fund operating statement on behalf of the territory, there is an 81% variance in Investment Revenue for the 2020-21 Budget compared to the 2019-20 Audited Outcome.

- a. What is the cause of expected investment revenues being 81% below expectations?
- b. Why is investment income from other government organisations, such as the Long Service Leave Authority, expected to increase by 11% in the 2020-21 Budget compared to the 2019-20 outcome when compared to the PSWC Fund investment income declining by 81%?

3. Claims Expense for the 2020-21 Budget for the PSWC Fund are 31% higher than the 2019-20 Audited Outcome.

- a. What is the cause of the jump in Claims Expense?
- b. How many fund managers does the PSWC Fund employ and what remuneration does each employee of the PSWC Fund receive?

Rachel Stephen-Smith MLA: The answer to the Member's question is as follows:–

1.a. Commonwealth officials have advised that finalisation of the anticipated transfer of assets between the Commonwealth and the PSWC Fund was delayed due to the impact of the COVID-19 pandemic and response on Commonwealth agencies. The ACT Government's self-insurance licence anticipates the transfer will be completed during the 2020-21 financial year.



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1.b. The costs associated with transferring workers' compensation claim administration functions from Comcare to the PSWC Fund were primarily incurred in the 2018-19 financial year. The relevant annual report records supply and services costs of \$453,000 for that year including audit and licence fees and actuarial costs.

In the years prior to the transfer, the ACT Government contributed to Comcare's operating costs via the annual premium payment to Comcare. Consequently, the transfer costs outlined above are partially offset by reductions in the annual premium payment to Comcare.

1.c. As indicated on Table 4, page 292 of Budget Statements B 2020-21, the PSWC Fund's assets (including receivables) exceeded its liabilities by \$18.8m as at 30 June 2020.

Accountability indicator 1.1.c excludes the value of receivables to focus on cash and invested assets already received and under management. Consequently, the Accountability Indicator 1.1.c result would exceed 100 per cent on receipt of the anticipated asset transfer from the Commonwealth, which is expected during the 2020-21 financial year.

2.a. Expected investment revenue in 2020-21 is significantly lower than the 2019-20 investment revenue budget and 2019-20 investment revenue audited result. This is due to the deterioration in the short-term economic outlook over the previous 18 months and is described in the Notes to the Territorial Budget Statements on page 295, Budget Statements B 2020-21.

2.b. Investment return estimates may vary between funds, depending on factors such as their asset allocations, target investment return rates and associated economic assumptions. The PSWC Fund has a more conservative expected return on investment in 2020-21 than the Long Service Leave Authority investments. As outlined in the Notes to the Territorial Budget Statements, page 295 of Budget Statements B 2020-21, the PSWC Fund anticipated a return to higher rates of investment return from 2022-23.

3.a. As indicated in the Notes to the Territorial Budget Statements on page 295 of Budget Statements B 2020-21, the 2019-20 claims expense audited outcome was lower than expected and reflects actual experience.

The 2020-21 Budget for claims expenses is based on an estimate of the ultimate number and cost of claims that will occur during 2020-21 and is informed by the ACT public sector claims experience over many years. If the good experience of 2019-20 continues into 2020-21, the audited claims expense outcome will be lower than currently budgeted.



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3.b. The PSWC Fund does not employ fund managers or any other personnel. As indicated on p216, Volume 2.2 of the CMTEDD 2019-20 annual report, "the functions of the Fund are performed by officers of the Chief Minister, Treasury and Economic Development Directorate (CMTEDD)".

The PSWC Fund may reimburse CMTEDD for expenses associated with carrying out PSWC Fund functions, however, it did not do so in relation to services received during the 2019-20 financial year.

Approved for circulation to the Standing Committee on Economy and Gender and Economic Equality

Signature:

A handwritten signature in blue ink, appearing to read "RSS", followed by a horizontal line.

Date: 12/3/21

By the Acting Minister for Industrial Relations and Workplace Safety, Rachel Stephen-Smith MLA



LEGISLATIVE ASSEMBLY
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QON No. IRWS2

STANDING COMMITTEE ON ECONOMY AND GENDER AND ECONOMIC EQUALITY
MS NICOLE LAWDER MLA (CHAIR), MS SUZANNE ORR MLA (DEPUTY CHAIR), MR JOHNATHAN DAVIS MLA

Inquiries into Annual and Financial Reports 2019–20 and ACT Budget 2020–21
ANSWER TO QUESTION ON NOTICE

Peter Cain MLA: To ask the Minister for Industrial Relations and Workplace Safety
[Ref: Budget Statements B, 2020–21]

In relation to: ACT Long Service Leave Authority

1. Long Service Leave Benefit expenses are expected to drop 27% in the 2020-21 Budget. What is the cause of this drop?

a. Can you outline the causes of Long Service Leave Benefit expenses rising over the following budgets?

2. With respect to the Portable Long Service Leave Scheme:

a. How many organisations have put in a request to be recognised as an employer under the scheme?

b. How many requests to be recognised as an employer under the scheme have been granted?

c. What process was followed by the Minister to make a determination to grant an inclusion request?

d. How many requests to be recognised as an employer under the scheme have been declined?

e. What were the reasons given for declining those requests?

f. What process was followed by the Minister to make a determination to decline an inclusion request?

g. How many organisations have requested an exemption from the scheme?

h. How many requests for exemption have been granted?

i. What process was followed by the Minister to make a determination to grant an exemption request?

j. How many requests for exemption have been declined?

k. What were the reasons given for declining those requests?

l. What process was followed by the Minister to make a determination to decline an exemption request?

m. Does a party whose request has been declined have a right of appeal through the *Administrative Decisions (Judicial Review) Act 1989*, or under any other legislation?



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- n. Are parties advised of this or any other appeal channels or rights?
- o. If the Minister declines a request for exemption, is the party advised of their rights under the *Freedom of Information Act 2016*, or the *Ombudsman Act 1989*?

Rachel Stephen-Smith MLA: The answer to the Member's question is as follows:—

1. Long Service Leave benefit expenses were approximately \$17 million higher than anticipated in 2019-20 due to several factors that are expected to be specific to that year. These are described on page 27 of the Long Service Leave Authority's 2019-20 annual report and include higher than expected leave utilisation and a decrease in the discount rate.

The budgeted amount for 2020-21 is 27 per cent lower than the 2019-20 audited outcome and is in line with longer term actuarial projections for leave utilisation.

- 1(a). The Authority's actuary used a range of assumptions to estimate the long service leave expenses and liability in the future years including wage inflation, industry growth, scheme member demographics, and long service leave liability discount rate. In general, it is expected that all four administered schemes will continue to grow in the ACT in the next three years as a result of an anticipated increase in wages and number of employers and employees.
- 2(a). Five requests for declarations under section 12 of the *Long Service Leave (Portable Schemes) Act 2009* (Portable Schemes Act) have been considered by the portfolio Minister since 1 May 2020.
- 2(b). Five ministerial declarations under section 12 of Portable Schemes Act are currently in force in relation to requests made since 1 May 2020. All five declarations are available as disallowable instruments on the ACT Legislation Register website.

The ACT Legislation Register shows that no other declarations have been made under section 12 of the Portable Schemes Act since the commencement of the Act.

- 2(c). Under section 12 of the Portable Schemes Act, the Minister is required to consider whether on reasonable grounds a declaration would be consistent with the objects of the Portable Schemes Act. If the Minister is satisfied about these matters they may make a declaration under section 12 to expand the coverage of the Act by determining:
 - a person(s) is an employer for the a covered industry;
 - a person(s) is an employee, or an employee of a stated employer, for a covered industry;
 - a person(s) to be a voluntary member for a covered industry; or
 - work, or an activity, to be work in a covered industry.



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- 2(d). The relevant Minister has not declined any requests made for declarations under section 12 of the Portable Schemes Act received since 1 May 2020.
- 2(e). Not applicable based on the answer to 2(d).
- 2(f). The Minister is required to consider the same matters outlined in 2(c) in declining a request.
- 2(g). The relevant Minister has received four requests for a declaration to be made under section 13 of the Portable Schemes Act since 1 January 2019.
- 2(h). The relevant Minister has not made any declarations under section 13 of the Portable Schemes Act in relation to the four requests received since 1 January 2019.

The ACT Legislation Register shows that no declarations have been made under section 13 of the Portable Schemes Act since its commencement.

- 2(i). Under section 13 of Portable Schemes Act, the relevant Minister is required to consider whether on reasonable grounds a declaration would be consistent with the objects of the Portable Schemes Act. If satisfied about these matters they may make a declaration under section 13 to limit the coverage of the Act by determining that:
 - a person(s) is not an employer for the a covered industry;
 - a person(s) is not an employee, or an employee of a stated employer, for a covered industry;
 - a person(s) not to be a voluntary member for a covered industry; or
 - work, or an activity, not to be work in a covered industry.
- 2(j). The portfolio Minister has not made any declarations under section 13 of the *Long Service Leave (Portable Schemes) Act 2009* (Portable Schemes Act) in relation to the four requests received since 1 January 2019.
- 2(k). In relation to the four requests received since 1 January 2019 for a declaration to be made under section 13 of the Portable Schemes Act the Minister was not satisfied that the requirements under section 13 of the Act had been met. Matters that the Minister took into account when considering those requests were described in written correspondence to the applicants and included the Minister's views on the scope of the legislation as it applied to the workers and work roles in question.
- 2(l). The relevant Minister is required to consider the same matters as outlined in 2(i) in declining a request.
- 2(m). Section 13 of the Portable Schemes Act allows the Minister to make a statutory instrument declaring the Portable Schemes Act to not apply to a person (or persons), work or activity, limiting the coverage of that Act as currently in force. Such declarations, if made, receive the scrutiny of the Legislative Assembly as a disallowable instrument.



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QON No. IRWS2

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Review under the *Administrative Decisions (Judicial Review) Act 1989* (ACT) (ADJR Act) in relation to section 13 of the Portable Schemes Act would depend on whether declarations made, or not made, are legislative or administrative in character, which would be a matter for the court to ultimately determine should an application for judicial review under the ADJR Act be made.

Section 13 of the Portable Schemes Act is also not subject to the internal review or review by the ACT Civil and Administrative Tribunal under part 9 of the Portable Schemes Act.

2(n). As section 13 of the Portable Schemes Act is not a reviewable decision under part 9 of the Portable Schemes Act, no reviewable decision notice is required to be provided to parties under the *ACT Civil and Administrative Tribunal Act 2008*.

2(o). As noted above, no reviewable decision notice, including advice on rights under the *Freedom of Information Act 2016* or the *Ombudsman Act 1989* is required to be provided to parties.

Approved for circulation to the Standing Committee on Economy and Gender and Economic Equality

Signature:

A handwritten signature in blue ink, appearing to read "RSS", followed by a long horizontal flourish.

Date: 12/3/21

By the Acting Minister for Industrial Relations and Workplace Safety, Rachel Stephen-Smith MLA



STANDING COMMITTEE ON ECONOMY AND GENDER AND ECONOMIC EQUALITY
MS NICOLE LAWDER MLA (CHAIR), MS SUZANNE ORR MLA (DEPUTY CHAIR), MR JOHNATHAN DAVIS MLA

Inquiries into Annual and Financial Reports 2019–20 and ACT Budget 2020–21
ANSWER TO QUESTION ON NOTICE

Asked by **Johnathan Davis MLA**:

[Ref: P. 302 Annual Report Vol 1 CMTEDD]

In relation to:

Insecure work

1. Are you anticipating working more broadly across other relevant directorates on insecure work, given the known links with workplace health and safety [especially in the construction industry]?
2. If so, can you explain how you are planning to do that and what barriers there may be?

Rachel Stephen-Smith MLA: The answer to the Member's question is as follows:—

The Government's response to the 2018 Standing Committee on Education, Employment and Youth Affairs' *Inquiry into the Extent, Nature and Consequence of Insecure Work in the ACT* outlined our commitment to support and protect workers engaged in insecure work in the ACT.

Consistent with that response, the ACT Government has implemented a range of initiatives to address insecure work including:

- strengthening the ACT Government's procurement practices with a secure local jobs code, designed to direct territory-funded contracts in industries that are vulnerable to insecure work to entities that meet their obligations under workplace laws;
- a labour hire licensing scheme for the ACT, which will commence later in 2021;
- funding of a young worker advice service to provide information to young workers about their workplace rights and entitlements; and
- establishing WorkSafe ACT as the Territory's independent work health and safety regulator and providing additional funding of more than \$2.5 million per annum to support work safety compliance and enforcement.

The ACT Government has also implemented measures to reduce insecure work risks within its own workforce, including:

- Enterprise Agreement provisions stipulating that permanent employment is the expectation, and setting limits around the use of temporary contracts and casual work;
- seasonal worker provisions in Enterprise Agreements that aim to provide more long-term security for seasonal workers; and



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QON No. IRWS3

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- establishing a Taskforce into Insecure Work and Outsourcing, with the aim to convert insecure employment to more secure forms of employment in the ACT public sector.

The Parliamentary and Governing Agreement for the 10th Legislative Assembly also outlines the ACT Government's commitment to the shared progressive principles and values of protecting and creating secure local jobs including:

- continuing and reviewing the effectiveness of the secure local jobs code to ensure it is meeting its objectives that all businesses obtaining Government contracts are meeting high ethical and labour standards; and
- ensuring that workers' rights are upheld and strengthened in all sectors across the ACT.

Approved for circulation to the Standing Committee on Economy and Gender and Economic Equality

Signature:

Date:

12/3/21

By the Acting Minister for Industrial Relations and Workplace Safety, Rachel Stephen-Smith MLA