

Senate Standing Committee on Education and Employment

**QUESTIONS ON NOTICE
Supplementary Budget Estimates 2013-2014**

Outcome 4 - Workplace Relations & Economic Strategy

Department of Employment Question No. EM0122_14

Senator Tillem asked on 21 November 2013, Hansard page 88

Question

United Voice equal remuneration case

Ms Parker: It is really early days on this case. The Fair Work Commission has only issued draft directions on timing, hence we have not got a lot of advice to provide. It is very early days for all parties at the moment. Senator TILLEM: Can you take on notice what the public harm would be in advising the committee on that advice? Senator Abetz: I am not sure that I can give you more information than I already have, but I am willing to read the Hansard and see what I have said and whether anything needs to be added to it. I am willing to take it on notice.

Answer

The Department's advice in relation to this application under Part 2 – 7 of the *Fair Work Act 2009* is primarily legal advice that is self-evidently subject to legal professional privilege (LPP).

LPP serves the public interest in the administration of justice by facilitating freedom of consultation between clients and their legal advisers: *Waterford v Commonwealth* (1986) 163 CLR 54. By enabling persons to conduct their affairs with the benefit of confidential legal advice, LPP underpins the rule of law: *Kennedy v Wallace* (2004) 142 FCR 185.

Mandatory disclosure of advice that is subject to LPP has long been recognised as contrary to the public interest, and the general detriment in such advice not remaining confidential is that it is likely to discourage persons (be they citizens, corporations or governments) from seeking advice to structure their affairs in accordance with the law, or from disclosing all relevant facts when they do seek advice.