

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Additional Estimates 2010-2011**

Outcome 5 - Workplace Relations

DEEWR Question No.EW1019_11

Senator Abetz asked on 23/02/2011, Hansard page 116.

Question

APPEAL RIGHTS UNDER THE FAIR WORK LEGISLATION

Senator ABETZ—What appeal rights are there under the Fair Work legislation? They are defined; let us put it that way. I will not put a term on it, but are they specified in the act? Mr Bohn—The rights of appeal? Senator ABETZ—Yes, public interest, error of fact, error of law— Mr Bohn—Appeals against Fair Work Australia? Senator ABETZ—Yes. Mr Bohn—Yes, those are dealt with in the act. Senator ABETZ—What section? Do you have that handy for me, please? Mr Bohn—You might have to bear with me on that. Can I get back to you in a minute or so on that? Senator ABETZ—Yes, of course. Mr Bohn—I can answer your question, Senator. I have taken some counsel from people familiar with this area. Section 604 is the section you are after.

Supplementary Answer

In addition to the primary appeal provision in section 604 of the *Fair Work Act 2009* (the FW Act), section 400 modifies how this general provision applies in relation to unfair dismissal decisions.

The effect of section 400 of the FW Act is to make the process for permitting appeals from unfair dismissal decisions different from the general grounds in section 604 in two respects.

- Firstly, subsection 400(1) of the FW Act requires FWA to be satisfied that granting permission to appeal is in the public interest.
- Secondly, subsection 400(2) of the FW Act provides that, to the extent that the basis for an appeal relates to a question of fact, an appeal can only be made on the basis that the decision appealed against involved a significant error of fact.