

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

**QUESTIONS ON NOTICE
Supplementary Budget Estimates 2010-2011**

Outcome 5 - Workplace Relations

DEEWR Question No.EW0560_11

Senator Abetz asked on 20/10/2010, Hansard page 28.

Question

GOOD FAITH CANNOT BE PROSECUTED OR FINED

Senator ABETZ—So you are aware of that sentiment, that is all I was asking. Moving on. You might not be able to answer this question, so I will flick this one to the minister, about looking at the possibility of providing binding advice from the Fair Work Ombudsman so that if advice is sought and obtained by an employer that is later found by—best endeavours used, and I accept that that is what the Fair Work Ombudsman does—Fair Work Australia or a court of law to be wrong that the employer who follows that in good faith cannot be prosecuted or fined. Has the government turned its mind to instituting such a procedure? Senator Chris Evans—The issue was raised with me in passing, but I have not given it any detailed consideration. I am happy to give you a response when the department is here, if you like, if you want to raise it again, because it is not something I have been provided with any detailed advice on. I am sure the department will be able to give you a response. So maybe we will come back to it when the department is back here this arvo. Senator ABETZ—For the purposes of this, in case I forget, can we take it on notice here and now for the department—so that is on the Hansard—but I accept what you are saying, Minister.

Answer

Consideration has, to date, not been given to amending the *Fair Work Act 2009* ('the FW Act') to provide scope for the Fair Work Ombudsman to provide binding advice which, where sought and obtained, provides protection against prosecution in circumstances where the determination is found by a court to have been incorrect.

While it might be possible to frame reasonable reliance on advice from the Fair Work Ombudsman (FWO) as a defence to a compliance action brought against an employer under the FW Act by the FWO –unless the defence also extended to actions brought by employees and/or unions, it would be of limited value.