

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

**QUESTIONS ON NOTICE
Supplementary Budget Estimates 2012-2013**

Outcome 4 – Workplace Relations and Economic Strategy

DEEWR Question No. EW0673_13

Senator Abetz asked on 17 October 2012, Hansard page 116

Question

Correspondence received regarding foster carers

Senator ABETZ: I am quoting from it, and I was copied into the correspondence—although it does not say, I am assuming as the shadow minister. This is quoting from the ACT Community Services Directorate, basically saying that their hands are tied: 'The advice that foster carers are not covered by this new legislation is not a decision of the Community Services Directorate; rather advice that has been provided by the Commonwealth. Any change to the legislation would have national implications and is a lengthy and complicated process which will need to include the Commonwealth and all other jurisdictions who have implemented this.' There is the suggestion that foster carers are not covered. Are you able, if you are not— Mr Kovacic: We will take it on notice. It is quite possible that that correspondence might have been referred to Safe Work Australia, but nonetheless we will take it on notice. Senator Jacinta Collins: Senator, just before you move on: does the suggestion seem to be that in the ACT they currently are covered? Is this an issue of moving to harmonisation, where there is a view that people who are presently covered will not be? Senator ABETZ: I do not know if this is a changed situation or— Ms Paul: Just a query. Senator ABETZ: the continuation of a change, but supposedly, under the work health and safety legislation, according to the ACT Community Services Directorate, there is no coverage. Senator Jacinta Collins: We will take it on notice.

Answer

Under the model Work Health and Safety (WHS) laws, an organisation that places children into home-based foster care owes a duty as a person conducting a business or undertaking (PCBU) to its workers and must also ensure, so far as is reasonably practicable, that the health and safety of other persons (such as volunteer home-based carers) is not put at risk from work carried out as part of the business or undertaking.

Organisations will also owe a duty to foster carers as volunteer workers if the organisation instructs them to carry out work activities.

This means organisations who provide home-based care need to consider the risks associated with placing children with volunteer home-based carers and make arrangements to eliminate or reduce those risks so far as is reasonably practicable. The responsibility extends to risks directly related to the care of foster children

including identifying behavioural issues of foster children, informing the carers of these issues, providing appropriate training and support to carers to minimise the risks posed by those issues and checking that the children are placed in a safe environment.

The WHS laws do not apply to the relationship between volunteer home-based carers and the children they look after in their homes, as this is considered a domestic relationship and not 'work'.

Each jurisdiction has the ability make variations to the model WHS legislation to take into consideration local laws and drafting protocols.