

**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. EW0676_13

Senator Abetz asked on 17 October 2012, Hansard page 117

Question

Unionism in workplaces

Senator ABETZ: I am referring to an article from the Australian of 16 August 2012. It is, I think, the ADJ Contracting case. I am inquiring whether, if it is illegal—by agreement—to promote unionism in the workplace and if you were to have a non-union collective agreement where everybody agreed that unionism should be discouraged, that would be appropriate to be in the workplace agreement. Mr Kovacic: I will take it on notice. The relevant consideration there would be the general protection principles of the Fair Work Act. One thing I would say in respect of the ADJ agreement is that it has been the subject of a number of appeals, most recently by a full Federal Court which has upheld the validity of the provisions that were challenged. Senator ABETZ: Yes. Mr Kovacic: The question you ask I will take on notice. Senator ABETZ: So, if that is valid, one has to ask why the reverse would not be valid, because the Fair Work Act also has provisions in it about voluntary association and freedom of association et cetera. The suggestion that companies need to promote unionism—let's not beat around the bush; it is 'no ticket, no start'—I think most people would find— Senator Jacinta Collins: I am not convinced of that at all from my experience. Mr Kovacic: I am not so sure that I would accept that assertion, Senator Abetz. Senator ABETZ: In that case, if there were a clause to discourage trade unionism, why would you say that that would be adverse action? Mr Kovacic: What I said is that— Senator ABETZ: It cuts both ways. Ms Paul: That is not what the officer said. Mr Kovacic: In terms of providing an answer on notice, I think a clear consideration would be how such a provision would stack up against the general protections provisions of the Fair Work Act. Senator ABETZ: It looks as though the general protections might only operate one way. But if you can take that on notice for us and confirm for us that the act is equal unbalanced and cuts both ways evenly, that would be good.

Answer

Under the *Fair Work Act 2009* (FW Act), an agreement term that requires or permits (or has the effect of requiring or permitting) a breach of the general protections provisions of the FW Act would be an objectionable term. An objectionable term is an unlawful term and a term of an enterprise agreement has no effect to the extent that it is an unlawful term.

The general protection provisions of the FW Act protect against workplace discrimination, protect workplace rights (as defined in section 341) and freedom of association in respect of becoming, or not becoming, a member of an industrial association, be represented, or not, by an industrial association and participate, or not participate, in lawful industrial activities. It is unlawful to take adverse action against an employee including because the employee is or is not a member of a union (s. 346). It is also unlawful to induce an employee to join or not to join a union (s. 350).