

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2014 - 2015

Agency - Fair Work Commission

Department of Employment Question No. EMSQ15-000030

Senator McKenzie asked on 26 February 2015 on proof Hansard page 42

Question

FWC - Process for applying for right of entry permits

CHAIR: I appreciate that you have probably tried to be as thorough as you can with the processes to ascertain whether the declaration is indeed true and correct. Why do we not go with a statutory declaration for this particular application process rather than the process you have outlined?

Mr Enright: The Fair Work Commission—and the general manager might assist me here—has rules about the forms that it uses. These forms comply with the rules of the Fair Work Commission. Why it does not call for a statutory declaration is not something I am aware of.

CHAIR: Ms O'Neill, did you want to add something to that?

Ms O'Neill: I cannot immediately assist on that question. I can take it on notice, if you like.

Answer

Section 512 of the *Fair Work Act 2009* (FW Act) provides that the Fair Work Commission may issue an entry permit to an official of a registered organisation if the Commission is satisfied that the official is a fit and proper person to hold the entry permit.

Unlike the *Work Health and Safety Act 2011*, which requires a proposed permit holder to make a statutory declaration when applying for a WHS entry permit, the FW Act does not require that a statutory declaration be completed when applying for an entry permit under section 512.

In accordance with the Commission's rules, an application for an entry permit under section 512 is made by completing and lodging with the Commission a Form F42, which requires signed declarations by:

- a member of the committee of management of the applicant organisation about various matters relating to the prospective permit holder, including that the prospective permit holder is a fit and proper person to hold a permit; and
- the proposed permit holder about various matters, including that he or she has never been convicted of an offence against or ordered to pay a penalty under an industrial law, or convicted of certain offences against a law of the Commonwealth, a State, a Territory or a foreign country.

The Criminal Code contains a range of offences relating to the provision of false or misleading statements, information or documents, which could apply to false or misleading declarations made in a Form F42.

Section 136.1 of the Criminal Code provides that it is an offence to knowingly or recklessly make a false or misleading statement to a Commonwealth entity (such as the Commission) in certain applications, including an application for a permit.

Section 137.1 of the Criminal Code makes it an offence to knowingly give false or misleading information to a Commonwealth entity (subject to a warning having been given for the purposes of subsection 137.1(4)). Section 137.1 also makes it an offence to knowingly give false or misleading information where the information is given in compliance or purported compliance with a Commonwealth law (such as the FW Act or the Commission's rules as given effect by that Act), and section 137.2 makes it an offence to knowingly produce a false or misleading document where the document is produced in compliance or purported compliance with a Commonwealth law.

The *Statutory Declarations Act 1959* (SD Act) contains a separate offence of intentionally making a false statement in a statutory declaration.

Collectively, the offences under the Criminal Code are broader than the offence under the SD Act and are considered to provide an adequate avenue for redress against persons making or lodging false declarations in a Form F42.