

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Budget Estimates 2015 - 2016

Outcome 2 - Workplace Relations and Economic Strategy

Department of Employment Question No. EMSQ15-000105

Senator O'Sullivan asked on 01 June 2015 on proof Hansard page 109

Question

Self-incrimination

ACTING CHAIR: That is fine. Can I go on to the issue of self-incrimination? It has been suggested that the ABCC legislation will, for the first time, require people to incriminate themselves.

Mr O'Sullivan: That is not correct.

ACTING CHAIR: There is a reference to section 713 of the Fair Work Act—is that right? Does that have a similar provision?

Mr O'Sullivan: Yes, that is right, and I will just take you to it:

A person is not excused from producing a record or a document under paragraph 709(d)—which is the provision that requires them to ask certain questions on the ground that production of the record or document might tend to incriminate the person. Incrimination is abrogated under the current Fair Work Act; however, in the case of an individual, that evidence is not admissible in evidence against the individual in criminal proceedings.

ACTING CHAIR: I understand. How long has this been in the legislation?

Mr O'Sullivan: It has been in the Fair Work Act—

ACTING CHAIR: Since 2008?

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Mr O'Sullivan: Since 2009, when it was enacted. And I think there was something similar in the Workplace Relations Act, but I would have to check.

Answer

The requirement that a person must produce a record or document to an inspector even if it may incriminate the person, along with a corresponding immunity in relation to criminal proceedings, has existed in Commonwealth workplace relations legislation since 1 January 2004. It was inserted into the *Workplace Relations Act 1996* by the *Workplace Relations Amendment (Improved Protection for Victorian Workers) Act 2003*.