

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

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

**Outcome 5 - Workplace Relations**

**DEEWR Question No.EW0192\_11**

**Senator Fisher asked on 31/05/2010, Hansard page 76.**

**Question**

***PAID PARENTAL LEAVE BILL***

Senator FISHER—.....My question is whether an amendment to this end would need to be dealt with under and, therefore, consequential to the Paid Parental Leave Bill and whether an amendment of this nature would need to be done through the fair work legislation and, in fact, could not be done through the paid parental leave legislation. That is my question. Mr Kovacic—I will take that on notice. Senator FISHER—If your answer is, ‘Yes, it can be,’ what then is there to prevent the Commonwealth from circumventing the referral of powers legislation to make workplace relations amendments other than through the Fair Work Act? With the referral of powers, what is to stop the Commonwealth from getting around the consultation period or anything else that it may consider undesirable by legislating workplace relations matters elsewhere? Mr Kovacic—You have asked the primary question and I have taken that question on notice. Senator FISHER—And you will take that further question on notice— Mr Kovacic—That further question is a contention on the second answer and— Senator FISHER—please, Mr Kovacic? Mr Kovacic—Certainly. I was going to come to that. Senator FISHER—My final question on this issue is: would the Commonwealth have constitutional power to amend the Paid Parental Leave Bill in this respect? Mr Kovacic—I will take that question on notice as well.

**Answer**

State references of workplace relations matters to the Commonwealth support the application of the *Fair Work Act 2009* and amendments to that Act, as well as the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* to employers and employees in all States except Western Australia who are otherwise outside Commonwealth power. Consistent with this, the consultation requirements contained in the Inter-Governmental Agreement for a National Workplace Relations System relate only to changes proposed to be made to the Fair Work legislative framework.

As is the case in other contexts where States have referred matters to the Commonwealth Parliament, State references in relation to workplace relations matters do not affect the Commonwealth Parliament’s capacity to enact legislation in relation to that subject matter in reliance on its own constitutional powers. The Paid Parental Leave Bill relies exclusively on Commonwealth legislative powers; it does not rely on any references from the States.