

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

**QUESTIONS ON NOTICE
Budget Estimates 2011-2012**

Outcome 5 - Workplace Relations

DEEWR Question No.EW0306_12

Senator Abetz asked on 30/05/2011, Hansard page 113.

Question

Records Management For Job Applications

Senator ABETZ: Have you provided any advice to employers that they should, therefore, keep all job applications and notes of any interviews for a period of six years even for the non-successful applicants? Mr Kovacic: I am not aware that we have. I will take it on notice as to whether we have. I might suggest that I would not mind also taking that question on notice for the scenario that you are outlining, just to affirm the advice that Mr O'Sullivan has provided and to ensure that we are providing accurate advice to the committee. Senator ABETZ: Thank you

Answer

The department has not provided any advice to employers that they should keep all job applications and notes of any interviews for a period of six years. The department's position is that it is a judgment for individual employers to make as to what recruitment records they keep and for how long, having regard to, amongst other things, their respective risk profile and the cost/benefits to the employer associated with keeping such records.

With regard to the example given by the Senator (i.e. a refusal to engage on the basis of union activities), the evidentiary onus on the employer to prove that such discrimination was not for a prohibited reason is the same under the *Fair Work Act 2009*(FW Act) as it was under the *Workplace Relations Act 1996* (WR Act). The limitation of actions for similar 'freedom of association' claims under the WR Act was determined by reference to State laws. The department is not aware of any such actions being brought before the courts or Fair Work Australia.

In relation to the advice that Mr O'Sullivan has provided, the department confirms that an adverse action application relating to a refusal (contrary to s.340 of the FW Act) to employ a prospective employee can be made under s.539 of the FW Act within six years after the day on which the refusal occurred.