

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

**QUESTIONS ON NOTICE
Budget Estimates 2012-2013**

Outcome 4 – Workplace Relations and Economic Strategy

DEEWR Question No. EW0144_13

Senator Xenophon provided in writing.

Question

**Australian and International Pilots Association v Fair Work Australia [2012]
FCAFC 65**

Recently (10 May 2012), the Full Bench of the Federal Court decided *Australian and International Pilots Association v Fair Work Australia* [2012] FCAFC 65. The following appeared on 11 May 12 in WorkplaceInfo: Justice Perram said that under s411 of the Fair Work Act 2009, Qantas' response only had to be causally connected to the employees' action. 'The response required by s411 does not have to be reasonable, proportionate or rational,' he said. 'Indeed, it would be a response under s411 even if Qantas's motives were shown to be, as in the case of the pilots they probably were, opportunistic.' 'Further, s411 neither requires that the response action be taken solely in response to the industrial action of the party with whom the proposed enterprise agreement may be made nor that it be predominantly or even substantially in response to the employee claim action.' 'All that is required is that it is a response. The threshold is low.'

- Notwithstanding the current Post-implementation Review of the Act, does DEEWR regularly review FWA-related court decisions as a way of monitoring the approach of the various Courts to the FWA 09?
- Was the intention of s411 to permit responses that are not "reasonable, proportionate or rational"?
- In the current circumstances, would DEEWR provide an internal input to the Post-implementation Review based on that decision or would it be left to those affected by the decision?

Answer

The responses below correspond to the questions listed in the dot-points above.

1. Yes.
2. The intention underpinning Section 411 of the *Fair Work Act 2009* (FW Act) is to set out the elements that make industrial action 'employer response action' for the purposes of the FW Act. The section does that.
3. The post-implementation review of the FW Act is now complete. While the Department did not make a submission to the Review, other parties to these proceedings including Qantas, the Australian and International Pilots Association, the Transport Workers' Union of Australia, the New South Wales Government and the Victorian Government did.