

**SENATE STANDING COMMITTEE ON
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS**

**QUESTIONS ON NOTICE
SUPPLEMENTARY ESTIMATES 2009-10**

Outcome/Agency **Fair Work Australia**

DEEWR Question No. **EW614_10**

Senator Humphries asked on 22 October 2009 EEWHR Hansard page 45.

Question

Senator HUMPHRIES—Are you prepared to at least consider that? Obviously at least one person that we know of has incurred the expense of retaining a lawyer, had the lawyer appear at the first day of the hearings and has been told to go away, that he cannot use the lawyer. This person, or this company, presumably has lost some sum of money by retaining a lawyer futilely.

.....

Mr Lee—We can take that on notice, Senator. It would require an examination of the practicalities of that type of arrangement. I would refer to what Mr Nassios said, though, in particular the query as to the extent to which there have been changes in this part of the act. On my reading of it also it is something that has been in place for a very long time—this particular provision—and has stood the test of time. But I am happy to take that on notice.

Answer

Fair Work Australia has provided the following response:

Section 596(2) of the Fair Work Act 2009 provides that

“FWA may grant permission for a person to be represented by a lawyer or paid agent in a matter before FWA only if:

- (a) it would enable the matter to be dealt with more efficiently, taking into account the complexity of the matter; or
- (b) it would be unfair not to allow the person to be represented because the person is unable to represent himself, herself or itself effectively; or
- (c) it would be unfair not to allow the person to be represented taking into account fairness between the person and other persons in the same matter.

Note: Circumstances in which FWA might grant permission for a person to be represented by a lawyer or paid agent include the following:

- (a) where a person is from a non-English speaking background or has difficulty reading or writing;
- (b) where a small business is a party to a matter and has no specialist human resources staff while the other party is represented by an officer or employee of an industrial association or another person with experience in workplace relations advocacy.”

In general terms, the predecessor to section 596 of the Fair Work Act 2009 was section 100 of the Workplace Relations Act 1996. Insofar as is relevant, section 100(6) of the Workplace Relations Act 1996 provided that leave could be granted to a lawyer or paid agent having regard to:

- whether being represented by counsel, solicitor or agent would assist the party concerned to bring the best case possible;
- the capacity of the particular counsel, solicitor or agent to represent the party concerned;
- the capacity of the particular counsel, solicitor or agent to assist the Commission in performing the Commission's functions under this Act.
- the complexity of the factual and legal issues relating to the proceeding;
- whether there are special circumstances that make it desirable that the party concerned be represented by counsel, solicitor or agent;
- if the party applies to be represented by an agent—whether the agent is a person or body, or an officer or employee of a person or body, that is able to represent the interests of the party under a State or Territory industrial relations law.

The Fair Work Australia website provides information on representation on matters before Fair Work Australia under the heading 'About Hearings and Conferences'.