

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2016 - 2017

Agency - Fair Work Commission

Department of Employment Question No. EMSQ17-001467

Senator Cameron asked on 02 March 2017 on proof Hansard page 10

Question

FWC - Process to change an agreement

Senator CAMERON: So the employer cannot take any action against a union or its members who say, 'We don't want to change the agreement.' There is nothing the employer can do legally.

Ms O'Neill: I am not in a position to provide such a broad confirmation of the proposition that you have put.

Senator CAMERON: Why not?

Ms O'Neill: I am happy to take it on notice, but in terms of—

Answer

Variation of an enterprise agreement is covered by ss.207 – 218 of the *Fair Work Act 2009* (FW Act).

A variation of an enterprise agreement is made when a majority of affected employees who cast a valid vote approve the variation. The variation has no effect unless it is approved by the Fair Work Commission (Commission) under s.211 of the FW Act.

Part 3-1 of the FW Act provides employees with protection from adverse action being taken because they have or have exercised a workplace right. "Workplace right" is defined in s.341 of the FW Act as including:

- being entitled to the benefit of a workplace instrument (including an enterprise agreement); and
- being able to participate in a process or proceeding under a workplace law (including making, varying or terminating an enterprise agreement).

An enterprise agreement may also be varied by the Commission to remove an ambiguity or uncertainty, or if the agreement is referred to it by the Australian Human Rights Commission.