

Senate Standing Committee on Education Employment and Workplace Relations

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

Outcome 4 - Workplace Relations and Economic Strategy

DEEWR Question No. EW0937_13

Senator Back asked on 13 February 2013, Hansard page 101

Question

Potential employer requesting medical history

Senator BACK: Can I ask for clarification? Is it discriminatory to ask for someone's medical history at the time you contemplate employing them? Mr O'Sullivan: I would have to take that on notice. I have a feeling that question should probably be directed to the Attorney-General's Department, which deals with discrimination legislation more broadly. Senator Jacinta Collins: We will have to take it on notice. Senator ABETZ: In the context of employment surely the department must know, within the context— Mr Kovacic: We will take it on notice, Senator, to give you a definitive answer. Senator ABETZ: If an employer were to ring up the Fair Work Ombudsman and say 'Can I do this?' the Fair Work Ombudsman would be saying: 'Thanks for that. We will ring up the Attorney-General's Department and get back to you.' I would have thought we would have had an answer. Mr Kovacic: My sense is that it probably is, but just to confirm that that is the case, we will take it on notice, Senator.

Answer

No. Unlawful discrimination in this context is more likely to arise from a misuse of such information, not from merely requesting it. Employers can validly use medical information to assess a candidate's fitness to fulfil the inherent requirements of the position.

This answer takes into account the *Fair Work Act 2009* (the general protections provisions being of particular relevance) and Commonwealth and State anti-discrimination legislation.