

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

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

Agency - Fair Work Australia

DEEWR Question No. EW0728_12

Senator Abetz asked on 19 October 2011 , Hansard page 20

Question

FWA - memorandum for Fair Work Australia

Senator RONALDSON: I gather that Mr Williams prepared a memorandum for Fair Work Australia on the progress that had been made in relation to the investigation into Mr Thomson and the HSU. If so, what was the date of that memorandum? Ms O'Neill: Senator, I will take that on notice if I can. Senator RONALDSON: Will you provide the committee with a copy of that memorandum, please? Ms O'Neill: Again, I will take that aspect of the question on notice. Senator RONALDSON: Are you saying that you will or you will not? Ms O'Neill: I am saying that I will take it on notice. As you are aware both investigations are ongoing. No conclusions have been reached at this stage and advice has been obtained that there is a very real risk of prejudice to the investigation or of possible civil or criminal proceedings that may ensue, because the risk of prejudice is high, I am being particularly cautious and taking questions on notice so that they can be carefully considered and legal advice obtained so that no inadvertent disclosures are made.

Answer

Fair Work Australia has provided the following response:

I refer to the Senate's Order of 13 May 2009 governing the raising and treatment of claims of public interest immunity in committee proceedings. I consider the provision of the information required to answer question EW0728_12 would be harmful to the public interest. I am of this view for the following reasons.

The legislative scheme of the Fair Work (Registered Organisations) Act 2009 (RO Act) is directed at ensuring that an organisation discharged obligations of accountability to its members in relation to the financial affairs of the organisation through proper and regular disclosure of financial information.

Inquiries are conducted under section 330 of the RO Act into whether Part 3 of Chapter 8 of the RO Act, the reporting guidelines made under that Part, regulations made for the purposes of that Part, or the rules of an organisation relating to its finances or financial administration have been, or are being, complied with.

If there are reasonable grounds for doing so, an investigation into whether a civil penalty provision has been contravened can be conducted. If, at the conclusion of an

investigation, I, as Acting General manager, am satisfied that the reporting unit concerned has committed a contravention, the reporting unit must be notified and I may do all or any of the following:

- (a) issue a notice to the reporting unit requesting that the reporting unit takes specified action, within a specific period, to rectify;
- (b) apply to the Federal Court for an order under Part 2 of Chapter 10 (civil penalty provisions);
- (c) refer the matter to the Director of Public Prosecutions for action in relation to possible criminal offences.

Question EW0728_12 seeks information about the ongoing investigation. The document sought contains information relating to the documents received by my delegate, the actual or possible course of the investigation and the particulars of available or potentially available evidence. Part of the document contains material that is subject to legal professional privilege. As the investigation has not concluded and no decision has been made by me whether to take action under any or all of the actions specified in (a), (b), and (c) above, the prospect of inflicting prejudice by answering question EW0728_12 on persons and the organisations the subject of the investigation, is substantial.