

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

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

Agency - Fair Work Australia

DEEWR Question No. EW0596_13

Senator Abetz on 17 October 2012, Hansard page 20.

Question

Senator ABETZ: So the more offences you commit, according to Fair Work Australia, the more complicated it becomes and, therefore, the fewer the matters that are going to be prosecuted. I would have thought, if you have made this clear finding of the provision of false and misleading information, which is in direct contravention of section 337 of the Fair Work (Registered Organisations) Act, that that was a matter that should be pursued. Has any legal advice being sought in relation to this?

Ms O'Neill: I will take that on notice, because my attention has also just been drawn to the fact that that provision is in fact an offence; it is not a civil penalty provision. So I will take it on notice, but it appears that that would not be a matter for me to initiate proceedings on and prosecute as an offence.

Senator ABETZ: But how are the prosecuting authorities going to find out that Mr Thomson provided you with false and misleading information unless you ask the relevant authority to prosecute it? This is another case, is it not, of Fair Work Australia not prosecuting these matters and not cooperating with the relevant authorities to get these matters brought before the court?

Ms O'Neill: I do not think that is a correct characterisation, but I have said I will take that on notice.

Senator ABETZ: This is now a matter you say you cannot personally pursue. Who would need to prosecute that?

Ms O'Neill: I have said I would take it on notice, for the reason that, rather than speaking on the hop, if you like, I would prefer to give a considered response to it.

Answer

Fair Work Australia has provided the following response.

FWA has not previously sought legal advice on this issue as it was unnecessary to do so.

Section 337 of the *Fair Work (Registered Organisations) Act 2009* (RO Act) provides, and provided at all material times as follows:

337 Offences in relation to investigation by General Manager

- (1) A person commits an offence if:
 - (a) the person does not comply with:
 - (i) a requirement under subsection 335(2) to attend before the General Manager or delegate; or

- (ii) a requirement under subsection 335(2) to give information or produce a document; or
- (b) the person gives information, or produces a document, in purported compliance with a requirement under subsection 335(2), and the person knows, or is reckless as to whether, the information or document is false or misleading; or
- (c) when attending before the General Manager or delegate in accordance with a requirement under subsection 335(2), the person makes a statement, whether orally or in writing, and the person knows, or is reckless as to whether, the statement is false or misleading.

Maximum penalty: 30 penalty units.

- (2) Strict liability applies to paragraph (1)(a).

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

- (3) Paragraph (1)(a) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) A person is not excused from:

- (a) giving information; or
- (b) producing a document; or
- (c) answering a question;

under subsection 335(2) on the ground that the information, the production of the document, or the answer to the question, as the case may be, might tend to incriminate the person or expose the person to a penalty.

- (5) However, in the case of an individual:

- (a) the information given, the document produced, or the answer given; and
- (b) giving the information, producing the document, or answering the question; and
- (c) any information, document or thing obtained as a direct or indirect consequence of giving the information, producing the document or answering the question;

are not admissible in evidence against the person in:

- (d) criminal proceedings, other than proceedings under, or arising out of, paragraph (1)(b) or (c); or
- (e) civil proceedings for the recovery of a penalty.

Craig Thomson participated in an interview in the course of the investigation into the HSU National Office on one occasion only, on 15 September 2010. Mr Thomson did so on a voluntary basis. There is no offence under the RO Act for giving false and misleading evidence in the course of a voluntary interview. An element of the offence under section 337 is that the information must be given on a compulsory basis arising from the General Manager's exercise of powers under sub-section 335(2). As such, Mr Thomson could not breach section 337 in providing information to FWA voluntarily.