

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

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

Outcome 4 – Workplace Relations and Economic Strategy

DEEWR Question No. EW0686_13

Senator Abetz asked on 17 October 2012 , Hansard page 121

Question

Re-employment of public servants

Senator ABETZ: All right. Was any assessment undertaken as to whether that might disadvantage the potential re-employment of public servants, especially in Queensland? Mr Kovacic: The policy intent underpinning the bill is to ensure that state public sector employees' terms and conditions of employment are protected where a transfer of business occurs between a state public sector employer and a national system employer, and that was the key element in terms of the bill. Building on the point I made before, were the bill to be passed by the parliament, what it would do is, as far as possible, set up a nationally consistent set of transfer-of-business provisions for when public sector employees are involved in a transfer of business. In terms of the question you asked, I would have to take that on notice.

Answer

The Panel for the Post-Implementation Review (the Panel) considered the existing transfer of business provisions of the *Fair Work Act 2009* (the Act) in detail. While some employers submitted that the provisions discourage an employer taking on transferring employees, the Panel found that there was little, if any, evidence presented that this had been occurring other than within corporate groups (which would have limited practical relevance in relation to transfers covered by new Part 6-3A of the Act). Although the Panel concluded that it was not possible on the available evidence to draw a strong conclusion either way, it noted that its view was that 'it is likely that that the benefit to the new employer of experienced staff transferring to undertake the relevant work, balances out the potential concerns about transferring pay and conditions arrangements.'

Employees working in the Commonwealth, Victorian, Northern Territory and Australian Capital Territory public sectors already have the benefit of the transfer of business protections in the Act. The Panel gave no indication that it considered the Act's existing transfer of business provisions had any different effect for public sector employees.

As the *Fair Work Amendment (Transfer of Business) Act 2012* does no more than extend (with necessary modifications) the Act's existing transfer of business protections to public sector employees in the other states when they transition into the national workplace relations system, the Panel's conclusion is particularly relevant.