

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

**QUESTIONS ON NOTICE  
Additional Estimates 2009-2010**

**Agency - Fair Work Ombudsman**

**DEEWR Question No.EW0955\_10**

**Senator Abetz asked on 10/02/2010, Hansard page 39.**

**Question**

*NEW MODERN AWARD*

Senator ABETZ—... What about if I am an employee and the employer has paid me under the new modern award as of 1 January, but then there is a variation which says I should be paid more. Will the employer have to provide me with back pay for that period? Mr Wilson—Again, I will take that on notice. It clearly would depend on the commencement date of the variation, but I will take that on notice. Senator ABETZ—Yes, of course, but in the event that the variation were then back-dated to commence on 1 January for both scenarios. Mr Wilson—Right.

**Answer**

*The Fair Work Ombudsman has provided the following response:*

Fair Work Australia can make an order varying a modern award with retrospective effect but only if it is satisfied that it is appropriate to do so in exceptional circumstances to remove an ambiguity or correct an error.

The terms of such a retrospective order, including whether such an order entitles an employee to back pay as a consequence of the retrospective effect, is a matter for Fair Work Australia.

The Fair Work Ombudsman will be guided by the specific terms of any such orders.