

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

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

**Agency - Fair Work Ombudsman**

**DEEWR Question No. EW0894\_13**

**Senator Abetz asked on 13 February 2013 , Hansard page 36**

**Question**

**Enforcement of dress code in the workplace**

Senator ABETZ: ... Can I ask whether the case that was reported in the Adelaide Advertiser on 12 February, 'Non-Muslim teachers ordered to wear scarf'—is that something that the Fair Work Ombudsman has had drawn to its attention or the attention of the office? What sorts of powers does an employer have to tell an employee—I suppose within reason you can ask people to be dressed appropriately and, just picking on something, not too scantily, for example, for particular tasks; but is it legally possible for an employer to say to a woman, 'You will need to wear a headscarf'? Mr Wilson: The particular issue I do not think has been brought to our attention. Certainly no-one here this morning has knowledge about it. In relation to the second question—can employers direct people to wear particular types of clothing—it is an unsatisfactory answer but it is probably the only one I can give: that depends. It depends on the policies of the workplace. Senator ABETZ: Like safety vests, safety glasses, uniforms. Mr Wilson: It would be possible to imagine a set of policies which said that men should wear this particular type of dress, which may or may not have connotations with particular ethnic backgrounds, and women should wear this type. That is an inadequate answer, but you could do it. Senator ABETZ: Could somebody take a look at that for us on notice? Mr Wilson: The question we are taking on notice is what—can I just be precise about it? Senator ABETZ: In this very specific case: Adelaide Advertiser, 12 February 2013, page 1—the story that is reported there as to what rights the employer has in that particular circumstance. And we will limit it to that.

**Answer**

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

The article referred to in the *Adelaide Advertiser* on 12 February 2013 relates to allegations of unfair dismissal against a school in South Australia.

The Fair Work Ombudsman (FWO) has not received a formal complaint in relation to this matter, however a representative of the FWO has been in contact with the employer and discussed the circumstances, including the General Protections provisions of the *Fair Work Act 2009* (FW Act).

Section 351 of the FW Act sets out the provisions relating to workplace discrimination. Under these provisions, it is unlawful to take adverse action against a person on the grounds of 13 named attributes, including religion.

Section 351(2) also provides that the action won't be considered discrimination under certain circumstances including:

*... (b) taken because of the inherent requirements of the particular position concerned; or*

*(c) if the action is taken against a staff member of an institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed—taken:*

*(i) in good faith; and*

*(ii) to avoid injury to the religious susceptibilities of adherents of that religion or creed.*

Complaints regarding adverse action may be lodged with the FWO. Applications for relief in respect of adverse action can be lodged with the Fair Work Commission (FWO).

Policies regarding dress codes in workplaces are not specifically contained within the provisions of the FW Act, however these types of matters may be contained in workplace policies.

In relation to the particulars of this case, it is understood that an unfair dismissal application has been lodged with the FWC.