

## Senate Standing Committee on Education Employment and Workplace Relations

### QUESTIONS ON NOTICE Additional Estimates 2012-2013

#### Outcome 4 - Workplace Relations and Economic Strategy

DEEWR Question No. EW0945\_13

Senator Abetz asked on 13 February 2013, Hansard page 122

#### Question

#### Flexible Working Arrangements- No Reasonable Grounds to Reject and Worker's Redress

Senator ABETZ: Yes; that they can now start talking, whereas before they could not, allegedly. But if they do exercise this new found right to talk to their employer and the employer says, 'Look, reasonable request and I've got no reasonable business grounds to reject it but guess what? I'm going to anyway'—I would imagine that there are no employers like that in the country, but in the event that there is one, two or even a thousand of them—what redress does the worker have in the face of such a letter from their boss? Mr Kovacic: I would highlight two things, but I will take the specific question on notice just to make sure that I give you a clear response. Section 65(6) states that, if the employer refuses the request, the written response under subsection (4) must include details of the reasons for the refusal. The risk is that, if it falls foul of that particular requirement— Senator ABETZ: All right; because I do not want to. That is my reason. I have given you a reason now. What is the worker's redress? Mr Kovacic: I will take on notice whether 'because I don't want to' would constitute reasonable business grounds. I will take that on notice.

#### Answer

A request for flexible working arrangements by an employee under section 65 must be in writing and an employer must respond in writing to the request within 21 days. Subsection 65(5) provides that a request for flexible working arrangements can only be refused by an employer on 'reasonable business grounds'. If an employer refuses the request, subsection 65(6) of the *Fair Work Act 2009* (Fair Work Act) requires the employer's written response to include details of the reasons for refusal.

An employee is able to enforce the procedural requirements relating to the right to request and an employer's refusal. An employer who seeks to deny an employee the opportunity to request flexible working arrangements, or fails to respond in writing or provide details of the reasons for a refusal of a request, would be in breach of section 44 of the Fair Work Act and be exposed to civil penalties under Part 4-1 of the Fair Work Act. Division 2 of Part 4-1 of the Fair Work Act provides for the Federal Court or the Federal Magistrates Court to make any order the court considers appropriate where it is satisfied that a person has contravened or proposes to contravene a civil remedy provision (subsection 545(1)).

However, these provisions do not extend to the reasonableness of the decision to refuse a request for flexible working arrangements. Under the Fair Work Act, the 'reasonableness' of grounds for refusing a request for flexible working arrangements is not subject to review in either the Federal Court or Federal Magistrates Court, or before the Fair Work Commission (FWC).