

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

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

**Agency - Fair Work Ombudsman**

**DEEWR Question No.** EW0190\_13

**Senator Abetz asked on 28 May 2012 , Hansard page 63**

**Question**

**Award Flexibility**

Senator ABETZ: So if it is determined objectively at a later stage that the worker was not better off overall, despite the protestations of the employee at the time that he is better off overall, what is the situation for the employer? Mr Wilson: We are looking at it from the point of view of the Fair Work Ombudsman jurisdiction. We will take on notice the proposition you are putting to us about the Fair Work Ombudsman jurisdiction, and we will come back and be quite specific about what we can or cannot do.

**Answer**

*The Fair Work Ombudsman has provided the following response*

Under the *Fair Work Act 2009*, it is the employer's responsibility to ensure that any individual flexibility arrangement (IFA) results in the employee being better off overall. This is one of the procedural requirements for the creation of an IFA.

The Fair Work Ombudsman can investigate the following types of complaints relating to IFAs:

- The Fair Work Ombudsman can investigate a claim that the IFA was not genuinely agreed to by the employer and employee.
- The Fair Work Ombudsman can investigate a complaint that an employer exerted undue influence or undue pressure on an employee in relation to a decision by the employee to agree to an IFA or terminate an IFA, contrary to s.344(c) of the Act.
- The process of making or terminating an IFA under a modern award or enterprise agreement is a workplace right (s.341(2)). The Fair Work Ombudsman can investigate a claim that a person took adverse action against another because of his or her workplace right relating to the making or termination of the IFA.
- It is unlawful for a person to organise or take action, or threaten to organise or take action, with intent to coerce another person to exercise or not exercise a workplace right or to exercise or propose to exercise a workplace right in a particular way (s.343). The Fair Work Ombudsman can investigate an allegation of coercion under s.343.

- The terms of an IFA must be honoured. The Fair Work Ombudsman can investigate whether an employer has failed to comply with the undisputed terms of an IFA. An IFA is a term of the relevant award or enterprise agreement.