

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

**QUESTIONS ON NOTICE
Supplementary Budget Estimates 2010-2011**

Agency - Fair Work Ombudsman

DEEWR Question No.EW0557_11

Senator Abetz asked on 20/10/2010, Hansard page 25.

Question

FWO WEBSITE

Senator ABETZ—Do you think it might be wise to have some sort of statement on the website that just because you have a valid complaint it does not mean that the Fair Work Ombudsman can necessarily assist in every case? Mr Wilson—I would be absolutely certain that that is there now. Senator ABETZ—If somebody could confirm that for us and point out where on the website it could be found, that would be helpful.

Answer

The Fair Work Ombudsman provided the following answer:

Fair Work Online (www.fairwork.gov.au), the Fair Work Ombudsman's website, contains a number of statements setting out that the Fair Work Ombudsman may not be able to assist in every complaint made to it. These include:

- While the Fair Work Ombudsman may look into a workplace complaint that happened more than 6 years ago, it cannot take the person to court or enforce the resolution of the complaint:
<http://www.fairwork.gov.au/complaints/making-a-complaint/pages/default.aspx>
.
- If the party the complaint is about does not fix the identified issues, the Fair Work Ombudsman will advise the complainant of what legal options may be available to them:
<http://www.fairwork.gov.au/complaints/making-a-complaint/pages/what-next.aspx>.
- At the enforcement stage of an investigation, there are a number of possible outcomes or enforcement actions which may be undertaken, including a possible referral to small claims procedures. A Fair Work Inspector determines the best course of action dependent upon the specific circumstances:
<http://www.fairwork.gov.au/about-us/investigations/pages/stages-in-an-investigation.aspx>.

- Fair Work Inspectors determine the best course of action dependant upon the specific circumstances of the case:
<http://www.fairwork.gov.au/guidancenotes/GN-8-FWO-Investigative%20Process.pdf> (Guidance Note 8 – FWO Investigative Process).
- The decision whether to recommend that legal proceedings be commenced (or some other enforcement activity) rests with the Fair Work Inspector and their Executive Level 2 Manager in consultation with relevant Field Operations Executive Directors and the Group Manager of Field Operations. Any decision to commence proceedings requires a two-stage test be satisfied:
 - a. First, there must be sufficient evidence to prosecute the case; and
 - b. Secondly, it must be evident from the facts of the case, and all the surrounding circumstances, that commencing proceedings is in the public interest.<http://www.fairwork.gov.au/guidancenotes/GN-8-FWO-Investigative%20Process.pdf> (Guidance Note 1 – FWO Litigation Policy).
- Employees of sole traders, partnerships or other unincorporated organisations in Western Australia are not part of the national workplace relations system and are therefore outside of the Fair Work Ombudsman’s jurisdiction:
<http://www.fairwork.gov.au/faqs/the-fair-work-system/pages/default.aspx>