

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

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

Agency - Fair Work Ombudsman

DEEWR Question No. EW0608_13

Senator Abetz asked on 17 October 2012 , Hansard page 34

Question

FWO - Pursual of matters once they have been settled civilly

Senator ABETZ: That is what some people and organisations are starting to think—that they can report an illegality to the inspectorate, who can commence a prosecution and whatever else; and then, if the parties settle the matter, that is the end of the story. But the public interest might actually require that the matter be prosecuted. For example, if I go through a red light and collide with your car, Mr Wilson, and I pay for the damage to your car, that should not exempt me from being prosecuted by the police for going through a red light. And, if we do not allow that for a small traffic infringement, why on earth are we allowing this for major industrial activities? I do not expect you to comment on that; that is an issue of policy. But, continuing the analogy, if you were to report the matter to a different police force—instead of the inspectorate, to the Fair Work Ombudsman—I could potentially still be charged for going through that red traffic light. That is what I am trying to tease out with you: if people take their complaints to the Fair Work Ombudsman, as opposed to the inspectorate, for certain illegal industrial activity, then matters against the offending parties can be prosecuted right to the end, even if civil matters have settled. Mr Wilson: I have not had anyone directly come to us with a matter that they say we need to investigate in that area. But I— Senator ABETZ: But can they? And how would they be dealt with? Mr Wilson: What I was about to say is that I just do not know, because we have not had to turn our minds to whether or not that is the case. Senator ABETZ: In that case, would you be so kind as to take that on notice, because I think there are elements within the community who would like to know whether they should be reporting matters to the Fair Work Ombudsman, which might have more teeth, more oomph, as opposed to the inspectorate, which some are now saying is in fact a waste of time. If you can come back to us on whether that would be a worthwhile activity for them, that would be much appreciated. Mr Wilson: Certainly.

Answer

The Fair Work Ombudsman has provided the following response.

The Australian Government established both the Fair Work Ombudsman (FWO) and Fair Work Building and Construction (FWBC) as part of its regulatory policy for Commonwealth workplace laws.

Whilst the agencies have jurisdictions which may overlap in certain instances, the FWBC has specific responsibility in the building and construction industry.

Specifically, the *Fair Work (Building Industry) Act 2012* (the BI Act) established FWBC, with the function to regulate workplace relations laws in the building and construction industry through education, advice and compliance activities. This includes monitoring building industry participants' compliance with 'designated building laws.' Designated building laws are defined by the BI Act to include the *Fair Work Act 2009*.

Accordingly, it is the policy of the FWO to refer all building industry participant matters to the FWBC. Arrangements, including MOUs between the two agencies, are in place to enable these referrals.