

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

**QUESTIONS ON NOTICE
Budget Estimates 2011-2012**

Outcome 5 - Workplace Relations

DEEWR Question No. EW0057_12

Senator Abetz provided in writing.

Question

Flexible Work Arrangements

The National Employment Standards provide a statutory right for eligible employees have a right to request flexible working arrangements for employees to assist them to care for their child. The employer can reject such a request on reasonable business grounds and this is not subject to any review/appeal, judicial or otherwise. 1. Is the Government aware that where employers are rejecting such requests on reasonable business grounds, they are then facing adverse action claims based on discrimination, in that the employee has carer responsibilities? 2. Does the Government believe that this is a fair and correct application of the NES and by extension the adverse action claims? 3. Was this the original intention of the Act?

Answer

The Government is not aware of adverse action claims being brought under the *Fair Work Act 2009* (FW Act) alleging that an employer's rejection on reasonable business grounds of an employee's request for flexible working arrangements constitutes adverse action on the basis of carer's responsibilities.

The effect of s.44(2) of the FW Act is to remove the possibility of orders made under Part 4-1 of the FW Act (Civil Remedies), in relation to a contravention, or alleged contravention, of a refusal to grant a request for flexible working arrangements.

Subsection 44(2) was not intended to and nor does it have the effect of providing a shield against legitimate actions being brought for discrimination on unlawful grounds, and nor does it operate to limit the Federal Court's jurisdiction, as provided by s.562 of the FW Act.