

Your responses suggest that you may apply to the Fair Work Commissioner to deal with the matter.

Division 3—Workplace rights

340 Protection

- (1) A person must not take adverse action against another person:
 - (a) because the other person:
 - (i) has a workplace right; or
 - (ii) has, or has not, exercised a workplace right; or
 - (iii) proposes or proposes not to, or has at any time proposed or proposed not to, exercise a workplace right; or
 - (b) to prevent the exercise of a workplace right by the other person.

Note: This subsection is a civil remedy provision (see Part 4-1).

- (2) A person must not take adverse action against another person (the ***second person***) because a third person has exercised, or proposes or has at any time proposed to exercise, a workplace right for the second person's benefit, or for the benefit of a class of persons to which the second person belongs.

341 Meaning of *workplace right*

Meaning of workplace right

- (1) A person has a ***workplace right*** if the person:
 - (a) is entitled to the benefit of, or has a role or responsibility under, a workplace law, workplace instrument or order made by an industrial body; or
 - (b) is able to initiate, or participate in, a process or proceedings under a workplace law or workplace instrument; or
 - (c) is able to make a complaint or inquiry:
 - (i) to a person or body having the capacity under a workplace law to seek compliance with that law or a workplace instrument; or
 - (ii) if the person is an employee—in relation to his or her employment.

workplace instrument means an instrument that:

- (a) is made under, or recognised by, a workplace law; and
- (b) concerns the relationships between employers and employees.

workplace law means:

- (a) this Act; or
- (b) the Registered Organisations Act; or
- (c) the *Independent Contractors Act 2006*; or

- (d) any other law of the Commonwealth, a State or a Territory that regulates the relationships between employers and employees (including by dealing with occupational health and safety matters).

Prospective employees taken to have workplace rights

- (3) A prospective employee is taken to have the workplace rights he or she would have if he or she were employed in the prospective employment by the prospective employer.

Note: Among other things, the effect of this subsection would be to prevent a prospective employer making an offer of employment conditional on entering an individual flexibility arrangement.

342 Meaning of *adverse action*

- (1) The following table sets out circumstances in which a person takes *adverse action* against another person.

Meaning of *adverse action*

Item	Column 1 <i>Adverse action is taken by ...</i>	Column 2 <i>if ...</i>
2	a prospective employer against a prospective employee	the prospective employer: (a) refuses to employ the prospective employee; or (b) discriminates against the prospective employee in the terms or conditions on which the prospective employer offers to employ the prospective employee.

Subdivision B—Other contraventions

372 Application for the FWC to deal with a non-dismissal dispute

If:

- (a) a person alleges a contravention of this Part; and
(b) the person is not entitled to apply to the FWC under section 365 for the FWC to deal with the dispute;

the person may apply to the FWC under this section for the FWC to deal with the dispute.