

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2014 - 2015

Agency - Fair Work Commission

Department of Employment Question No. EMSQ15-000028

Senator O'Sullivan asked on 26 February 2015 on proof Hansard page 55

Question

FWC - Non-permitted matters

Senator O'SULLIVAN: This is my final question, on notice, and then I am completed. On this question of including non-permitted matters, you indicated that between the previous cases and the case that I have cited there was a decision that—

Justice Ross: Not all of the previous cases. There was a degree of tension between some of the previous cases.

Senator O'SULLIVAN: Yes, but you did cite a court decision that a commissioner might draw upon.

Justice Ross: Yes.

Senator O'SULLIVAN: Whatever weight it gave, whether it persuaded them or not, it was capable of persuading their thinking in relation to this particular matter.

Justice Ross: JJ Richards.

Senator O'SULLIVAN: I can probably search that myself, but if the commission has a copy of that could we take on notice to have the judgment?

Justice Ross: Certainly. The relevant extracts are referred to in the Esso full bench decision.

Senator O'SULLIVAN: Either way. As long as I can get sufficient material for me to get my head around it.

Justice Ross: Yes.

Answer

The decisions *J.J. Richards & Sons Pty Ltd v Fair Work Australia* [2012] FCAFC 53 and *Esso Australia Pty Ltd v AMWU, CEPU and AWU* [2015] FWCFB 210 are attached.