

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2015 - 2016

Agency - Fair Work Commission

Department of Employment Question No. EMSQ16-000013

Senator Lines provided in writing.

Question

FWC - Penalty rates case

In relation to the Penalty Rates Case (<https://www.fwc.gov.au/awards-and-agreements/modern-award-reviews/am2014305-penalty-rates-case>) please provide a short report on progress.

What has been the process?

How many witnesses have you heard from?

How many more do you expect?

When will a decision be reached?

Has there been any commentary about the evidence raised by either employers or unions?

Will the Commission be releasing a transcript of the Case and evidence presented?

If so, when?

If not, why not?

How many federal politicians have made a submission to the penalty rates case?

Answer

In relation to the penalty rates case please provide a short report on progress.

What has been the process?

The Penalty Rates Case is being dealt with as part of the 4 yearly review of modern awards, required by s.156 of the *Fair Work Act 2009*. The Penalty Rates Case arose in late-2014 from proposals by employers to alter penalty rates in modern awards in the hospitality and retail sectors. The issue is being dealt with by a specially constituted Full Bench. A penalty rates webpage¹ has been set up on the Fair Work Commission's (Commission's) website that includes information relevant to the case, including all submissions, correspondence and a detailed timetable².

The Commission has issued a series of Directions to interested parties that provide a time frame for submissions, witness evidence and hearings.

Hearings were held between August and December 2015 in Melbourne, Sydney and Brisbane with videoconferencing to other capital cities and, in some cases country centres, to hear witness evidence.

A Statement and Further Revised Directions were issued on 15 January 2016 regarding final submissions and related matters³. The Statement included the following:

¹ <https://www.fwc.gov.au/awards-and-agreements/modern-award-reviews/am2014305-penalty-rates-case>

² <https://www.fwc.gov.au/awards-and-agreements/modern-award-reviews/penalty-rates-case/timetable>

³ [\[2016\] FWCFB 285](#)

Any interested person who is not a party to the proceedings may put forward a position (and file material in support of their position) in relation to varying the penalty rate provisions in the above awards by no later than 4:00pm Wednesday 17 February 2016.

Further to the Statement and Revised Directions, the Commission published an advertisement in major daily newspapers on 20 January 2016. The advertisement invited persons, other than parties to the matter, to put forward their position regarding the proposal to vary penalty rates in awards in the hospitality and retail sectors.

Following the Statement and advertisement the Commission has received over 6,000 contributions from individuals. These contributions are being progressively published on the Commission's website.

The Further Revised Directions direct employer parties, union parties and interested persons to file final written submissions.

Final submissions are listed for hearing from 11 April 2016 to 15 April 2016⁴.

How many witnesses have you heard from?

More than 130 witnesses have appeared in these proceedings. This included a number of witnesses appearing from various places in regional Australia via video link.

How many more do you expect?

It is a matter for the Full Bench to determine whether further witnesses will be required to give evidence in the proceedings.

When will a decision be reached?

As noted earlier, final submissions are listed for hearing from 11-15 April 2016. It is a matter for the Full Bench when a decision will be issued.

Has there been any commentary about the evidence raised by other employers or unions?

A number of objections were made to lay and expert evidence. Written objections are published on the Commission's website⁵ and in-hearing objections have been recorded in transcript, which has been, or will be published on the Commission's website⁶.

Objections were made on a number of grounds including: no expertise in the area/opinion evidence not based on expertise; submission; hearsay; relevance, speculation; conclusion, and argument.

Objections were resolved by agreement between the parties, through conferences conducted by a Member of the Commission or by determination of the Commission. The Full Bench published a statement on 17 September 2015 addressing multiple objections raised in the course of proceedings⁷.

⁴ <http://www.fwc.gov.au/documents/sites/awardsmodernfouryr/nol-270216-305.pdf>

⁵ <https://www.fwc.gov.au/awards-and-agreements/modern-award-reviews/penalty-rates-case/submissions>

⁶ <https://www.fwc.gov.au/awards-and-agreements/modern-award-reviews/penalty-rates-case/transcript>

⁷ [2015] FWCFB 6467

Will the Commission be releasing a transcript of the Case and evidence provided? If so, when? If not, why not?

The Statement issued on 15 January 2016 indicated that transcript and a consolidated list of exhibits will be made publicly available:

“[14] The Commission will release a consolidated list of exhibits (the consolidated list) in relation to the Penalty rates case. The consolidated list will be a complete record of all evidence, as tendered, in the penalty rates case with cross-references to transcript (which will subsequently be made publically available)”⁸.

How many federal politicians have made submissions to the penalty rates?

Submissions are published on the Commission’s website⁹.

One submission indicates that it was made by a federal politician. A submission from Melissa Price, the Member for Durack, was filed on 14 December 2015.

⁸ [2016] FWCFB 285

⁹ <https://www.fwc.gov.au/awards-and-agreements/modern-award-reviews/penalty-rates-case/submissions>