

## **Senate Standing Committee on Education and Employment**

### **QUESTIONS ON NOTICE Budget Estimates 2016 - 2017**

**Agency - Fair Work Commission**

**Department of Employment Question No. EMSQ16-000798**

**Senator Williams asked on 06 May 2016 on proof Hansard page 71**

#### **Question**

#### **FWC - RSRT - Options given for witnesses to attend hearing**

Senator WILLIAMS: I am going to make another point here. I am aware of the case of Alina Hawkins. Ms Hawkins was one of the witnesses, I understand, who was subpoenaed by the tribunal to give evidence. Ms Hawkins has a baby, and I understand that Ms Hawkins raised the fact that she had a baby that she needed to care for when she was subpoenaed. What arrangements were made for Ms Hawkins either not to attend the tribunal in person or to be able to breastfeed her child while at the tribunal? Are you familiar with the witness?

Ms O'Neill: I am not, so I would have to take the detail on notice. But, as Ms Clarke indicated, our understanding is that witnesses were given the opportunity to give their evidence by way of phone rather than travelling to attend.

Senator WILLIAMS: Let me take you to that point, Ms O'Neill. Is it normal practice for the tribunal to require breastfeeding mothers to travel to the tribunal in person to give evidence?

Ms O'Neill: As I have indicated, our understanding is that witnesses were not required to attend. They were given the opportunity to give evidence in other forms. But in terms of any particular case, I do not have that information and I would have to take that on notice.

Senator WILLIAMS: Please do, because I would like to quote from an email Ms Hawkins received on 24 March 2016. After dealing with the notice to appear, the email concludes by saying:

You should be aware that it is an offence under section 89 of the Road Safety Remuneration Act to fail to attend at the Road Safety Remuneration Tribunal in accordance with an order requiring a person to attend. The penalty for such an offence is imprisonment for six months. Would you agree with that? That would not be false? You might check that out.

Ms O'Neill: No, I would not agree with that. If you wish to provide those details, I can assist in following up the—

Senator WILLIAMS: The point I make is this: it disgusts me to think that for a young, breastfeeding mum they used the heavy-handed tactic of, 'You'll show up or we'll lock you up for six months.' I just think that those are bully tactics, but we will move on.

I understand that the tribunal heard evidence on the first sitting day, the Saturday, from those witnesses who chose to give evidence over the phone. Was this option offered to all witnesses?

Ms O'Neill: I am sorry, I am not trying to be unhelpful, but these were all decisions of the tribunal and not administrative staff or—clearly—myself. And so—

Senator WILLIAMS: Fine, I can understand that; you were not sitting on the tribunal. But will you take it on notice?

Ms O'Neill: We will have to take that on notice.

Senator WILLIAMS: Because I specifically want you to see if Ms Hawkins had been offered that very offer that those people had on the Saturday—okay?

Ms O'Neill: Certainly.

Senator WILLIAMS: How did the tribunal choose which witnesses they would offer telephone attendance to? Would you not be able to answer that?

Ms O'Neill: I would not.

Senator WILLIAMS: But you might be able to find out for us?  
Ms O'Neill: I will do my best.

## **Answer**

*What arrangements were made for Ms Hawkins either not to attend the tribunal in person or to be able to breastfeed her child while at the tribunal? Are you familiar with the witness?*

*Is it normal practice for the tribunal to require breastfeeding mothers to travel to the tribunal in person to give evidence?*

*I understand that the tribunal heard evidence on the first sitting day, the Saturday, from those witnesses who chose to give evidence over the phone. Was this option offered to all witnesses?*

*I specifically want you to see if Ms Hawkins had been offered that very offer that those people had on the Saturday—okay?*

*How did the tribunal choose which witnesses they would offer telephone attendance to? Would you not be able to answer that?*

All summoned witnesses were offered the opportunity to apply via email to the Road Safety Remuneration Tribunal (RSRT) President's chambers to have their Order to attend set aside or varied.

Ms Hawkins contacted the RSRT's President's chambers and informed her Honour's associate that she had a baby and she was offered the opportunity to appear via telephone. Ms Hawkins refused this as she wanted to attend in person before the RSRT to give her evidence.

During proceedings, the President, through her associate, inquired whether Ms Hawkins had her baby with her in order for the RSRT to make any necessary arrangements. Ms Hawkins responded that her baby was not present.

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In relation to the offences for failing to attend before the RSRT, section 89 of the repealed *Road Safety Remuneration Act 2012* (Cth) provided that:

*'Required to attend*

(1) A person commits an offence if:

- (a) the person has been required to attend before the Tribunal; and
- (b) the person fails to attend as required.

Penalty: Imprisonment for 6 months.'