

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Budget Estimates 2017 - 2018

Agency - Fair Work Ombudsman

Department of Employment Question No. EMSQ17-004138

Senator Cameron asked on 30 May 2017 on proof Hansard page 43

Question

FWO - Tandara Spirit - changed legal interpretation date

Senator CAMERON: What was the date of the changed legal interpretation?

Mr Campbell: The decision at first instance by the Federal Court judge—Janine, do you know?

Ms Webster: I can take the date of that particular decision on notice,

Answer

On 24 July 2015, Justice Jessup of the Federal Court of Australia handed down his decision in *Esso Australia Pty Ltd v The Australian Workers' Union* [2015] FCA 758 (Esso Federal Court Decision). The decision represented a new precedent with respect to the requirements of the framing of orders under section 418 of the *Fair Work Act 2009*.

In August 2015, both Esso Australia Pty Ltd (Esso) and the Australian Workers' Union (AWU) filed appeals against the Esso Federal Court Decision.

On 25 May 2016, a Full Federal Court handed down its decision upholding the Esso Federal Court Decision of 24 July 2015.

In July 2016, both Esso and the AWU applied for special leave to appeal to the High Court of Australia. Amongst the grounds of appeal, Esso sought leave to appeal the finding by the Full Federal Court upholding the decision of Justice Jessup.

The High Court of Australia heard and decided the application for special leave on 16 December 2016. Esso's application for special leave in relation to the relevant issue, (that is, the reframing of orders under section 418 of the *Fair Work Act 2009*) was unsuccessful.