

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Supplementary Budget Estimates 2015 - 2016

Agency - Fair Work Commission

Department of Employment Question No. EMSQ15-000341

Senator Lines provided in writing.

Question

FWC - Low paid bargaining stream - operation

Can you please explain in detail how the low paid bargaining stream works?
How does it operate in practice?
Do you think it's having the desired effect?

Answer

Can you please explain in detail how the low paid bargaining stream works?

Part 2-4, Division 9 of the *Fair Work Act 2009* (FW Act) allows a party to apply to the Fair Work Commission (Commission) for a low paid authorisation.

When an application is made for a low-paid authorisation, the Commission is required to make the authorisation if it is considered in the public interest. In doing so, the Commission must consider 'historical and current matters relating to collective bargaining'. Section 243(2) of the FW Act outlines the matters the Commission must take into account in deciding whether or not to make an authorisation:

- (a) whether granting the authorisation would assist low-paid employees who have not had access to collective bargaining or who face substantial difficulty bargaining at the enterprise level;
- (b) the history of bargaining in the industry in which the employees who will be covered by the agreement work;
- (c) the relative bargaining strength of the employers and employees who will be covered by the agreement;
- (d) the current terms and conditions of employment of the employees who will be covered by the agreement, as compared to relevant industry and community standards;
- (e) the degree of commonality in the nature of the enterprises to which the agreement relates, and the terms and conditions of employment in those enterprises.

The Commission must also take into consideration matters relating to the likely success of collective bargaining (s.243(3) FW Act).

The Commission can, of its own initiative, provide the bargaining representatives with assistance if a low-paid authorisation is in operation. This assistance can take the form of facilitating bargaining for the agreement, consistent with the activities that the Commission would undertake if it were dealing with a dispute (s.246 FW Act).

How does it operate in practice?

The FW Act does not specify a process for the Commission when dealing with matters under Division 9, Part 2-4 of the FW Act. Accordingly, the Commission is able to deal with these matters utilising the full array of powers available to it.

Upon review of the small number of matters dealt with by the Commission, applications under this section tend to be dealt with by way of a hearing, where parties present evidence and make submissions regarding the legislative requirements. The Commission may then issue a decision determining the matter.

Do you think it's having the desired effect?

Outside of reviewing the Commission's own policies and procedure to increase its accessibility and transparency, the Commission does not generally comment on matters of policy.