

Senate Finance and Public Administration Legislation Committee — Budget Estimates Hearing—May 2017

Answers to Questions on Notice

Parliamentary departments, Department of Parliamentary Services

Topic: EA Ballot - casuals

Question: 34

Hansard Reference: p 122, 22 May 2017

Date set by the committee for the return of answer: 7 July 2017

Senator McALLISTER: I understand that in the approach taken to the last ballot, the department took a particular view about section 181 of the Fair Work Act, which was that 'employees employed at the time who will be covered by the proposed agreement must approve the agreement by voting for it'. I understand that in the last ballot that was interpreted to mean those staff who were on rostered on during that two-week period, and that resulted in 56 people voting—that information comes from an answer to question on notice 66. Is that the only interpretation of the Fair Work Act that is available to you in this instance?

Ms Croke: We do take advice on these things. I can take that on notice to see if there is any broader interpretation. We get legal advice on a lot of these matters and we operated within that advice at the time of the ballot as to which casual employees were eligible.

Answer

The advice provided to DPS supports the interpretation that section 181 of the Fair Work Act that 'employees employed at the time who will be covered by agreement' permits only casual to vote in the ballot only if they are 'employed by' being rostered on or working during the access and ballot period.

Casual employment at DPS operates with a pool of people available for casual work who are offered work on an 'as required' basis. DPS has no control over whether a person on the casual pool list will accept a rostered shift or be available for future offers of work as people on the casual pool list are free to refuse an offer of work. Likewise DPS cannot predict whether all people in the casual pool list will be offered work during a particular peak period of work such as the Senate Estimate weeks or other unanticipated busy periods.

DPS is aware of the broader interpretation of section 181 of the Fair Work Act contained in *McDermott Australia Pty Ltd v The Australian Workers' Union & The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union known as the Australian Manufacturing Workers' Union (AMWU)* [2016] FWCFB 2222. However, due to the nature of casual employment in DPS, this interpretation has no application.