

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Additional Estimates 2010-2011**

Agency - Fair Work Australia

DEEWR Question No.EW0759_11

Senator Fisher provided in writing.

Question

ANNUAL LEAVE LOADING

At any time prior to the operation of the Fair Work Act, or since, did or has the Govt or the Dept have any discussions with FWA or any members of FWA, or provide it or them with any documentation, about the intention behind or effect of s90 of the Fair Work Act, and its implications for, or relationship with any clauses in modern awards dealing with annual leave loading? • If so, please detail relevant dates and times, and the nature of each instance. What process does FWA use (if any) to minimise any prospect that a clause of a modern award conflicts with the provisions of the Fair Work Act? • Was that (conflict-minimisation) process used in respect of any clauses in modern awards dealing with annual leave loading, including in respect of clause 29.2 of the Road Transport and Distribution Award 2010? At the time of including clause 29.2 in the Road transport and Distribution Award 2010, was Fair Work Australia aware of any potential or alleged conflict between the effect of that clause and any provisions of the Fair Work Act? If so, how did Fair Work Australia become so-aware?

Answer

Fair Work Australia has provided the following response.

Fair Work Australia staff did not provide any documentation or have any discussion in relation to the intent or effect of s90 of the Fair Work Act.

The process for making and varying the modern awards is a web-based process where all relevant applications, submissions, directions etc. are published on the Fair Work Australia website so that interested parties may put their views. In the case of the variation to the *Road Transport and Distribution Award 2010* there were no issues raised regarding interaction of the proposed clause with the legislation. There were no submissions filed by any party apart from the application by the Australian Road Transport Industrial Organisation.

It is not appropriate to comment further on the decision making process of the Full Bench.