

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

**QUESTIONS ON NOTICE
Supplementary Budget Estimates 2010-2011**

Outcome 5 - Workplace Relations

DEEWR Question No.EW0599_11

Senator Fisher asked on 20/10/2010, Hansard page 104.

Question

Enterprise awards containing enterprise-specific and locked-in pay increases

Senator FISHER—Many enterprise awards contain enterprise-specific and locked-in pay increases. So are there workers covered by enterprise awards that could move to a modernised instrument that has lower wages or lesser conditions? Mr Kovacic—I am not aware of any concerns to that effect but I am happy to take that question on notice Senator FISHER—This is the second bit of the same question. What about workers covered by enterprise awards, who might otherwise be award-free, so therefore not end up being covered at all by a modernised award?

Answer

The *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Transitional Act) provides for the making of modern enterprise awards to replace existing enterprise instruments (see Schedule 6). Under the Transitional Act, enterprise instruments continue to operate until 31 December 2013 unless either replaced or terminated. In the event that no action is taken to modernise an enterprise instrument it will cease to operate at that time. At that point, in almost all cases, employees will be covered by the relevant modern award.

Any person covered by an enterprise instrument may apply to Fair Work Australia to have a modern enterprise award made, or to have the existing instrument terminated, before 31 December 2013 - the provisions of the Transitional Act ensure that relevant parties are fully informed of this process. For the purpose of assisting parties to make an informed decision regarding whether to make an application to modernise an enterprise instrument, Fair Work Australia is required to advise those covered by the instrument six months before 31 December 2013 of the deadline and the consequences of not making an application (i.e. termination).

In considering an application to make a modern enterprise award, Fair Work Australia is required to consider broad criteria, including:

- whether there is a modern award (other than the miscellaneous modern award) that would, but for the enterprise instrument, cover the persons who are covered by the instrument;
- the content, or likely content of the modern award;
- the terms and conditions of employment applying in the industry in which the

persons covered by the enterprise instrument operate, the extent to which those terms and conditions are reflected in the instrument and the extent to which the enterprise instrument provides enterprise-specific terms and conditions of employment; and

- the likely impact of the persons covered by the enterprise instrument, and the persons covered by the relevant modern award, of the decision to make, or not to make, the modern enterprise awards.

To date, Fair Work Australia has received four applications to modernise enterprise awards. Of the applications made, one has been withdrawn, one has been determined and two remain under consideration by Fair Work Australia.

Following the modernisation process, employees covered by a modern award, including a modern enterprise award, may apply to Fair Work Australia for a take-home pay order if their take-home pay is reduced as a direct result of the enterprise award modernisation process. An employee's take-home pay includes not only wages, but other entitlements such as penalty rates and allowances.