

## **Senate Standing Committee on Education and Employment**

### **QUESTIONS ON NOTICE Additional Estimates 2016 - 2017**

#### **Agency - Fair Work Commission**

**Department of Employment Question No. EMSQ17-001476**

**Senator Mckenzie asked on 02 March 2017 on proof Hansard page 23**

#### **Question**

##### **FWC - Enterprise agreement approvals by Commissioners**

CHAIR: Okay. So you are not aware of any case within the commission's work where an enterprise agreement has been approved by one commissioner and unapproved by another?

Ms O'Neill: I am racking my memory banks here, Senator—

CHAIR: That would be good.

Ms O'Neill: so I will take this on notice. I actually think there was one occasion some years ago where the same application was effectively lodged in two places and was allocated to different members, who came to different results. That is the only occasion that I can think of where that matter may arise.

#### **Answer**

To the best of our knowledge, there have been two occasions where an enterprise agreement application has been lodged twice and allocated to two Members who have dealt with the matter differently.

In late December 2009, the Riverina Division of General Practice, a primary health care provider, lodged an enterprise agreement approval application twice, once by email and once by post. Due to an oversight, Fair Work Australia (as the Fair Work Commission was then known) incorrectly assigned different matter numbers to the applications and they were allocated to different Members. One Member chose to deal with the application on the papers and approved the agreement in early 2010. The other Member conducted a hearing but ultimately did not determine the matter as the agreement had already been approved. The second application was withdrawn on the basis that it was redundant.

Also in December 2009, the Bondi Junction Private Hospital lodged an enterprise agreement approval application. Once again, the same application was lodged twice, once by facsimile transmission and once by post or over the counter. Fair Work Australia incorrectly assigned different matter numbers to the applications and they were allocated to different Members. On 20 January 2010 an employee registered organisation lodged a Notice for Employee Organisation to be Covered by Enterprise Agreement (Form F22) quoting the matter number for both applications. The Form F22 was placed on both matter files.

The employee registered organisation made submissions to one Member regarding certain technical matters. As a result, the Member found that the application was defective ([2010] FWA 448) and it was withdrawn. The second Member subsequently dealt with the application on the papers. Nothing on the electronic file indicates that the employee registered organisation made submissions to the second Member concerning technical matters. The second Member approved the agreement ([2010] FWAA 1118).

In 2009-10, there were 24,053 applications to Fair Work Australia concerning enterprise agreements (see Fair Work Australia's 2009-10 Annual Report, which can be viewed at: [www.fwc.gov.au/documents/documents/annual\\_reports/ar2010/fwa\\_annual\\_report\\_2009-10.pdf](http://www.fwc.gov.au/documents/documents/annual_reports/ar2010/fwa_annual_report_2009-10.pdf)). The two matters identified above are the only occasions of which we are aware (either in 2009-10 or thereafter) in which duplicate applications were allocated to, and dealt with differently, by separate Members.

After these matters were identified, Fair Work Australia reviewed its procedures concerning the proper identification and management of duplicate applications.