

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2013-2014

Agency - Fair Work Commission

Department of Employment Question No. EM0453_14

Senator Cameron provided in writing.

Question

FWC - Award modernisation

1. Is the Fair Work Commission currently accepting or has it recently accepted submissions on award modernisation?
2. Has the Commission received a submission from the Commonwealth in relation to award modernisation?
3. If so, does the Commonwealth's submission canvass the need for a review of penalty rates?

Answer

1. Yes. Proceedings in relation to the 4 yearly review of modern awards have commenced recently. The Commission has received submissions on the jurisdictional issues and 'common issues' relating to the review.
2. A submission from the Commonwealth was received on 3 February 2014 and is available on the Commission's website.
(www.fwc.gov.au/sites/awardsmodernfouryr/submissions/AM20141_sub_AusGov_030214.pdf)
3. The following extract from a background paper issued by the Full Bench on 4 March 2014 summarises the Commonwealth's submission in relation to penalty rates at paras 36 to 38:

[36] The Issues Paper states:

"Section 134(1)(da) of the Act was inserted by the *Fair Work Amendment Act 2013* and commenced on 1 January 2014. This section was not in the Act during the Transitional Review of modern awards.

We invite submissions as to the impact of this new provision."27.

[37] Most submissions which dealt with this issue submitted that s134(1)(da) is one element of the modern awards objective and should be considered as operating within the framework of the other elements of the modern awards objectives. The following parties submitted that the provision should be considered in the context of the modern awards objective:

- Australian Government
- ACTU
- Ai Group
- ABI
- AMIC
- AFEI
- ARA
- Horticulture Taskforce
- LGA
- MGA
- AHA

[38] There were a range of divergent submissions about the interpretation of s.134(1)(da) and the weight to be accorded to the provision. The Australian Government, ABI and ACCI submitted that the provision did not require the addition of new penalty rate clauses in awards which currently do not include such clauses. The Australian Government submitted:

“The Government submits, consistent with evidence of the then Department of Education, Employment and Workplace Relations to the Senate Education, Employment and Workplace Relations Legislation Committee on 22 April 2013, that this paragraph merely requires the Commission to consider the existence of entitlements rather than requiring the addition of new clauses in modern awards which currently do not contain such clauses.”

Note: s.134(1)(da) of the *Fair Work Act 2009* provides the following:

(1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

...

(da) the need to provide additional remuneration for:

- (i) employees working overtime; or
- (ii) employees working unsocial, irregular or unpredictable hours; or
- (iii) employees working on weekends or public holidays; or
- (iv) employees working shifts; and

...