

**SENATE STANDING COMMITTEE ON
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS**

**QUESTIONS ON NOTICE
SUPPLEMENTARY ESTIMATES 2009-10**

Outcome 5
DEEWR Question No. EW561_10

Senator Siewert provided in writing.

Question

Fair Work Amendment (State Referrals and Other Measures) Bill 2009
How will workers who are currently under State awards be protected against lower rates when their States transfer their industrial powers to the Commonwealth?

Answer

Item 70 of Schedule 2 to the Fair Work Amendment (State Referrals and Other Measures) Bill 2009 (the Bill) will amend Schedule 9 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (the T&C Act) to insert the relevant minimum wages rules outlined below.

Further, item 54 of Schedule 2 to the Bill will amend the T&C Act to insert a new Schedule 3A. Schedule 3A will set out the main provisions governing the transition by employees and employers from State workplace relations coverage to coverage by the national workplace relations system.

Division 2B State awards

A Division 2B State award (that is not a Division 2B State enterprise award) containing the terms of the relevant State source award will govern the terms and conditions of employment for the relevant Division 2B State reference employees from the Division 2B referral commencement (anticipated to be 1 January 2010) for a period of 12 months. After that time, a modern award will come into operation (item 21 of new Schedule 3A).

The rates of pay in Division 2B State awards will be the same as the current rates of pay in the source State awards from which they are derived.

The base rate of pay payable to the employee under the Division 2B State award must not be less than the national minimum wage order rate. If the Division 2B State award rate is lower, then the national minimum wage order rate will be read into the Division 2B State award (new item 16 of Schedule 9 to the T&C Act).

During the 12 month period that Division 2B State awards are in existence, Fair Work Australia (FWA) must consider whether modern awards should be varied to include transitional arrangements continuing the effect of terms contained in Division 2B State awards in relation to employees to whom the Division 2B State award previously applied (item 29 of new Schedule 3A). These transitional arrangements will apply for five years from the Division 2B referral commencement. Given that the AIRC will have determined transitional arrangements for employers and employees covered by notional agreements preserving State awards (NAPSAs) which are derived from State awards, there will be a

framework already in place for translating Division 2B State reference employers and employees to coverage by modern awards. The Government envisages that FWA will apply these transitional arrangements to the transition of Division 2B referral State award-covered employees to modern award coverage.

Once the modern award begins to apply, if the base rate of pay payable to an employee under the relevant modern award is lower than the base rate of pay that would have been payable had the Division 2B State award not terminated, the employee can apply to FWA for a take home pay order (item 32 of new Schedule 3A).

Division 2B State enterprise awards will be subject to the enterprise award modernisation process in Schedule 6 to the T&C Act. However, they will be subject to the same minimum wages rules as Division 2B State awards.

An employer to whom a Division 2B State instrument applies may make an application to FWA for an order that allows it to phase-in the effect of increases in base rates of pay that may result from the operation of these rules (new item 18 of Schedule 9). FWA may only make such an order where the phasing-in of the increases is necessary to ensure the ongoing viability of the employer's enterprise.

Division 2B State employment agreements

The rates of pay in Division 2B State employment agreements will be the same as the current rates of pay in the source State employment agreements from which they are derived.

For employees to whom a Division 2B State employment agreement applies, the transitional provisions (new item 17 of Schedule 9) would make it clear that:

- if the employee is covered by a Division 2B State award then the agreement rate of pay cannot be lower than the Division 2B State award rate of pay; and
- if the employee is covered by a modern award then the agreement rate of pay cannot be lower than the modern award rate of pay.

In either case, the higher rate in the Division 2B State award or modern award would be read into the Division 2B State employment agreement as a minimum benchmark.

For employees who are not covered by a Division 2B State award or modern award, the Bill provides that the base rate of pay payable to an employee under the Division 2B State employment agreement must not be less than the national minimum wage order rate.

Award/agreement free Division 2B referral employees

For Division 2B State referral employees who are currently instrument-free and who will remain instrument-free following the Division 2B referral commencement, the Bill provides that the higher of the preserved State minimum wage as at referral commencement or the national minimum wage order rate will be the minimum base rate of pay payable (new item 19 of Schedule 9).