

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

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

**Agency - Fair Work Ombudsman**

**DEEWR Question No.EW0572\_11**

**Senator Fisher asked on 20/10/2010, Hansard page 45.**

**Question**

**POTENTIAL GAP IN MODERN AWARDS**

Senator FISHER—What would you say today, for example, to an employer who is currently covered by what under the old terminology used to be an enterprise award, which was, in layperson's speak, about to be terminated and in theory replaced by a modern award? If an employer in that scenario rings you today, who're they gonna call? They're gonna call you. What'cha gonna tell 'em? ..... Mr Wilson—I have just checked with the officer here. I have checked with Mr Bongji. If any of us did have that answer right now, he would be the one who did. We do not have those scrips with us. We would need to take that on notice.

**Answer**

*The Fair Work Ombudsman has provided the following response:*

The following is the script available to the contact centre on the termination of 'enterprise awards':

***Question: We are bound by an enterprise instrument (an enterprise based federal award or an enterprise based NAPSA). Can we keep using it or do we have to move to a modern award?***

*Answer: The enterprise instrument became an 'award-based transitional instrument' on 1 July 2009 and will continue to apply until it is either terminated, ceases to operate or is replaced by a modern enterprise award.*

*The instrument is transitional in that it will cease to operate after 31 December 2013 if no action is taken after 1 January 2010 to apply to FWA to have it modernised.*

*There is an enterprise instrument modernisation process for making modern enterprise awards to replace existing enterprise instruments. Enterprise instruments include enterprise based awards or NAPSAs and preserved State agreements derived from enterprise awards.*

*Enterprise instruments are excluded from the initial award modernisation process.*

*If an application to modernise an enterprise instrument has not been received by FWA by 31 December 2013, the enterprise instrument will cease to operate. At this point you would become covered by a relevant modern award.*

*FWA will consider a wide range of criteria in deciding whether or not to make a modern enterprise award. These are set out in the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 in Schedule 6, Part 2.*