

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

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

Agency - Fair Work Australia

DEEWR Question No.EW0579_11

Senator Abetz asked on 20/10/2010, Hansard page 65.

Refers to previous DEEWR Question No [EW0286_11](#)

Question

FWA - REGARDING EW0286_11

Senator ABETZ—Can I take you to question on notice—0286. In that question I asked, ‘Is it accepted by Fair Work Australia that due to an error in registration the supported employment services award had the transition schedule deleted?’ We are told that it did not contain a transitional schedule and that the award was varied on 15 March to include the transitional provisions as the result of an application to vary the award. It was accepted that the transitional schedule was not contained in it. I am wondering whether it is accepted that the fact the transitional schedule was not contained was due to an error in registration. That was the import of the question, and that has not been answered. Mr Hower—The award, when it was issued in December 2009, did not include a transitional schedule. Senator ABETZ—We know that. Was it an error that occurred within Fair Work Australia—as in an administrative error? Mr Hower—I am not sure of the proceedings before the tribunal that led to the making of the award. Senator ABETZ—I accept that you are not, and I accepted last time around that people at the table might not be aware of that. That is why the question was put on notice. The question related to whether it was due to an error in registration. With respect, I was hoping that a body like Fair Work Australia would be able to give us a straight answer as to whether it was an error in registration or not, and not just tell us that it did not contain a transitional schedule. We all knew that it did not contain that, so the answer provided was unhelpful, and avoided the substance of the question as to whether it was due to an error in registration. I also add, we all make mistakes so there is nothing shameful in saying, ‘Yes, out of all the awards we did, there was one where we accidentally missed out a transitional schedule.’ I do not think there is any great shame associated with that. The great shame might be trying to avoid acknowledging that it was in fact an error in registration—if it was. It may well have been that somebody had not applied, but I would of thought, with respect, it would have been a Fair Work Australia obligation to have that transitional schedule in the supported employment services award 2010. Mr Nassios—We would have to have a look at the number that is contained in the answer there. Senator ABETZ—It is AN2009-172 Mr Nassios—Correct. Unfortunately I do not have the answer for you. Senator ABETZ—Can you please take it on notice again and give us a direct answer as to whether an error did occur within Fair Work Australia? Mr Nassios—Yes.

Answer

Fair Work Australia has provided the following response:

In establishing the model transitional provisions on 2 September 2009 the Award Modernisation Full Bench stated:

‘...Although we have decided not to introduce a statement of principles, the model provisions will serve a similar purpose. This should minimise the potential for confusion and promote consistency of outcomes. It is our intention that the model provisions be applied generally although some modern awards will require special provisions. While the model provisions can be departed from to meet the circumstances of a particular case, departures should be limited. ...’ [para 18; Decision AIRCFB 800]

While most modern awards contain the model transitional schedule there are several modern awards where the schedule was not included. This occurred in cases where parties submitted that a transitional schedule was not necessary.

The reason for the model transitional schedule not being included in the Supported Employment Services Award 2010 when it was issued on 4 December 2009 is unclear from the public record. It appears from the transcript from the initial award modernisation consultation proceedings for this award on 14 August 2009 that the parties went off the record when transitional provisions were discussed.

The exposure draft of the modern award published for comment on 25 September 2009 included the model schedule.

The rates in the modern award reflected the rates derived from the federal award - the Liquor, Hospitality and Miscellaneous Union Supported Employment Services Award 2005. There was also a notional agreement preserving a State award (NAPSA) in Western Australia - the Supported Employees Industry Award, however this NAPSA did not contain rates of pay.

On 14 December 2009 Australian Business Industrial lodged an application to vary the modern award to amend the classification structure/definitions and to insert the model transitional schedule. In support of their application in relation to the transitional provisions ABI stated:

‘There is no reason to depart from the standard approach to the transition of differences in wage rates, penalties or loadings. The primary federal award-based transitional instrument the *Australian Liquor, Hospitality and Miscellaneous Union Supported Employment Services Award 2005* was responsency based and did not cover a significant proportion of employers to be covered by the SES award. There was only one NAPSA which directly covered employers to be covered by the SES award and across the majority of employers to be covered by the SES award there will be a great diversity of arrangements currently applying. In these circumstances the case for phasing arrangements is strong.’

On 15 March 2010 the Full Bench issued an order inserting the model transitional schedule in line with ABI’s application.