

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

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

Outcome 5 - Workplace Relations

DEEWR Question No.EW0598_11

Senator Fisher asked on 20/10/2010, Hansard page 102.

Question

Minister's letter to Fair Work Australia regarding termination of modernisable instruments – employees losing entitlements

Mr Kovacic—It is against that background that the advice was provided suggesting that the minister write to Fair Work Australia. Senator FISHER—As I said before, the minister's letter talks about probably a small number of employees losing minimum entitlements. How small is small? Mr Kovacic—We cannot be precise in terms of the potential number of employees in this sort of— Senator FISHER—What sort of entitlements? Mr Kovacic—We could not really even speculate, to be honest. Senator FISHER—What are examples of minimum entitlements? Mr Kovacic—Again, in terms of the details I am not sure that I can speculate. We could take it on notice to see whether we could provide some further details. Senator FISHER—Thank you.

Answer

The intention of the legislative provisions relating to terminating modernisable instruments (Item 3 of Schedule 5 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*(the T & C Act)) is that such instruments will be terminated when completely replaced by a modern award.Fair Work Australia has established a process to meet this requirement, publishing a list of all instruments it proposes be terminated under the provision. Parties can make submissions if they believe an instrument has not been replaced by a modern award.

While not able to speculate on the number of employees who could potentially be affected in the event a modernisable instrument is terminated and they are not covered by a modern award, the department believes that the number would be extremely small.

In some situations, an employee who has their modernisable instrument terminated would become covered by the Miscellaneous Award 2010.

In the highly unlikely event that a modernisable instrument is terminated and an employee previously covered by that instrument is not covered by any modern award (including the Miscellaneous Award 2010), that employee would become award free. That employee would then be covered by the National Employment Standards (NES) and the national minimum wage order.

In this scenario, the employee would cease to have access to minimum entitlements

that were provided for in the modernisable instrument, but are not included in the NES or minimum wage order. This will vary from modernisable instrument to modernisable instrument, so it is difficult to speculate as to what minimum entitlements might be affected.