

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE**

**2005-2006 ADDITIONAL SENATE ESTIMATES HEARING
16 FEBRUARY 2006
EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO**

QUESTIONS ON NOTICE

Outcome 2: Higher productivity, higher pay workplace
Output Group 2.1: Workplace relations policy and analysis
Output 2.1.2: Workplace Relations Legislation Development

Question Number: W704-06

Question:

Senator Wong asked in writing:

Further to QON response W614-06 which said that even if an AWA is found to be not meeting the requirements for a valid AWA it would continue to be active by virtue of it being lodged with the OEA. Would this condition also exist if that AWA was found not to be meeting the baseline minimum terms and conditions set out in the Fair Pay and Conditions Standard?

Answer:

Yes, an AWA that does not meet the Australian Fair Pay and Conditions Standard (the Standard) may be lodged with the Employment Advocate and commence operation. Not meeting the Standard does not invalidate the agreement.

However, the Australian Fair Pay and Conditions Standard (the Standard) applies irrespective of the content of a workplace agreement.

The relevant provisions are sections 89A and 89B. The effect of these provisions is that if a workplace agreement or contract of employment is silent on a particular aspect of the Standard, or purports to exclude any part of the Standard, that aspect of the Standard will nevertheless apply. The Standard prevails over a workplace agreement or contract of employment to the extent to which, in a particular respect, the Standard provides a more favourable outcome for the employee.

Compliance with the Standard is achieved directly through the operation of the Standard itself, not through the agreement making provisions. Section 318 provides that an employer will be liable to a civil remedy if a term of the Standard relating to hours, annual leave, personal leave or parental leave is contravened. Section 320 allows a Court to make a range of orders with respect to breaches of the Standard,

including the making of injunctions to stop a breach, and the payment of compensation.

Additionally, compliance with the Standard is also provided for in Part 8 of the Workplace Relations Act 1996, as amended by the Workplace Relations Amendment (Work Choices) Act 2005.

A significant part of the responsibility of the newly formed Office of Workplace Services will be to ensure that the Standard is enforced and complied with at all times.