

**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

OFFICE OF THE EMPLOYMENT ADVOCATE

Question Number: W784-06

Question:

Senator Marshall asked at *Hansard* page 107:

Question W532 from the previous Estimates Hearing asked how many requests had been made in relation to revisiting the approval process for AWAs. The OEA answered that there had been 16 requests. Please:

- a) explain the circumstances for each;
- b) identify what the problem was
- c) indicate whether it was rectified or not; and
- d) provide an updated figure for the period of November 2005 to February 2006.

Answer:

In relation to the first three sub-questions the response is provided for the 16 separate matters

- 1. (a) NDT assessment performed based on an incorrect classification
(b) Error of fact - Undertaking sought and obtained when not required
(c) Yes
- 2. (a) AWAs approved that were not lodged within 21 days of being made
(b) No jurisdiction to file or approve an AWA in those circumstances
(c) Yes
- 3. (a) AWA approved. Found to be based on incorrect award and also that no explanation provided to employee
(b) Error of fact
(c) Yes
- 4. (a) A document not being the AWA was lodged; also contained a confidentiality clause
(b) No power for the delegate to approve such a document
(c) Yes

5. (a) AWAs refused where it transpired that the following additional approval requirements were not met: employees had not had the required number of days to consider the AWAs nor did they receive an explanation or genuinely consent to making the AWAs
(b) No power for the delegate to approve an AWA when additional approval requirements are not met
(c) Yes
6. (a) A document in the nature of a certified agreement and not an AWA was lodged
(b) No power for the delegate to approve such a document
(c) Yes
7. (a) Employee had attempted to withdraw the AWA but the AWA had in any event been approved
(b) According to the OEA's withdrawal policy, there is no jurisdiction to approve an AWA once a party withdraws the AWA because there is no AWA before the delegate to approve
(c) Yes
8. (a) Employee had attempted to withdraw the AWA but the AWA had in any event been approved
(b) According to the OEA's withdrawal policy, there is no jurisdiction to approve an AWA once a party withdraws the AWA because there is no AWA before the delegate to approve
(c) Yes
9. (a) An issue arose as to the correct classification and award used for the no disadvantage test. The parties ultimately reached agreement regarding future AWAs and the request was withdrawn
(b) Error of fact - Whether the no disadvantage test had been applied correctly
(c) Yes
10. (a) Incorrect AWAs lodged for tour guides instead of drivers
(b) No jurisdiction - No AWA for the relevant employees before the delegate
(c) Yes
11. (a) AWAs approved where an undertaking was required without that undertaking being sought
(b) No power to approve the AWA without the undertaking as the delegate was not satisfied that the AWA met the no disadvantage test
(c) Yes
12. (a) AWAs approved that were not lodged within 21 days of being made
(b) No jurisdiction to file or approve an AWA in those circumstances
(c) Yes
13. (a) Wrong AWAs were lodged for employees
(b) No power for the delegate to approve AWAs to which the employees were not a party
(c) Yes

14. (a) The employment agreement was lodged rather than the AWA – the documents being in different terms
(b) No power to approve the document lodged as it was not an AWA
(c) Yes
15. (a) Allegation of lack of explanation and failure to provide the OEA's information statement. After consideration and in particular as the employment had ceased and revocation would have no effect, the AWA was not revoked
(b) Error of fact- Whether the additional approval requirement of explanation had been met
(c) Yes
16. (a) It appeared that the AWAs may have been lodged outside 21 days from when they were made. An investigation revealed that this was not the case and the AWAs were not reconsidered
(b) No jurisdiction for the delegate to exercise regarding AWAs lodged outside the 21 day period
(c) Yes

As regards the fourth sub-question:

- (d) There have been three further requests for reconsideration of the approval of AWAs in the period from November 2005 to February 2006.