

**SENATE STANDING COMMITTEE ON  
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS**

**QUESTIONS ON NOTICE  
ADDITIONAL ESTIMATES 2008-09**

**Outcome/Agency**                      **Workplace Authority**

**DEEWR Question No.**                **EW1142\_09**

Senator Fisher asked on 26 February, EEWHR Hansard page 17.

**Question**

Senator FISHER—Would it have taken your agency longer than 12 months to have assessed any of those agreements?

Ms B Bennett—Some of the agreements from the fairness test that were lodged, particularly in that May-June-July-August-September period, took a very long time. I hope that none took 12 months, but we have always acknowledged that there was such a lack of understanding on the change—and these agreements were caught in the middle of the change for the fairness test because it was retrospective—that we had to go back to employers many, many times to obtain the information. There are certainly no ITEAs or agreements under the no disadvantage test in that sort of period, because there was a much longer lead time in the introduction and people had a much clearer understanding of what was expected from them.

Senator FISHER—When you notify an employer that their agreement has not been approved do you stipulate a time period in which they must get back to you with further information if they so wish? You do, don't you?

Ms B Bennett—Yes.

Senator FISHER—And how long is that—14 days?

Ms B Bennett—It depends what type of agreement it is and which test it is under, and it is prescribed in the legislation. But I could set that out for you very easily under a question on notice.

**Answer**

The Workplace Authority has provided the following response:

Time periods provided to employers to vary an agreement so that it passes the no-disadvantage test or the former fairness test are set out in legislation. These are as follows:

**No-disadvantage test**

- Section 346W of the *Workplace Relations Act 1996* provides that for operational agreements employers are given 30 days, beginning on the seventh day after the date of issue of the does not pass notice, to vary the agreement. Operational agreements include union and employer greenfields agreements and Individual Transitional Employment Agreements for new employees.
- Section 346N of the *Workplace Relations Act 1996* provides that for non-operational agreements employers are not limited by a specific time period to vary their agreement. Non-operational agreements include union and employee collective agreements and Individual Transitional Employment Agreements for existing employees.

## Fairness test

- Under the fairness test, employers were given 14 days from the date of issue of the 'does not pass' notice to vary the agreement (refer section 346R of the *Workplace Relations Act 1996* as it was immediately prior to the enactment of the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* and preserved by the transitional provisions in schedules 7A and 7B of the current *Workplace Relations Act 1996*).