

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

**2003-2004 BUDGET ESTIMATES HEARING – 2 JUNE 2003**

**OFFICE OF THE EMPLOYMENT ADVOCATE**

**QUESTIONS ON NOTICE**

**Outcome 2: Higher productivity, higher pay workplace**

**Output Group 2.2: Workplace Relations Implementation**

**Outputs 2.2.3: Assistance to the Employment Advocate**

**Question Number: W035-04**

**Question:**

Senator Wong asked at *Hansard* page 38:

Did the OEA consider the clause in the OEA templates, relating to dismissal or the ending of employment and the interaction with 170VW, would give rise to the sorts of actions such as was taken in Gorgevski's case – given that the restrictions in Byrne and Frew or Gorgevski would not really apply because there would be a contractual clause that you were suing for breach of?

**Answer:**

*Bostik (Australia) Pty Ltd v Gorgevski* (1992) 36 FCR 20 involved the issue of a term of an award being incorporated into a common law contract, and a breach of that term. It does not concern the issue of a breach of statute. Where there is a breach by a party of a clause in an AWA, and there was loss or damage suffered as a result, then that loss or damage is recovered pursuant to a statutory remedy, namely section 170VW of the *Workplace Relations Act 1996*. The two issues are not directly comparable.