

EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

**SENATE LEGISLATION COMMITTEE - QUESTIONS ON NOTICE
2008-09 BUDGET ESTIMATES HEARING**

Outcome **WORKPLACE AUTHORITY**

Question No. **EW497_09**

Senator Abetz provided in writing.

Question

No Disadvantage Test – Policy Guide

With respect to the application of the No Disadvantage Test can you answer yes or no as to whether the following terms and conditions can be modified, varied or traded away under the government's new No Disadvantage Test:

- Can uniform or laundry allowances be modified or traded away in the government's new individual agreements or under any of the other allowable collective agreements?
- Can overtime or penalty rates be modified or traded away in the government's new individual agreements or under any of the other allowable collective agreements?
- Can vehicle allowances be modified or traded away in the government's new individual agreements or under any of the other allowable collective agreements?
- Can meal allowances be modified or traded away in the government's new individual agreements or under any of the other allowable collective agreements?
- Can annual leave or sick leave be cashed in, modified or removed in the government's new individual agreements or under any of the other allowable collective agreements?
- Can redundancy payments be cashed in, modified or removed in the government's new individual agreements or under any of the other allowable collective agreements?
- Can rostering arrangements be altered or varied in the government's new individual agreements or under any of the other allowable collective agreements?
- Can Long Service Leave entitlements be altered or varied in the government's new individual agreements or under any of the other allowable collective agreements?

Answer

The Workplace Authority has provided the following response:

Uniform, laundry, vehicle and meal allowances

Under the *Workplace Relation Act 1996*, workplace agreements do not have to provide specific provisions for uniform, laundry, vehicle or meal allowances. However, the no disadvantage test (NDT) operates to ensure that the overall effect of the terms and conditions in the workplace agreement is not reduced when compared to the reference instrument. Therefore if the reference instrument provides for these allowances but the workplace agreement does not, then to pass the NDT, the workplace agreement would need to offset any reductions of these allowances. For example, this could be done by increased hourly remuneration.

Overtime and penalty payments

The answer to this question is the same as question EW496_09.

Annual leave and personal leave

A workplace agreement cannot reduce entitlements to annual leave and personal leave provided by the Australian Fair Pay and Conditions Standard.

Rostering arrangements

Workplace agreements will provide for a variety of rostering arrangements which have been negotiated between the parties to the agreement. The no disadvantage test ensures that the rostering arrangements provided in the workplace agreement do not disadvantage the employee(s) when compared with the reference instrument.

Long service leave

Entitlement to long service leave is generally governed by Commonwealth, State and Territory legislation. In these circumstances, a workplace agreement cannot reduce the entitlement provided in the legislation. In circumstances where entitlement to long service leave might have been contained in an award only, a workplace agreement can remove or reduce this entitlement. However the no disadvantage test ensures that such reduction must be offset by other provisions in the workplace agreement, for example increased remuneration or other leave arrangements.