

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

**2005-2006 SUPPLEMENTARY BUDGET SENATE ESTIMATES HEARING  
2 and 3 NOVEMBER 2005**

**EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO**

**QUESTIONS ON NOTICE**

**OFFICE OF THE EMPLOYMENT ADVOCATE**

**Question Number: W 535-06**

**Question:**

Senator Campbell asked at *Hansard* page 35:

If they were an existing employee, they would not revert to the Standards that they were on prior to the AWA being lodged?

**Answer:**

Sections 98D(1) and 105E of the *Workplace Relations Amendment (WorkChoices) Bill 2005* (the Bill) state that if an employer lodges a workplace agreement that has not been approved by an employee, the employer will be liable to a civil penalty provision.

Apart from the imposition of a penalty, the Bill also provides that the Court may make an order declaring the agreement to be void or an order varying the agreement. The Court may also order a person to pay compensation to an affected employee.

Further detail on these matters is set out below:

*Order declaring agreement to be void*

Section 105F of the Bill states that a Court may make an order:

- declaring that the workplace agreement is void; or
- declaring that specified terms of the workplace agreement are void.

The Bill provides that the Court can only make an order declaring a workplace agreement to be void where the Court considers it appropriate to remedy all or part of any loss or damage resulting from any contravention and prevention or reduction of all or part of that loss or damage.

Section 105I provides that any order declaring a workplace agreement to be void will take effect from the date of the order or a later date specified by the order.

#### *Order varying the agreement*

Section 105G of the Bill also provides that the Court may make an order varying the terms of the workplace agreement if an employer lodges an agreement that has not been consented to by the employee.

The Bill provides that the Court may only make an order varying the agreement where the Court considers it appropriate to remedy all or part of any loss or damage resulting from any contravention and prevention or reduction of all or part of that loss or damage.

#### *Compensation*

Section 105J of the Bill provides that the Court may order a person who contravened s 98D(1) to pay compensation that the Court considers appropriate for any loss or damage resulting from the contravention that was suffered by an employee whose employment is subject to the agreement.