

**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: W562-06**

**Question:**

Senator Siewert asked in writing:

Noting page 14 of the report on ‘Assisting employees to balance work and family responsibilities’...:

- (a) Have you done any evaluation on the effectiveness of your activities in this area?
- (b) How do you know that you “assisted workers to balance work and family responsibilities” and what evidence supports this claim?
- (c) How many complaints were received last year about agreements?
- (d) How many complaints about non registration of AWAs did you receive last year?
- (e) What happens when you find out that an AWA was not registered?
- (f) How many unsigned AWAs were lodged?
- (g) How long does it take to deal with a complaint?
- (h) Can you provide reasons for the length of these delays?
- (i) I understand that the CFMEU has lodged a complaint that has been in for over a year? Why has it taken so long?

**Answers:**

(a) & (b) Yes. In July 2005, the OEA completed its most recent Work/Life Balance project wherein the OEA undertook Employee and Employer Surveys in selected workplaces across South Australia for the purposes of examining, from an employee perspective, work/life balance needs and satisfaction with existing work/life initiatives. Additionally, information about current work/life provisions, and the impact of absenteeism, turnover, and training and recruitment costs was collected from management.

Following a series of interviews with prospective employers the OEA settled upon four employers to participate in the project covering the following sectors; mining, disability services, food processing and retail. The data collected through the surveys

was analysed by the OEA and separate reports were written in collaboration with the Workplace Flexibility Unit of DEWR for each participating company.

The reports recommended appropriate work/life balance provisions to address individual workplace needs, including suggested clauses for inclusion in workplace agreements. Each company was provided with workplace specific provisions that suited their business.

One of the companies, COMREC, has been nominated for a national Work and Family Award as has another SME (small to medium sized enterprise) using AWAs – Austral Tree and Stump.

(c) The complaints investigated by the OEA in 2004-2005 are summarised below in Table 1.

Just over 90% of the 331 complaints received related to AWA matters, primarily concerning allegations of breaches of AWAs. 58% (191) of investigations related to breaches of AWAs.

**Table 1 AWA Primary Complaint, Complaints Investigated 2004-2005**

<b>Primary complaint</b>	<b>No of investigations</b>	<b>% of investigations</b>
<b>AWA matters</b>		
Breach	191	57.7%
Coercion	14	4.2%
false declaration	13	3.9%
genuine consent	44	13.3%
Information	11	3.3%
ndt issues	17	5.1%
no explanation	3	0.9%
number of days	4	1.2%
not filed/approved	5	1.5%
Sub Total – AWA Matters	302	91.2%
<b>Freedom of Association</b>		
agreement type	6	1.8%
anti-union	1	0.3%
General	7	2.1%
industrial action compulsion	1	0.3%
Membership discrimination	1	0.3%
no ticket no start	0	0.0%
union preference	1	0.3%
no jurisdiction	8	2.4%
right of entry	0	0.0%
resignation not accepted	4	1.2%
Sub Total – Freedom of Association	29	8.8%
<b>Total</b>	<b>331</b>	<b>100.0%</b>

(d) The OEA complaints database does not record complaints concerning 'non registration of AWAs'.

(e) It is not a breach of the *Workplace Relations Act 1996* for an employer not to lodge an AWA after it has been signed by the employee or both parties. If the matter comes to the OEA's attention (for example, through an employee inquiry), the OEA's approach is:

1. To advise the employee what industrial instrument would apply to them (which may involve a referral to Wageline or the relevant state body for advice on industrial instrument coverage, entitlements and possible enforcement.
2. If the employee authorises the OEA to discuss the matter with the employer then the OEA will do so with a view to resolving the matter.
3. The employee is advised that the AWA that has not been lodged may in certain circumstances be enforced as a common law agreement.. The employee would be advised to seek their own legal advice on this issue.

(f) The OEA recorded 27 unsigned AWAs lodged during 2004-05.

(g) The OEA aims to resolve 80% of investigations into alleged breaches of the *Workplace Relations Act 1996* within 40 days. Over the year 2004-2005, 82% of investigations were resolved within this timeframe.

(h) There were various reasons for cases taking longer than 40 days to resolve. Commonly, delays are the consequence of legal disputes, but can also be inevitable in matters involving remote worksites where complainants and potential respondents can only be contacted intermittently.

The finalisation reasons of complaints received in 2004-2005 and finalised over the years 2004-2005 and 2005-2006 are summarised in Tables 2 and 3. The OEA seeks to resolve breaches by voluntary compliance, that is by the voluntary correction of behaviour and remedying of the breach. Of the investigations where this is an appropriate outcome, that is where the OEA has determined there is a breach of the Act and the complaint is within jurisdiction (168 complaints), 44% (74 complaints) were resolved by voluntary compliance.

(i) The OEA assumes that the Senator is referring to the matter of Shamrock Holdings (WA) Pty Ltd (Shamrock).

The OEA became aware of the possible fraudulent signing of an AWA after Justice French of the Federal Court handed down his decision on 29th July 2004 in the case of *BGC Contracting Pty Ltd v The Construction Forestry Mining & Energy Union of Workers [2004] FCA 981*.

The OEA commenced an investigation of the matter in August 2004. The principal of the employer and other employees were difficult to contact and to meet as the worksite of Shamrock was in Karratha, some 1761 km north of Perth.

Whilst in September and November 2004 the OEA obtained certain written information including unsigned statements, the OEA was unable to interview relevant witnesses until 12 May 2005 for reasons including lengthy correspondence with

solicitors regarding the use of authorised officer's powers, remoteness issues, unavailability of the solicitor and the hospitalisation of the principal witness.

The Employment Advocate determined that there was insufficient evidence to pursue any breaches of the *Workplace Relations Act 1996* (Part XA or VID) and accepted the recommendation to refer the matter of the alleged fraudulent signing of the AWA to the Department of Employment and Workplace Relations fraud and investigation unit for further investigation of any offences under the Commonwealth *Criminal Code Act 1995* or the relevant Crimes Act in Western Australia.

The matter was referred to the Department of Employment and Workplace Relations fraud and investigation unit on 12 September 2005 and the investigation is ongoing.