

**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**

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

**Output Group: 2.1: Workplace relations policy and analysis**

**Output: 2.1.1: Workplace relations policy advice**

**Question Number: W604-06**

**Question:**

Senator Marshall asked in writing:

At chapter 7, p. 37, *WorkChoices* states that if an employee is working for a business or part of business which transmits to a new employer, his/her instrument of employment transmits to the new employer for a maximum period of twelve months. It states that new employees of the transmittee will not be subject to that instrument. Does this mean that two employees doing the same job for the transmittee can be employed under completely different terms and conditions?

**Answer:**

Where a transmission of business has occurred and an employee transfers to the new employer, the awards, collective agreements and individual agreements that cover the employees of the transferring business will transmit to the new employer. The twelve month period gives the new employer and transferring employees the opportunity to negotiate, if necessary, more suitable arrangements for their employment relationship, while affording the transferring employee protection of their instrument while these negotiations take place.

After the period of 12 months, if the transferred employees and the new employer have not negotiated a new agreement, or a variation to an existing agreement that will cover the employees, they will be covered by whichever of the new employer's instruments is capable of applying to them (for example, the new employer's existing collective agreement or relevant award) or in the absence of such an instrument, the employees will be covered by the Australian Fair Pay and Conditions Standard

As the purpose of the provisions is to protect transferred employees' entitlements in a transmission of business, a transmitted instrument will only bind the new employer in relation to transferred employees.

It should be noted that the outcome referred to in the question is also possible under existing provisions, and there is no time limit on how long employees of a business may be employed under different terms and conditions due to a transmission of business. For instance, currently, a transmission of business may result in employees employed under one award being transferred to a business where the employees are employed under a different award. The transmission of business provisions in the Bill are designed to limit these types of complexities and make business acquisition less uncertain and disruptive for employees and employers.