

**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 advice and analysis**

**Output 2.1.1: Workplace relations policy advice**

**Question Number: W606-06**

**Question:**

Senator Marshall asked in writing:

*WorkChoices* goes on to state, p.37, that the new employer and employees will be able to negotiate agreements to override the transferred agreements and awards.

Does this include a collective agreement covering both new employees and transferring employees from the former employer? If so, does this mean that a valid majority of employees can agree on a collective agreement at the new employer which has terms and conditions worse than those which applied at the former employer?

If so, will a transmitting employee be forced to accept a collective agreement voted up by a majority of all employees at the new business (including new employees who would otherwise be on the Fair Pay and Conditions Standard)?

**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 transmitted business will transmit to the new employer. These instruments will have a maximum period of application of twelve months. The period may be shorter where the majority of transferred employees agree to terminate the transferred collective agreement, or an employee covered by a transferred individual agreement agrees to terminate that agreement. The period of application will give the new employer and transferring employees the opportunity to negotiate, if necessary, more suitable arrangements for their employment relationship, while protecting the transferring employees' existing wages and conditions while these negotiations take place.

If the transferring employees are covered by a transmitted collective agreement:

- a collective agreement that at the time of transmission applies only to existing employees of the new employer, may be varied so as also to apply to the transferring employees. This can, however, only occur with the agreement of the transferring employees because the varied collective agreement can only apply to the transferring employees if they have approved the termination of the transmitted collective agreement. The transmitted collective agreement cannot be unilaterally terminated during the transmission period even if it has passed its nominal expiry date.
- a completely new collective agreement may be made so as to apply to the transferring employees. The agreement would need to be approved by a valid majority of persons whose employment will be subject to the agreement. The new agreement would need to include terms and conditions that meet the Australian Fair Pay and Conditions Standard.

If a transferring employee is covered by a transmitted AWA, that AWA will not be overridden by a collective agreement that would otherwise come into operation in relation to his or her employment with the new employer.