

**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 and advice

Question Number: W608-06

Question:

Senator Marshall asked in writing:

- (a) Can the transmittee employer make the offer of a job with that new employer conditional on the acceptance of an AWA?
- (b) Even to former employees of the transmitter who accept a job with the new employer?
- (c) Would this mean that the former instrument of employment of those transmitting employees does not transmit to the new employer?

Answer:

(a) and (b)

No. If the employee is a transferring employee the award, collective agreement or AWA that applied to the particular employee will transmit to the new employer, and the new employer will be unable to make the offer of a job conditional on the acceptance of an AWA.

An employee is a transferring employee if:

- he or she is employed by the old employer immediately before the time of transmission; and becomes employed by the new employer in the transmitted business within two months after the time of transmission; or
- he or she is employed by the old employer at any time within one month before the time of transmission; and the person's employment with the old employer is terminated by the old employer before the time of transmission for genuine operational reasons; and the person becomes

employed by the new employer in the transmitted business within two months after the time of transmission.

It is possible for an employee of the old employer to take up employment with the new employer in the transmitted business without being a transferring employee. For example, he or she could resign from the old employer and seek employment with the new employer in the transmitted business. In this case, the new employer will be able to make the offer of a job conditional on the acceptance of an AWA, as is the case with any new, non-transferring employee.

- (c) Where a transmission of business has occurred and an employee is a transferring employee, the awards, collective agreements and individual agreements that cover the transferring employee will transmit to the new employer.