

**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

Output2.1.2: Workplace relations legislation development

Question Number: W614-06

Question:

Senator Marshall asked in writing:

An AWA is to come into effect upon lodgement. But what is the legal effect of an AWA that does not meet the requirements for a valid AWA? Will it be void ab initio (i.e. from commencement), voidable (i.e. on application), or will it remain valid to the extent not varied?

Answer:

Proposed s. 100(1) and s. 100(2) of the Work Choices Bill provides that all workplace agreements, including AWAs, come into operation on lodgment even if there has been a contravention of the requirements of Divisions 3 or 4. This means that even if the requirements relating to bargaining agents, pre-lodgement procedure and approval have not been met, the workplace agreement will come into operation when it is lodged. The only circumstances in which an agreement will be void ab initio is where the agreement lodged is not a workplace agreement.

However, a range of remedies, including voiding or varying workplace agreement will apply where:

- an employer lodges a workplace agreement without employee approval (s. 98D);
- a person coerces an employee (s. 104(1) and (3));
- duress is applied to an employee (s. 104(5)); or
- a person's reckless false or misleading statement causes an employee to enter a workplace agreement (s. 104A),

The range of remedies that would apply in those circumstances are:

- a financial penalty of up to \$6,600 for an individual and \$33,000 for a corporation (s. 105D(f), (zi) and zj);
- the court may declare all or part of the agreement void with effect from the date of judgement (s. 105F and s. 105I);
- the court may vary the terms of the agreement (s. 105G); and
- the court may order compensation of such amount as the court considers appropriate to compensate the employee for any loss or damage resulting from the contravention (s. 105J).

When the court varies or voids an agreement, those remedies will only apply from the date the court makes the order. Therefore, agreements will be voidable. Where, for example, a contravention of the requirement that an agreement not be lodged without approval occurs. If the Court varies and agreement in such circumstances, the agreements will remain valid to the extent that it is not varied.

Further, the Bill provides an enhanced compliance regime including remedies where an agreement is lodged without meeting the requirements for making agreements that are set out in Divisions 3 and 4. For example, an employer that does not provide an information statement or seven days ready access to a workplace agreement would be liable for a financial penalty of up to \$3,300 for an individual and \$16,500 for a corporation (s. 105D(2)(c) and (d)).