

## EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

### SENATE LEGISLATION COMMITTEE - QUESTIONS ON NOTICE 2008-09 SUPPLEMENTARY BUDGET ESTIMATES HEARING

#### Outcome

#### WORKPLACE AUTHORITY

#### EW907-09

Senator Collins asked on 23 October 2008, EEWL Hansard page 99.

#### Question

*Definitions – Fairness Test and NDT*

CHAIR—Do you have an additional handout that sets out all of those explanations? Perhaps I could ask you to take on notice those issues.

Ms Bull—We can take that on notice. It is detailed in our policy guide on the no disadvantage test, but we can take that on notice and provide that explanation.

#### Answer

The Workplace Authority has provided the following response.

The following definitions apply to the fairness test and no-disadvantage test statistical handouts provided to the Committee on 23 October 2008.

#### Statistics Definitions

**Table 1 – Fairness test**

Name	Definition
Number of agreements lodged	Includes all agreements lodged (original and varied agreements) under the fairness test
Number of agreements finalised	Includes: <ul style="list-style-type: none"><li>• Fairness test does not apply</li><li>• Passed</li><li>• Passed following change</li><li>• Failed – agreement ceases to operate</li><li>• Duplicate and Invalid agreements</li></ul>
Fairness test does not apply	For an agreement to be subject to the fairness test it must meet <u>all</u> of the following criteria: <ul style="list-style-type: none"><li>• it must have been lodged on or after 7 May 2007; <u>and</u></li><li>• the employee(s) subject to the agreement must be employed in an industry or occupation in which the terms and conditions of the kind of work performed or to be performed by the employee(s) is regulated by an award or is usually regulated by an award (including a State award prior to 27 March 2006); <u>and</u></li><li>• <i>for AWAs only</i>, the annual full-time equivalent salary must be less than \$75,000 in the first twelve months after the AWA is lodged; <u>and</u></li></ul>

Name	Definition
	<ul style="list-style-type: none"> <li>the agreement must exclude or modify one or more protected award condition.</li> </ul>
Passed	Passed the fairness test
Passed following change	Passed the fairness test after variation of the agreement or the provision of an undertaking to reinstate the protected award conditions or pay a higher rate of pay
Failed – agreement ceases to operate	Agreement did not pass the fairness test and has ceased to operate
Duplicate and Invalid agreements	An invalid lodgement occurs where a declaration is lodged that does not reflect the agreement type that was made and approved by the parties, or, where a document other than the agreement was lodged by the parties to the agreement.

**Table 2 – no-disadvantage test**

Name	Definition
Number of agreements lodged	Includes all agreements lodged (original and varied agreements) under the NDT
Number of agreements finalised	Includes: <ul style="list-style-type: none"> <li>Invalid</li> <li>NDT does not apply</li> <li>Passed</li> <li>Requires variation</li> <li>Passed after variation</li> <li>Failed – agreement ceases to operate</li> </ul>
Invalid	<ul style="list-style-type: none"> <li>the agreement lodged was not signed;</li> <li>the agreement lodged was made prior to 28 March 2008;</li> <li>was lodged with an incorrect employer declaration form ; or</li> <li>was a purported AWA</li> </ul>
NDT not applicable – taken to pass	The employee(s) covered by the agreement are award free
Passed	Passes the NDT on its first lodgement
Requires variation	Did not pass the NDT – includes agreements that are operational on lodgement only
Passed after variation	After initially failing the NDT, the agreement passes the NDT after being varied – includes agreements that are operational on lodgement only
Ceases to operate	Applies only to agreements that operate from lodgement i.e. ITEA (new employee) and Greenfields Collective agreements, where the agreement and it's subsequent variation did not pass the no-disadvantage test or where a variation was not received within the required timeframe.
Failed – requires re-lodgement	Agreements did not pass the NDT – for agreements which are not in operation at lodgement

<b>Name</b>	<b>Definition</b>
Passed after re-lodgement	After initially failing the NDT, the agreement passes the NDT after being varied – for agreements that are not in operation at lodgement