

**SENATE STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND
WORKPLACE RELATIONS**

Inquiry into *Fair Work Bill 2008*

Question on Notice

Hearing, Perth, 29 January 2009

Minister for Commerce, WA Government

Question from Senator Marshall at page 22 *Committee Hansard*, 29 January 2009:

Senator Marshall asked the Minister for Commerce “to have a further look” at flexibility in the workplace through individual flexibility arrangements as distinct from collective arrangements.

Answer

The Australian Industrial Relations Commission (AIRC), in drafting the model flexibility clause for inclusion in modern awards, observed that:

“The purpose of a model flexibility provision is to permit a reduction in one or more minimum award entitlements as part of an agreement which meets the genuine individual needs of the employer and the employee without disadvantaging the individual employee.”¹

Terms of a modern award that may be varied by agreement between an employer and an individual employee include arrangements for when work is performed and overtime and penalty rates.

The example provided by the Minister for Commerce at page 21 of the *Committee Hansard* related to an employer and individual employees agreeing to individual flexibility arrangements that alter start and finish times

¹ [2008] AIRCFB 550 at paragraph 163 (20 June 2008).

at a workplace. That appears to be precisely the type of arrangement allowed by the model flexibility clause drafted by the AIRC.

While an employer would also have the option of making an enterprise agreement collectively with employees to alter start and finish times, that is an option that is less frequently exercised by smaller employers. Making and registering a collective agreement in order to alter start and finish times is a complex option for many small businesses without specialist human resources or legal advice.

It is the WA Government's position that arrangements about start and finish times in a small business that are implemented through individual flexibility arrangements should be able to be maintained when new employees are offered employment by allowing employers to offer employment conditional on acceptance of an individual flexibility arrangement.

Certainly businesses in Western Australia both large and small have previously extensively utilised opportunities to implement flexibilities through individual arrangements with employees. The provisions of the Bill do not require such flexibilities to be implemented collectively. On the contrary, the capacity for individual flexibility arrangements to be made both where modern awards or enterprise agreements apply encourages the implementation of flexibilities through individual arrangements with employees.