

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION  
LEGISLATION COMMITTEE**

**2003-2004 BUDGET ESTIMATES HEARING – 2 JUNE 2003**

**OFFICE OF THE EMPLOYMENT ADVOCATE**

**QUESTIONS ON NOTICE**

**Outcome:** 2 Higher productivity, higher pay workplace

**Output Group:** 2.2 Workplace Relations Implementation

**Outputs:** 2.2.3 Assistance to the Employment Advocate

**Question Number:** W028-04

**Question:**

Senator Carr asked at *Hansard* page 34:

- (a) Can you advise how the AWA Construction Industry Framework clauses measure up to the National Building and Construction Industry Award in regards to the following provisions:
- Probation;
  - Casual labour;
  - Hours of work;
  - Inclement weather;
  - RDOs;
  - Overtime;
  - Annual leave;
  - Travelling Allowances;
  - Redundancy; and
  - Superannuation.
- (b) Could you please provide an analysis of where the template meets the disadvantage test on each one of the clauses?

**Answer:**

- (a) The no-disadvantage test (NDT) applied to Australian workplace agreements (AWAs) is a global test and not a line-by-line comparison. Nevertheless, comparing the nominated clauses in the AWA framework for the construction industry with those in the National Building and Construction Industry Award, the answer is as follows:

- *Probation*

The AWA framework:

A probationary period of 12 weeks.

The National Building and Construction Industry Award 2000:  
A probationary period of 2 weeks.

- *Casual labour*

The AWA framework:

In lieu of entitlements to sick leave, annual leave, public holidays or other forms of leave (excluding LSL), a casual loading of 20% applies.

The National Building and Construction Industry Award 2000:

Excludes annual leave, personal leave, parental leave, jury service, public holidays and redundancy for casuals. The period of employment will not exceed six weeks. Should employment continue beyond this period on a regular and systematic basis the employee will be deemed to be engaged on a part-time basis. An all purpose loading of 25% applies.

- *Hours of work*

The AWA framework:

Gives three options.

Option 1

152 hrs average over 4 weeks- min 4 hrs to 10 hrs per day- span 6:00am to 8:00pm.

Option 2

Very flexible, however, clause prohibits implementation without agreement.

Option 3

10 hrs to 40 average over 12 mths – span 4:00am to 8:00pm.

Guarantees to endeavour to roster equitably to ensure that allocation of weekend and public holiday hours are equally divided between employees on a rotating basis.

The National Building and Construction Industry Award 2000:

Full Time

Ordinary working hours shall be 38 per week, worked between 7:00am (6:00am in Qld) and 6:00pm, Monday to Friday, RDO flexible.

Part Time

The actual ordinary hours of part-time work shall be arranged or varied as applicable by mutual agreement between the employer and the employee.

Casual

As per the full time provisions except for the number of hours to be worked where the employer must notify the actual or likely number of hours to be worked per week.

- *Inclement weather*

The AWA framework:

Gives a number of options with the basis being a reasonable approach and/or consultation. Provides for transfer to other work or worksites.

The National Building and Construction Industry Award 2000:  
Includes extensive provisions for dealing with this issue, including allowing employees to be transferred to other work and ensuring the completion of concrete pours and emergency work.  
Paid time-off to a maximum of 32 hrs per 4 weeks.

- *RDOs*

The AWA framework:  
Flexible approach, RDOs may be cashed out or employees may bank RDOs to be taken at a time mutually agreed time

The National Building and Construction Industry Award 2000:  
Primarily taken at a time by mutual agreement.

- *Overtime*

The AWA framework:  
Contains a number of options, including penalty rates (to be inserted by parties), time off in lieu, and single time.

The National Building and Construction Industry Award 2000:

All time worked beyond employee's ordinary time of work is overtime and paid for at the rate of one and a half times ordinary rates for the first two hours and at double time thereafter Mon-Sat, and Sunday double time.

- *Annual leave*

The AWA framework:  
Standard 20 days with cashing out provision if in excess of 21 day accrual. Leave loading incorporated into base rate of pay.

The National Building and Construction Industry Award 2000:  
Extensive provisions delivering 20 working days paid leave with 17.5% loading each year.

- *Travelling Allowances*

The AWA framework:  
A number of options, including incorporating travelling allowance into a base rate, 50% of the ordinary rate, and no payment where transport is provided.

The National Building and Construction Industry Award 2000:  
Has extensive provisions that apply in certain circumstances.

- *Redundancy*

The AWA framework:  
Standard provisions apply with a maximum of 8 weeks.

The National Building and Construction Industry Award 2000:  
Standard provisions apply with a maximum of 8 weeks, with a slightly higher accrual rate ie less than 1 yr service 1.75 hours per week of service, and so on.

- *Superannuation*

The AWA framework:

Contributions as set by the *Superannuation Guarantee (Administration) Act 1992*, with the complying fund determined by agreement.

The National Building and Construction Industry Award 2000:

Contributions required under the *Superannuation Guarantee (Administration) Act 1992* paid to industry fund. Ordinary time earnings defined to include a wide range of allowances and shift loadings. Contributions continue at normal rate if employee absent on workers' compensation.

- (b) The NDT is a global test which compares the terms and conditions of the AWA with the terms and conditions enjoyed by the employee under the relevant, or designated, award, and relevant laws. The test can only be performed when *all* of the terms and conditions of the AWA – particularly the pay rates - are known. The AWA framework, which is the subject of the Senator's question, suggests various alternatives for certain conditions and does not include pay rates, as it is intended that these be determined by the parties.

It is possible - indeed, common - for some AWA conditions to be less beneficial, and others more beneficial, when compared to the corresponding award conditions. As long as the AWA does not disadvantage the employee *overall*, the NDT is passed.