

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

**2003-2004 SUPPLEMENTARY BUDGET ESTIMATES HEARING  
6 NOVEMBER 2003**

**OFFICE OF THE EMPLOYMENT ADVOCATE**

**QUESTIONS ON NOTICE**

**Question Number: W150-04**

**Question:**

Senator Webber asked in writing:

Therefore, it is possible that the hourly rate for a person who worked night shift is reduced in real terms because penalty rates are no longer paid. Given that, on what basis does the OEA arrive at the hourly rate for comparison purposes?

**Answer:**

The no-disadvantage test for AWAs is a global test. Under s170XA of the *Workplace Relations Act 1996*, an AWA passes the no-disadvantage test if it does not disadvantage the employee, overall, in relation to their terms and conditions of employment under the relevant or designated award (and relevant laws).

In comparing the AWA with the award, the OEA takes into account - amongst other things - the applicable award pay rates and allowances, the AWA pay rate(s), working hours, leave provisions, and any preference expressed by the employee. All of these factors have the potential to affect the hourly rate used for comparison purposes.