

**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: W157-04

Question:

Senator Webber asked in writing:

How does the OEA measure whether choice is voluntary?

Answer:

The procedure for determining whether the choice is genuine is as follows:

Voluntary non-standard hours (span of hours)

1. Hours worked outside the span of ordinary hours as defined by the relevant/designated award; or hours worked in addition to the maximum number of ordinary hours prescribed by the relevant/designated award; and
2. The AWA itself must offer the employee a choice between working ordinary hours and voluntary hours.

If the nature of the work is such that the employee has no real choice, then these hours cannot be voluntary non-standard working hours. Such a situation may be where the employee is engaged in a task that requires either specific hours or shifts (e.g. Night Security Officer) or where the advertisement states specific hours.