



Workplace Relations Alert

“Workchoices – A New Workplace Relations System”

On 9 October 2005 the Prime Minister announced the framework of the Government's proposals in a document entitled *“Workchoices - A New Workplace Relations System”* which explains in a detailed sixty eight pages how the new workplace relations system will work, once introduced. The “Workchoices” proposals are described by the Prime Minister as *“the next step in the evolution of a more decentralised workplace relations system which will bring forth the next wave of productivity improvement which will benefit all Australians”*. The package, which is designed to encourage employees and employers to negotiate individual contracts, also heralds a significantly reduced role for trade unions and the Australian Industrial Relations Commission.

In addition to the more global proposals outlined by the Prime Minister in his speech to the House of Representatives on 26 May this year, the “Workchoices” release foreshadows the following additional changes to the *Workplace Relations Act 1996* (‘*WR Act*’):

- The establishment of a new body called **Office of Workplace Services** (OWS) to carry out enforcement functions under the *WR Act*.
- Provision for review of all Awards by a body called the **Award Review Taskforce** and subsequent rationalisation of all Federal Awards by the Australian Industrial Relations Commission (‘AIRC’).
- Changes to the types of Collective Agreements available to Employers and Employees. These changes are aimed at ensuring that persons other than unions can be employee representatives in negotiations and ensuring that unions will no longer be able to be bound to an employee collective agreement. It will be mandatory to include a nominal expiry date (up to a maximum of 5 years).
- Detailing of prohibited content for Australian Workplace Relations Agreements (‘AWAs’) and Certified Agreements, the inclusion of which will attract penalties of up to \$33,000. Clauses that cannot be included in agreements include those which prohibit AWA’s, restrict the use of independent contractors, allow for industrial action during the term of an agreement, mandate union involvement in dispute resolution, provide a remedy for unfair dismissal and provide for trade union training leave, bargaining fees or paid union meetings.
- Amendments to require secret ballots before protected industrial action can be taken. Employees or the union(s) must apply to the AIRC for a secret ballot order.
- A requirement for the AIRC to hear and determine applications to prevent or stop unprotected industrial action within 48 hours. Applications will also be able to be made by third parties affected by the industrial action. Significantly, Section 166A of the *WR Act*, which slows access to common law tort remedies for unprotected industrial action until a certificate from the AIRC is obtained, will be repealed.



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- Amendments to the Transmission of Business provisions to limit the transmission of Awards and Agreements where no employees transfer to the new entity. Further, where employees do transfer, the Awards and Agreements will now only apply to the transferred employees at the new business. Further, collective agreements and AWAs transmitted to the new employer (as well as award provisions) will have a maximum period of application of twelve (12) months.
- Inclusion of a model dispute resolution procedure in the legislation which will apply to disputes about the application of an AWA or Collective Agreement where that agreement is lodged with the Office of the Employment Advocate ('OEA') without its own Dispute Resolution procedure. The model dispute resolution procedure sets out a 'staged' approach to dispute resolution commencing with workplace level discussions and proceeding to Alternative Dispute Resolution if the matter remains unresolved. ADR includes mediation, conciliation, and assisted negotiation and the parties can choose between referring a matter to a private ADR provider or to the AIRC for assistance.
- The ability of employees to agree with their employer to 'cash out' certain entitlements including up to 2 weeks of their accrued annual leave entitlement every 12 months.
- The provision for Employers and Employees to agree to modify or remove award conditions in relation to public holidays, rest breaks, incentive based payments and bonuses, annual leave loadings, allowances, penalty rates and shift/overtime loadings.

The Government has also announced that it will put in place comprehensive transitional arrangements for employers and employees entering the new system and for those non-constitutional corporation employees currently in the Federal system.

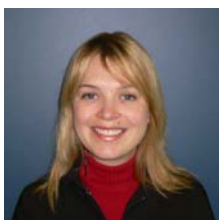
The proposed "Workchoice" legislation is set to be introduced in the House of Representatives on the eve of Melbourne Cup.

For more information please contact our Workplace Relations Team.

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