

“Work Choices – High Court decision and Second Round Changes announced”

High Court upholds validity of Work Choices Legislation

The Work Choices legislation which came into effect in March 2006 has been the subject of much publicity and controversy and a High Court challenge by state governments and unions. The States challenged the use of the Corporations power in the constitution to establish a national workplace relations system for constitutional corporations in hearings in the High Court in May 2006. In what some describe as a “landmark” decision, the High Court upheld the constitutionality of the Work Choices legislation on 14 November 2006.

In the case argued before the High Court, state governments and unions submitted that as there is a separate head of power for interstate conciliation and arbitration, the Corporations power extends only to the external relationships of corporations and not their internal management. They further submitted that the regulation of employment arrangements within corporations is a matter of internal management only.

The High Court rejected these submissions and held that the Corporations power does in fact permit regulation of internal corporate employment relationships by the Federal Government.

The High Court decision means that state governments’ and unions’ multi million dollar legal attempt to scuttle the Work Choices legislation has failed and reflects the continuing development of the Corporations power to support Commonwealth legislation. As a result, employers covered by Work Choices (who have not already done so) will now need to fully embrace the changes and ensure that their organisations are complying with the Work Choices legislation.

Proposed “Second Round” changes to Work Choices

A number of unintended consequences have flowed from the Work Choices legislation which took effect in March 2006. As a result, the Federal Government announced a host of proposed changes to the *Workplace Relations Act 1996* on the eve of the High Court decision. The key proposed changes are:

1. Accrual of Annual Leave

It is proposed that the legislation be amended such that annual leave will accrued in respect of a maximum 38 ordinary hours work week, so that annual leave will not accrue at a greater rate because of overtime worked.

2. Cashing out of Accrued Personal Leave

The proposed changes will allow employees and employers to agree to cash out accrued personal leave provided that, for full-time employees, at least 15 days of accrued personal leave remain after the cashing out.

3. **Protection of agreement-based redundancy entitlements**

It is proposed that for 12 months after the termination of a registered agreement, unless replaced by a new agreement, redundancy entitlements contained within that agreement will be protected. This protection will be limited to redundancies initiated by the employer due to operational requirements or because the employer is insolvent.

4. **Record Keeping Requirements**

Under the proposed changes, record keeping requirements will be streamlined to require employers to record only those hours for which a full-time employee is entitled to overtime or other penalty rates, instead of the current requirement for employers to record all hours worked by the employee. Employers will be required to keep records of hours worked by casuals or irregular part-time employees who are paid on an hourly basis.

HOW DOES THIS AFFECT YOU?

The recent decision of the High Court to uphold the validity of Work Choices means that Employers can now fully embrace Work Choices and should ensure compliance with the new laws.

The proposed changes to Work Choices have not yet come into effect, however we will keep you updated as to when the legislation is enacted.

Should you wish to discuss any compliance issues, please contact us.



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