The last few years have witnessed profound changes in Australian labour law, with the promise of more to come following the election of the Rudd Labor Government.

The Work Choices legislation has only been in operation for two years, so there has been little opportunity to ‘step back’ and examine how it has been operating in an overall sense. A number of academic publications have provided assessments of how the law is playing out in discrete areas (eg secret ballots for industrial action, the operational reasons exclusion from unfair dismissal, bargaining/the ‘fairness test’). However, this Workshop will be the first attempt to draw together the work being carried out by various individuals, to form a coherent assessment of the Work Choices legislation ‘in practice’.

At the same time, the new Labor Government is commencing the task of implementing its Forward with Fairness (‘FWF’) policy. This will involve the reversal of some aspects of the Work Choices laws (eg AWAs, some of the unfair dismissal exclusions), and the introduction of a new collective bargaining system premised on ‘good faith bargaining’. Importantly, some elements of Work Choices will be retained (eg limits on industrial action and union right of entry). Relevant aspects of the proposed ‘Transition Bill/Act’, and the likely shape of Labor’s substantive reform legislation, will also be explored in the Workshop.

Participants in the Workshop will be asked to contribute a 5,000-10,000 word paper which examines:

- the current (ie Work Choices) statutory provisions in the relevant area;
- case law and other evidence of how those provisions have been operating in practice;
- how the relevant area is likely to change under Labor’s FWF policy;
- participants may also wish to consider how the changes that have occurred in the relevant area fit within the overall policy objectives/purposes of labour law.

Following the Workshop, participants will be asked to revise their papers for publication in a book to be published by Federation Press.
Program & Participants

Day 1 – Morning Session

9.00-9.15 am
• Introduction & Overview – Anthony Forsyth (Monash University) & Andrew Stewart (University of Adelaide)

9.15-10.15 am
• Constitutional Aspects & Federal/State ‘Power-Sharing’ – Andrew Stewart

(10.15-10.45 am – Morning Tea)

10.45 am-11.45 pm
• Australian Fair Pay & Conditions Standard/Labor’s National Employment Standards (including Wage-Fixing & Role of AFPC/FWA) – Jill Murray (La Trobe University)/Rosemary Owens (University of Adelaide)

11.45 am-12.30pm
• Compliance and enforcement – Tess Hardy (Baker & McKenzie)

(12.30-1.20 pm – Lunch)

Day 1 – 1st Afternoon Session

1.20-2.10 pm
• Agreement-Making: Forms of Agreement & Approval Processes – Carolyn Sutherland (Monash University)

2.10-3.00 pm
• Collective Bargaining and ‘Good Faith Bargaining’ – Anthony Forsyth

(3.00-3.20 pm – Afternoon Tea)

Day 1 – 2nd Afternoon Session

3.20-4.10 pm
• Industrial Action – Shae McCrystal (Sydney University)

4.10-5.00 pm
• Union Right of Entry/Freedom of Association – Colin Fenwick (University of Melbourne)/John Howe (University of Melbourne)

7.30 pm – Workshop Dinner
Day 2 – Morning Session

9.30-10.20 am
• Dispute Resolution/Fair Work Australia – Joellen Riley (University of NSW)/Greg Smith (Australian Industrial Relations Commission)

(10.20-10.40 am – Morning Tea)

10.40-11.30 am
• Unfair Dismissal – Anna Chapman (University of Melbourne)

11.30 am-12.30 pm
• 'Wrap-up'/roundtable session (drawing together common themes from the individual papers) – facilitated by Anthony Forsyth & Andrew Stewart

12.30 pm – Workshop Closes