

# **VECCI Briefing**

## **“WorkChoices”- The Federal Government’s Workplace Reforms**

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# **“WorkChoices - A New Workplace Relations System”**

***“A simpler, fairer, national  
Workplace Relations System  
for Australia”***

# “WorkChoices – A New Workplace Relations System”

## *The Objective*

“The essence of these reforms is to further promote and facilitate the making of agreements at the workplace level”

## *What is Involved?*

“New arrangements for setting minimum wages and conditions.”

“A more streamlined process for the making of workplace agreements.”

“Greater award simplification and a more focused role for the AIRC.”

“Major liberalisation of the unfair dismissal laws.”

“The goal of a national industrial relations system.”

# **“WorkChoices – A New Workplace Relations System”**

## ***“New arrangements for setting minimum wages and conditions”.***

- Establish Australian Fair Pay Commission.
- AFPC required to:
  - set and adjust a minimum adult wage.
  - adjust junior/trainee rates;
  - adjust casual loadings;
  - adjust minimum wages for award classification levels.
- PM guarantees – Award rates will not be reduced below 2005 Safety Net Review levels.
- AFPC - 5 member body. To have “Experience in business, community organisations, workplace relations and economics”. First decision no later than Spring 2006

# “WorkChoices – A New Workplace Relations System”

***“Greater award simplification and a more focussed role for the AIRC.”***

## **Award Coverage remains ..... BUT .....**

- Jury service, LSL, Superannuation and Notice of Termination clauses will not be included in any new awards. But will remain in current awards.
- Matters protected by the Fair Pay and Conditions Standard to be removed from list of allowable matters
- “Award Review Taskforce” to review existing awards and award classification structures.
  - Aim – to reduce complexity / ensure greater focus at workplace level.
  - Finalise initial review process by July for consideration by Fair Pay Commission prior to its first wage adjustment

# “WorkChoices – A New Workplace Relations System”

## *Award Review Taskforce*

### **Recommend Strategies to –**

- Rationalise award wage and classification structures
  - Simplify award conditions;
  - Reduce overlapping;
  - Broad band groups of classifications;
  - “Provide more scope to implement workplace arrangements.”
- Rationalise Awards
  - On an industry sector basis?
  - Amalgamate/ combine?
- \*Report to Minister by March, 2006 with a recommended strategy
- \*Complete “initial rationalisation” exercise by July. (Prior to initial Fair Pay Commission decision).

# “WorkChoices – A New Workplace Relations System”

## *Awards*

- AIRC only able to make new awards or vary existing awards as part of the award rationalisation process... UNLESS..... “variation essential and necessary to maintenance of the minimum award safety net”;
- If award conditions less generous than Fair Pay and Conditions Standard then new Standard applies in place of the award, (and vice versa);
- A model Dispute Settling Procedure to be included in all awards. Will replace any existing clauses – (can involve AIRC as part of the process, if the parties choose).

# **“WorkChoices – A New Workplace Relations System”**

***“A more streamlined process for making workplace agreements.”***

- Agreements currently benchmarked against the relevant award.  
Now..... a new benchmark test established.
- The “Australian Fair Pay and Conditions Standard.” 5 conditions:
  - the relevant Award classification rate;
  - annual leave – 4 weeks. Extra week for shift workers. (2 weeks can be cashed out by agreement).
  - personal leave – 10 days +2 days unpaid carers leave + 2 days compassionate leave. (10 days can be used for carers leave).
  - parental leave;
  - maximum number of ordinary hours per week - 38.

# “WorkChoices – A New Workplace Relations System”

## “Protected Award Conditions”

**BUT.....Existing award conditions dealing with:**

- Public holidays;
- Rest breaks, including meal breaks;
- Leave loadings;
- Allowances;
- Shift/overtime rates;
- Penalty rates;
- Incentives/bonuses,

also included..... unless “modified or removed by specific provisions in the new agreement.”

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## *Agreement Making – The Process*

- All Agreements (CA/AWA's) to be lodged with the OEA. To be supported by a Statutory Declaration confirming the agreement “negotiated in compliance with the law;”
- Employees to be provided with an Information Statement;
- Employees to be provided with 7 day “consideration period.” (Can be waived if all agree);
- Lodge within 14 days of agreement;
- Maximum term of 5 years.

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## *Agreement Making – The Process*

- Must contain standard Dispute Settling Procedure, including ADR process, (May involve the AIRC);
- Will also be matters that cannot be included in agreements – “Prohibited content” still to be confirmed in regulations.
- Also additional protections. Prohibit –
  - False/misleading conduct;
  - Coercion/ duress during agreement making process.

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## *Agreement Making - Industrial Action*

### **Bargaining Period**

- Notify AIRC. Commission can terminate or suspend if -
  - Pattern bargaining, taking place;
  - Cooling-off periods might assist;
  - Third parties “threatened with significant harm”.

### **Protected Action**

- Requires application to AIRC for secret ballot;
- Must be genuinely trying to reach agreement;
- No pattern bargaining;
- If union makes application then only union members can vote or be involved in any subsequent protected action.

# “WorkChoices – A New Workplace Relations System”

## *Agreement Making - Industrial Action*

### **Unprotected Action**

- Orders to be issued by AIRC within 48 hours unless “contrary to the public interest;”
- Application could be made by a third party
- Civil actions also available – trespass, interference with contractual arrangements etc, without requirement for certificate from AIRC.
- Fines and penalties – individuals – (\$6,600), unions – (\$33,000).

# “WorkChoices – A New Workplace Relations System”

## “Major liberalisation of unfair dismissal laws...”

- Will exempt businesses with up to 100 employees from the unfair dismissal system. (Based upon “a headcount”, but not including short term casuals);
- More than 100 employees – probation period for new employees to be increased from 3 to 6 months;
- But, terminations due to “operational requirements” (redundancy) to be excluded.
- Protection from unlawful termination to remain. \$4,000 available on application to assess “merits of their claim;”
- AIRC to remain involved in conciliating unlawful terminations based upon the various prohibited grounds;

# “WorkChoices – A New Workplace Relations System”

## *The AIRC – Limited Functions*

- **Will have jurisdiction to make “Workplace Determinations” if:**
  - Minister has issued an Essential Services Declaration;
  - Industrial action is threatening life, safety or significant economic damage;
- Can issue orders to stop unprotected action (must be issued within 48 hours, unless “contrary to public interest”).
- Otherwise dispute resolution functions available if parties to an award or agreement choose to involve the Commission.
- **Agreement negotiation**
  - May only exercise powers to the extent conferred by the parties.

# “WorkChoices – A New Workplace Relations System”

## *The AIRC – Its Functions (contd....)*

- **Regulate protected action**
  - Receive notification of bargaining period;
  - Order and oversee secret ballots.
- **Right of entry**
  - Revoke/ suspend permits;
  - Resolve disputes over right of entry.
- **AIRC and Awards**
  - Involved in award rationalisation/ award simplification;
  - Can only create new award as part of this process.
- **Termination**
  - Deal with unfair dismissal claims for businesses with more than 100 employees;
  - Conciliate unlawful termination claims.

# “WorkChoices – A New Workplace Relations System”

***“The goal of a national industrial relations system.”***

- Government to work towards a unified national system;
- States have been invited to refer their powers on workplace relations to the Commonwealth;
- In the absence of referrals.....Government relies on the Corporations power. State awards and agreements covering corporations become Federal agreements;
- “.....not about empowering Canberra, but about liberating workplaces across the country;”
- Victoria in unique position because of our referral.

# “WorkChoices – A New Workplace Relations System”

***Govt. has also acted on other election commitments.***

- Protect status of independent contractors;
- “Ensure the rule of law is restored to the building and construction industry;”
- Restore small business redundancy pay exemption;
- Provide a single right of entry regime;
- Transmission of Business.

# “WorkChoices – A New Workplace Relations System”

## *Right of Entry*

### **Current reasons for entry to remain -**

- to investigate suspected breach;
- to hold discussions with employees.

### **BUT..... current framework to be changed -**

- Permit holder must be “fit and proper” person;
- No rights to hold discussions if all employees on AWA’s;
- Suspected breach?
  - Employee on AWA must give written consent to investigate;
  - Official seeking entry must provide particulars of alleged breach.  
No fishing!
- Improper behaviour – permit could be revoked or suspended by AIRC.

# “WorkChoices – A New Workplace Relations System”

## *Transmission of Business*

### Existing laws to be amended

- If no employees transfer, then no awards or agreements transfer to the new employer.
- If employees do transfer their awards/agreement, coverage will transfer .....**BUT**.....
  - they will only apply to the transferred employees, and;
  - they will only apply for a maximum period of 12 months;
  - after 12 months the conditions in place at the new workplace begin to apply.

# **The “Work and Family” Test Case Decision**

***August, 2005***

# The “Work and Family” Test Case

**The Objective** – to vary award conditions to assist in coping with work and family responsibilities.

- **The ACTU claims** – sought to create new rights for employees.
- **The Employer response** – create options to enable outcomes to be developed, by agreement, in individual workplaces.
- **The Decision** – no absolute rights granted.....but requests can be made by employees.....those requests should not be unreasonably refused by employers.

# The “Work and Family” Test Case

## *The Outcome*

- New parental leave entitlements created.
  - A “right to request” to extend parental leave from 12 months to a maximum of 24 months.
  - A “right to request” to return to work from parental leave on a part – time basis (until child reaches school age).
  - A “right to request” simultaneous leave of up to 8 weeks. (The current entitlement is 1 week).
- The “right to request” is qualified by an employer’s “right to refuse”..... but only on “reasonable grounds.”

# The “Work and Family” Test Case

## *The Employer’s Obligation*

- “The employer shall consider the request having regard to the employee’s circumstances and, provided the request is genuinely based on the employee’s parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer’s business”.
- Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.”

# The “Work and Family” Test Case

## *The Outcome*

### **Annual leave**

- Can, by agreement, be carried forward for 2 years.
- Up to 10 days can be taken as single days.

### **Carers leave**

- Up to 10 days can be taken each year from accrued personal leave. (Was 5 days.)
- Bereavement leave to be a separate stand alone entitlement.
- Casual employees - will have an unpaid right to not be available to work for up to 48 hours.

# **Change to Victoria's Long Service Leave Laws**

***January, 2006***

# Change to Victoria's Long Service Leave Laws

## *The previous entitlement*

- 13 weeks leave after 15 years service.
- Pro rate entitlement after 10 years on termination. (Equates to 8 2/3's weeks at 10 years.)
- Casuals??

But.....changes apply from the beginning of 2006.

# Change to Victoria's Long Service Leave Laws

*From 1<sup>st</sup> January, 2006*

- Long Service Leave can be taken by employees after a period of 10 years service.....(although the rate of accrual does not change).
- BUT.....there will be a transition to the new entitlement in terms of when leave can be taken.
  - Only 2/3rds of an employee's service at 1<sup>st</sup> Jan. 2006 counted, FOR EXAMPLE - an employee with 10 years service at that point is only credited with having 6.667 years of service.
  - That employee would have to work another 3.33 years before being eligible to take leave. However, then entitled to the amount of leave due to an employee with 13.33 year's service.
- AND..access to pro rata LSL payments will apply to employees on termination after 7 yrs, rather than 10 yrs, as now applies.

# Examples of the Phasing - in Arrangement

	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15
<b>How many years employed in current job? (at 1<sup>st</sup> Jan, 06)</b>															
<b>No. of years recognised for purpose of LSL accrual? (at 1st Jan, 06)</b>	0.67	1.33	2.00	2.67	3.33	4.00	4.67	5.33	6.00	6.67	7.33	8.00	8.67	9.33	10
<b>How many extra years required to work before leave can be taken?</b>	9.33	8.67	8.00	7.33	6.67	6.00	5.33	4.67	4.00	3.33	2.67	2.00	1.33	0.67	0.00
<b>Years of service completed at that point.</b>	10.3	10.7	11.0	11.3	11.7	12.0	12.3	12.7	13.0	13.3	13.7	14.0	14.3	14.7	15.0
<b>Amount of leave employee entitled to at that point.</b>	8.96	9.24	9.53	9.82	10.1	10.4	10.7	10.9	11.2	11.5	11.8	12.1	12.4	12.7	13.0

# Change to Victoria's Long Service Leave Laws

## In Addition

- Any period of LSL is extended by the number of public holidays falling during the leave period.
- Service continues to accrue whilst an employee on paid parental leave.
- Casual and seasonal employees can be entitled to LSL.
  - A casual employee's service is regarded as continuous "if there is no more than an absence of 3 months between each instance of employment in the period or....."
  - if the absence is greater than 3 months, it was due to the terms of the engagement of the employee by the employer."

# Change to Victoria's Long Service Leave Laws

- Seasonal employment is also continuous “.... if the absences between instances of employment are due to the seasonal nature of the employment.”
- Casual/seasonal - leave can be accruing even though employee has taken on other work during the same period.
- If variations in working hours - hours to be averaged over preceding 12 months, or the preceding 5 years, whichever provides greater benefit to the employee.
- Employer can direct when leave taken providing three months notice given.
- Employee can request to take double the period of leave at half normal rate of pay. Employer can refuse such a request, based on business needs.



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