



# WORKCHOICES OR NO CHOICES?

A summary of the Federal Government's proposed Industrial Relations Changes

## GENERAL OVERVIEW - Kennett era:

- Abolition of Awards
- Primacy of Individual Agreements
- Powers of Commission cut by move to consent Arbitration
- Abolition of career based classification system and introduction of 5 minimum rates of pay

## SINCE 1999 - CPSU has worked with the Victorian Government to:

- Abolish Individual Employment Agreements
- Re-establish the primacy of union collective bargaining and underpinning awards
- Re-established a career based classification system with work value, progression and professional rates of pay
- Disputes go to AIRC to be resolved by Commission on merit of issue

## WHAT THE FEDERAL GOVERNMENT IS PROPOSING

- A national system
- A new wage setting body

- A new safety net: Fair Pay & Conditions Standard
- A new process for making Agreements
- A new award system
- A new system of dealing with dismissals
- Changes to the role of the AIRC
- Transitional arrangements.

This is the most significant change to our industrial laws in over 100 years.

Let's now look at each in more detail.

i) **A National System**

- Will use Corporations Power of Australian Constitution which will 'cover the field'
- Some matters will remain the responsibility of the State:
  - OHS
  - Workers Compensation
  - Public Holidays
- However some aspects will be in conflict - such as Right of Entry requirements in OHS (State) and the Federal Act
- Some transitional arrangements will apply.

ii) **New Wage Setting System: Fair Pay Commission**

- New Commission will be established with powers to:
  - set and adjust minimum wage
  - set and adjust minimum wage for Award Classifications

- set and adjust minimum wage for Juniors/Trainees/Apprentices & Employees with Disabilities
- set and adjust minimum wage for Piece Workers and Casual Loadings
- Main objective to be considered in setting the new minimum wage will be the economy (p.14)
- Process for setting minimum wages - Commission will:
  - Determine timing
  - Scope
  - Frequency
  - How the process will occur
  - Date of effect.
- Decision is independent of Government and cannot be appealed
- Commission will consider:
  - Award Simplification
  - Award Rationalisation
  - Review of classifications

### iii) Fair Pay & Conditions Standards

- Standards will be set by Parliament
  - Annual Leave
  - Personal/Carers Leave (including Sick Leave)
  - Parental Leave (including unpaid Maternity Leave)
  - Maximum ordinary hours of work (38 hours)
- These four conditions and the minimum wage are the only minimum conditions required to be in agreements.

#### a) Hours of Work

- Ordinary Hours can be averaged over a period of up to 12 months.

- Overtime (if any) will be subject to negotiations and is not guaranteed but can be removed by an express provision in a new Agreement (in excess of 38 hours)
- Penalty Rates will remain in Awards and Agreements but can be expressly modified or removed by agreement
- An employer can require an employee to work reasonable overtime (same as IRC test case) but disputes over this to be dealt with by new dispute settling procedure (No compulsory arbitration)

#### b) Annual Leave

- Four weeks paid Annual Leave
- Five Weeks for shift workers (24 hour operations)
- Pro rata application for part-timers
- No mention of retention of 17.5% leave loading
- Option to cash in up to two weeks of four weeks Annual Leave only by Agreement

#### c) Personal/Career's Leave

- Includes 10 days paid Personal Leave P.A. after 12 months up to 10 days in any given year can be used as Carer's Leave
- Two days unpaid Careers Leave per event for employees who have used up the 10
- Two days paid Compassionate Leave per occasion
- May need Doctors Certificate or Stat Dec to claim this leave
- NB preserved Award provisions which are greater than these standards will not be part of test for future agreement making.

#### d) Parental Leave

- 52 weeks unpaid Parental Leave at time of birth/adoption
- 12 months continuous service (F/T & P/T)

- Casuals on a regular/systematic basis for a period of at least 12 months and have a reasonable expectation of ongoing work.
- Preserved award provisions will not form basis of standards for agreement making where they are greater.
- Enforcement of these standards to be by Civil Proceedings or for Underpayments Recovery.

iv) **New Process for Making Agreements**

- Any new Agreement will become law upon lodgement accompanied by Statutory Declaration.
- Employees may use OEA, Bargaining Agents and if under 18 must seek permission of parents.
- Consideration of Agreements now 7 days (min) but can be waived by all employees in writing.
- Lodgement must be in within 14 days by employer, penalty applies if not lodged and employer to advise all employees upon lodgement.

**Varying/Terminating Agreements**

- If Agreement is terminated and not replaced by new Agreement minimum terms and conditions of fair pay conditions will apply (1 minimum rate of pay and 4 conditions)
- An employer can terminate within 90 days written notice
- An employer can give voluntary undertakings of what conditions above the FP&C standards will apply. This undertaking is in writing and lodged with OWS.

## 6 Types of Agreements

- Employee Collective
- Union Collective
- AWA
- Union Greenfields
- Employer Greenfields
- Multiple Business

## Agreement Content

- Must have terms and conditions (including wages) of standards - must include Award classification rates as set by Fair Pay Condition
- Casual Loading will be 20%

## Mandatory Content - what you can and can't have:

- Agreements must have: Nominal expiry date (may be 5 years);  
Dispute Settling Procedure (in new legislation)
- **Prohibited Content:**
  - cannot restrict the offering of AWA's
  - restrict use of independent contractors or labour hire
  - prohibit industrial action during life of Agreement
  - No TUTL
  - No bargaining fees to trade unions
  - No paid union meetings
  - Cannot stipulate that future agreements must be union
  - Removing union right to participate in dispute resolution

- No remedy for unfair dismissal
- Any other matter so proscribed by legislation or regulations
- Also no proscription for terms and conditions of labour hire
- If Agreement has these prohibited matters
  - unenforceable and will be removed
  - no protected industrial action will be available if in support of these matters.
- Penalties for breach of this:
  - \$33,000 for union who seeks to include or lodges an Agreement with these prohibited matters.
- Transitional Arrangement: old/pre WorkChoice Agreements will continue beyond nominal expiry date but no extension or variation after commencement.
- Existing Agreements: based on C&A Power of Constitution will remain for up to 5 years.

### **Relationship Between Agreement Types**

- AWAs will exclude both Collective Agreements and Awards
- Collective Agreements exclude Awards by not AWAs
- Awards will be excluded by AWA's and Collective Agreements.
- Dispute Process:
  - Resolution focus the workplace
  - Model DSP to apply
  - Model DSP: staged approach starting - workplace - moving to ADR
  - ADR: is a process: mediation; conciliation; assisted negotiation
  - Parties can choose ADR or AIRC
  - Arbitration will require the consent of both parties.

## Industrial Action

- AIRC to hear and determine a matter within 48 hours.
- If AIRC can't - the Act applies an interim Order to stop industrial action
- 3<sup>rd</sup> Party may also make application to terminate industrial action
- S166A (WROLA) to be repealed - allowing an employer or a 3<sup>rd</sup> Party immediate access to Courts which involves Tortious Conduct (Trespass, Interference with Contractual Relations, etc)

## Secret Ballot:

- Must be held for all industrial action
- Application to AIRC
- No Application granted if includes prohibited matters or is a pattern bargain

## Who Votes:

- Union Application: Only union members vote
- Non Union Agreement: All employees to be covered
- Industrial action is approved if 50% of eligible employees vote and of this more than 50% support vote
- Cost: 80% Australian Government; 20% unions (applicant employees)
- Enforcement of Agreements: Civil Penalties & Injunctions - \$33,000 for breach
- Suspension/termination of Bargaining Period remains same with additions of removing reference to Paid Rates Awards (CPSU amendment)

### New Additions:

- No Pattern Bargaining
- To facilitate a 'Cooling Off'
- Where 3<sup>rd</sup> parties may be threatened by industrial action (3 months duration)
- Pattern bargaining is defined where a party is negotiating 2 or more Collective Agreements and seeks common wages and conditions
- AIRC must do something (losses its discretion) only retains right to decide between termination or suspension
- New Essential Services Provisions - Minister may declare prohibited action in circumstances:
  - threat to life
  - personal safety, health, welfare
  - significant damage to the economy.
- Restrictions will apply to Community Service Workers (i.e. Police and Health)
- S170 MX will be repealed and replaced with Workplace Determinations and will apply as above - will remain in place for up to 5 years
- Extending the provision to apply to industrial action in State Systems.

### Award Conditions:

- Remove for Awards:
  - Long Service Leave
  - Superannuation
  - Jury Service
  - Notice of Termination
- In event Award provision is greater than Fair Pay Conditions, those conditions will prevail. No duration is stipulated.

- What can be in Awards and may be subject to Bargaining Changes:
  - Ordinary time hours of work and the times within which they are performed, rest breaks, notice periods and variations to working hours;
  - Incentive-based payments and bonuses;
  - Annual leave loadings;
  - Public holidays;
  - Ceremonial leave;
  - Allowances;
  - Loadings for working overtime or shift work;
  - Penalty rates;
  - Redundancy pay for employers with 15 or more employees;
  - Stand-down provisions;
  - Dispute settling procedures;
  - Type of employment, such as full-time employment, casual employment, regular part-time employment and shift work; and
  - Conditions for outworkers, including non-conditions provisions such as chain of contract arrangements registration of employers, employer record keeping and inspection
  - i.e. Public Holidays: no Union Picnic Days; Redundancy Pay: only for legitimate redundancy
- Must have a clause for facilitative provisions to be available - AWA's do not need majority approval
- Allowances: only where reimbursement for monies spent.
- Other matters to be removed:
  - Classifications
  - Annual Leave
  - Personal/Carers
  - Parental Leave

- If these are greater will continue to apply for current agreement but will not be used for the test in conditions for agreement making.
  
- What is **prohibited** in Awards:
  - Skill-based career path
  - Restrictions on apprenticeship/trainees
  - Enterprise flexibility provisions
  - Restrictions on use of contractors
  - Labour hire workers
  - Union Picnic Day
  - Tallies (Meat Industry)
  - TUTL
  
- AIRC will only be permitted to make new Awards as part of Award Rationalisation, to revoke/set aside Awards, it will not be able to vary or adjust conditions that are non allowable.

**Establishment of Award Review Taskforce:**

- To review:
  - Award Simplification
  - Award Rationalisation
  - Classification
  
- To report January 2006

**Transmission of Business:**

- If any employee accepts - then conditions will transmit for a maximum of 12 months regardless of Agreement type.

- Those transmitted Awards/Agreements will only apply to the staff bringing them in.
- After 12 months employees will transfer to employer's agreement applicable or to Fair Pay Conditions. The 12 month limit does not apply to Awards or Fair Pay Conditions.

### **AIRC:**

- Will have consent arbitration
- Arbitration may only be exercised when both parties consent and it is in Agreement.
- Will regulate industrial action, bargaining period authorisation, workplace determinations
- Right of Entry: may suspend/revoke permits, & impose conditions on whole union
- Limited use of conciliation and arbitration powers
- Some powers under transitional provision
- Unfair dismissals: only for employers with more than 100+ employees and 6 months work.

### **General:**

- Equal remuneration provisions to continue but applicant must choose jurisdiction i.e. AIRC or HREOC.

### **Registration of Unions:**

- Freedom of Association: will continue with two objects relating to relief and penalties

## Penalties:

- No coercion
- No false and misleading statements
- Take industrial action for/against a non unionist
- Definition of threat: will be extended to incorporate a threat (actual/perceived) of any kind
- Reverse onus of proof will not apply

## Right of Entry: - is retained with restrictions

- Tighten the requirements for the granting of an entry permit, including introducing a 'fit and proper person' test;
- Cover the field using the corporations and territories powers so that for businesses in the new system, right of entry can only be exercised under the new legislation;
- Make it clear there is no right of entry for discussion purposes where all employees are on AWAs;
- Only allow entry to investigate a breach of an AWA if the employee party to the AWA provides written consent;
- Require a union official to provide particulars of a breach that he or she is proposing to enter to investigate to employer;
- Confirm a union official can only access the records of union members when investigating a breach, unless an order is made by the AIRC that non-member records can be inspected; and
- Require a union official to comply with a reasonable request by an employer that the meeting or interview should be conducted in a particular room or areas of the premises and that a specified route should be taken to that venue.

- Increased reasons for why a permit can be revoked (p.48)
- An employer and their employees can seek to invoke a Conscientious Objection to prevent a union entering the workplace.

### Unfair Dismissal:

- Not available to employees working in companies with up to 100 employees
- 100 employees does not include casuals and seasonal
- This will over ride any State Law
- But unlawful termination is available only in the Civil Courts
- Constructive Dismissal - onus reversed so employee must now make case
- \$4,000 independent legal assistance after mediation not fix problem - only for unlawful dismissal

### What can we do:

- Local Rallies
- Sky Channel
- 15<sup>th</sup> November Melbourne Rally
- Community Activity
- Organise a Meeting
- Join a Union

**KAREN BATT**

*October 2005*