

28 March 2008

STAGE ONE OF THE GOVERNMENT'S NEW WORKPLACE RELATIONS SYSTEM IS NOW IN OPERATION

- **Significant changes to agreement-making**
- **No new AWAs can be made**
- **Employers using AWAs have access to ITEAs**
- **New "no disadvantage test"**
- **Award modernisation process commences**
- **Workplace Relations Fact Sheet requirements abolished**

Summary

The first of several pieces of legislation to implement the Government's new workplace relations system is now in operation. The *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* **came into operation from midnight on 27 March 2008**

The new legislation amends the *Workplace Relations Act* and has major implications for agreement making.

The main changes were explained in Member Advice Nat 003/08 and include:

- No new Australian Workplace Agreements (AWAs) can be signed after 27 March 2008. AWAs signed before this date must be lodged within 14 days of the making of the AWA.
- Employers who have been using AWAs are able to enter into a new form of individual agreement (an Individual Transitional Employment Agreement (ITEA) for certain employees;
- Most workplace agreements now come into operation 7 days after approval by the Workplace Authority, rather than upon lodgement;
- All new agreements made on or after 28 March 2008 will be subject to a new "no disadvantage test";
- The previous restrictions on workplace agreements incorporating by reference the terms of awards and prior workplace agreements have been removed;
- It is no longer possible for a party to unilaterally terminate a collective agreement made under the WorkChoices legislation with 90 days written notice after the nominal expiry date has passed;
- "Pre-reform certified agreements" (ie. those filed with the Australian Industrial Relations Commission (AIRC) before the WorkChoices legislation came into effect on 27 March 2006) and Preserved State Agreements can be varied or extended for up to three years;
- Notional Agreements Preserving State Awards (NAPSAs) have been extended to 31 December 2009;
- The previous requirement upon employers to distribute a Workplace Relations Fact Sheet to employees has been abolished;
- The AIRC has been given new powers and responsibilities to modernise Australia's award system.

Summary

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Assistance

Ai Group's BiZassistInfoline

1300 78 38 44

**REMEMBER TO HAVE
YOUR MEMBER NUMBER
HANDY**

Publications

Copies of many publications dealing with the WorkChoices legislation can be ordered from the Publications Department on (03) 9867 0209 or email publications@aigroup.asn.au.

Advice No. Nat 010/08

New horizons for Australian industry

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The legislation was the subject of a Senate Committee inquiry. Ai Group made a comprehensive written submission and appeared before the Senate Committee. As a result of Ai Group's representations some important changes were made to the legislation before it was passed by Parliament.

The first of those changes will allow employers to offer Interim Transitional Employment Agreements (ITEAs) to new employees who were previously employed by those companies. This is particularly important for the construction and labour hire industries where staff are often employed on new workplace agreements when new projects start.

We also succeeded in convincing the Government to allow Preserved State Agreements to be extended or varied in the same way as Pre-Reform Certified Agreements. In cases where all parties genuinely agree to the extension or variation, members can roll over an existing agreement without the potential for industrial action.

When did the legislation come into operation?

The legislation came into operation at midnight on 27 March 2008.

Can new AWAs be made?

No new AWAs can be signed after 27 March 2008. AWAs signed on or before this date must be lodged within 14 days of the making of the AWA.

What happens to existing AWAs?

Existing AWAs remain in force during their term and after their nominal expiry date (which can be up to five years) until terminated or replaced by another agreement.

Existing rules for the termination of AWAs remain in place. That is:

- WorkChoices AWAs (ie. AWAs approved after 26 March 2006) can be terminated:
 - During the nominal term, by agreement between the employer and employee;
 - After the nominal expiry date, by agreement between the parties, or unilaterally by the employer or employee with 90 days written notice;
- Pre-WorkChoices AWAs (ie. AWAs made before the WorkChoices legislation came into operation on 27 March 2006) can be terminated:
 - During the nominal term by agreement between the employer and employee;
 - After the nominal expiry date, by order of the AIRC on the application of one of the parties.

When an AWA is terminated, the employee becomes covered by the collective agreement (if any) applying to employees carrying out similar work in the workplace, or the relevant award.

What is an ITEA?

An Individual Transitional Employment Agreement (ITEA) is an individual agreement which can be made by some employers and employees (see below) during the period leading up to 31 December 2009. ITEAs remain in force after expiry until terminated by one or both parties, or replaced by another agreement. The latest nominal expiry date that an ITEA can have is 31 December 2009.

Who can make an ITEA?

An employer who had at least one employee engaged under an AWA as at **1 December 2007** may enter into ITEAs for:

- New employees; and

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- Existing employees covered by an AWA.

ITEAs cannot be entered into for existing employees who were not covered under an AWA as at 1 December 2007.

What types of agreements now come into effect upon approval by the Workplace Authority, rather than upon lodgement?

The following forms of agreement come into effect **seven days** after they are approved by the Workplace Authority as passing the no disadvantage test:

- ITEAs for existing employees; and
- Collective agreements and multiple-business agreements (other than greenfields agreements).

The following forms of agreement come into effect **upon lodgement** with the Workplace Authority:

- ITEAs for new employees;
- Employer greenfields agreements;
- Union greenfields agreements; and
- Multiple-business greenfields agreements.

What is the new no disadvantage test?

A new no disadvantage has been introduced. A workplace agreement passes the new no disadvantage test if the Workplace Authority is satisfied that:

- For an ITEA, it does not, on balance, result in a reduction of the employee's overall conditions of employment under a collective agreement, pre reform certified agreement or Preserved State Agreement applying to employees performing similar work in the workplace, or the relevant award or NAPSA.
- For a collective agreement, it does not, on balance, result in a reduction of the employee's overall conditions of employment under the relevant award or NAPSA.

An employer must not dismiss or threaten to dismiss an employee if the sole or dominant reason is that a workplace agreement does not pass the no disadvantage test. (A maximum penalty applies of \$33,000 for companies and \$6,600 for individuals. In addition, compensation can be awarded to the employee).

The previous fairness test and the concept of "protected award conditions" have been abolished except for collective agreements and AWAs that were made before 28 March 2008 and lodged with the Workplace Authority within 14 days of the date of approval.

Does the new legislation provide any new options for employers bound by pre-WorkChoices workplace agreements?

Yes, the legislation enables "pre-reform certified agreements" (ie. those filed with the Australian Industrial Relations Commission (AIRC) before the WorkChoices legislation came into effect on 27 March 2006) and Preserved State Agreements to be varied or extended for up to three years.

The following conditions apply:

- The expiry date can be extended for up to three years after the AIRC issues the order;
- All parties bound by the agreement must genuinely agree to the extension or variation;
- A valid majority of employees must approve the extension or variation;
- None of the parties can have organised or engaged in industrial action, or threatened to, on or after 13 February 2008;
- None of the parties can have applied for a protected action ballot in relation to proposed industrial action;

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- If the terms of the workplace agreement are varied, the Commission is required to apply a no-disadvantage test. The no disadvantage test is to be assessed against the relevant *transitional* award (which includes wage rates), together with relevant federal and state laws.

Will employers still have to provide the Workplace Relations Fact Sheet?

The requirement for employers to provide the *Workplace Relations Fact Sheet* has been abolished operative from midnight on 27 March 2008.

Ai Group information and assistance

Ai Group is providing extensive assistance to members in understanding the implications of the new workplace relations system as it is developed. In addition to our telephone advisory staff, Ai Group has a large team of workplace relations advisers with legal and other qualifications who are able to give detailed individual assistance to companies, such as reviewing employment contracts, agreements and policies; providing strategic advice about agreement-making; and providing the latest information about union claims.

Members may wish to arrange an awareness session or strategy session for their management team.

For further information about any of the issues covered in this Advice please call Ai Group's *BIZassistInfoline* on 1300 78 38 44.

Ai Group will keep you informed as further developments occur.



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