

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE**

**2005-2006 ADDITIONAL SENATE ESTIMATES HEARING
16 FEBRUARY 2006
EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO**

QUESTIONS ON NOTICE

- Outcome 2:** Higher productivity, higher pay workplace
- Output Group 2.1:** Workplace relations policy and analysis
- Output 2.1.2:** Workplace Relations Legislation Development

Question Number: W711-06

Question:

Senator Wong asked in writing:

During the public hearings into WorkChoices, the following was said by a DEWR representative regarding the s7C of the Work Choices Act:

I think that the unfair contracts provisions in the New South Wales legislation apply to both employment and non-employment contracts. The bill, when it excludes laws in proposed section 7C, only excludes those laws as they would otherwise apply in relation to an employee or an employer. It would exclude the operation of the unfair contracts laws in the New South Wales IR Act to the extent that they are operating with respect to employers and employees but not to the extent that they are operating with respect to parties in a different sort of relationship. The way the proposed section 7C is currently structured is that it will exclude the operation of state industrial relations acts that currently exist. So outworker protections in state industrial relations acts, as the bill is currently drafted, will be excluded. However, with regard to outworker protections that are in outworker specific acts, like the Victorian one - and I think there is also an act in New South Wales that operations in conjunction with the New South Wales IR Act - such standalone acts will not be overridden because they are not generally applying acts and they are not one of the listed IR acts.

Can DEWR clarify whether the intention of S7C of the WorkChoices Act to override state industrial relations acts in their entirety or only to the extent that these laws apply to employees or employers?

Answer:

All employers and employees described in subsections 5(1) and 6(1) of the Work Choices Act will be covered by the new federal jurisdiction. This includes, for example, all employees of constitutional corporations and employers located in the Territories.

Work Choices will 'cover the field' so that federal system employees and employers will not be subject to regulation by state industrial jurisdictions. Work Choices achieves this by expressly excluding the operation of some State and Territory industrial laws, but only to the extent that the laws apply to federally covered employees and employers. Section 7C of Work Choices is the primary provision which performs this function. In particular, subsection 7C(1) states:

This Act is intended to apply to the exclusion of all the following laws of a State or Territory *so far as they would otherwise apply in relation to an employee or employer* [emphasis added].

The excluded laws will continue to operate for all other persons who fall outside of the scope of the federal jurisdiction, such as employers in a State employed by a sole trader or a partnership and independent contractors.