

**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:** W713-06

**Question:**

Senator Wong asked in writing:

QON 575-06 asked 'Could the department provide a list of all current workplace industrial relations legislation existing in Australia, including which jurisdictions/s they cover and identifying which will be overridden by the bill?' The department advised in response that it was unable to provide this information because to do so would "involve an unreasonable diversion of the department's resources." a) Has the department undertaken any assessment of legislation - State and Federal - that would be affected by the introduction of the IR legislation? b) What was the scope of that assessment? c) Did that assessment involve looking at OHS legislation in both the Federal and State and Territory jurisdictions? d) Did that assessment involve looking at workers' compensation and anti-discrimination legislation? e) What other areas were within the scope of the department's assessment? f) Was any attempt made by the department to collate the State, Territory and Federal legislation that would be affected by the Government's IR changes? If not, why not?

**Answer:**

The intention of Work Choices is to exclude the operation of state and territory laws that regulate workplace relations, creating a single unified system of workplace relations for those covered by the Workplace Relations Act. It is not intended that the Act exclude the operation of laws which are not industrial relations laws. The provisions therefore expressly preserve the operation of certain laws, such as laws regulating occupational health and safety, workers compensation and discrimination, to ensure there is no doubt about their continued operation (see section 16(2) and 16(3)).

In the course of framing these provisions, the Department considered a range of different types of state and territory laws regulating employers and employees to

ensure the Government's policy was achieved, including OH&S, workers compensation and discrimination legislation.

The provisions exclude certain laws by expressly identifying them in the definition of 'State or Territory industrial law'. These laws are:

- the *Industrial Relations Act 1996* of New South Wales;
- the *Industrial Relations Act 1999* of Queensland;
- the *Industrial Relations Act 1979* of Western Australia;
- the *Fair Work Act 1994* of South Australia; and
- the *Industrial Relations Act 1984* of Tasmania.

However, the provisions also exclude laws which fall within certain described categories. These categories of law are set out in clause (b) of the definition of 'State or Territory industrial law' in section 4 and in section 16 itself.. For example, clause (b)(ii) of the definition of 'State or Territory industrial law' in section 4 excludes a law that applies to employment generally and has, as its main purpose or purposes providing for the determination of terms and conditions of employment.

Whether a law falls within the categories of laws which are described in this manner will depend on how that law is characterised and it is not possible to produce a definitive list of these laws.