

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

**2006-2007 ADDITIONAL SENATE ESTIMATES HEARING
15 FEBRUARY 2007
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: W1177-07

Question:

Senator Wong asked in writing:

Work Choices amendments The amendments to Work Choices made in December included amendments to the interaction of the Fair Pay and Conditions Standard and pre-reform workplace agreements.

(a) What is the nature of this change?

(b) Why was the change necessary?

(c) Why was there a need for this amendment to operate retrospectively?

Answer:

Clause 30 of Schedule 7 of the *Workplace Relations Act 1996* (WR Act) was amended, so that the Australian Fair Pay and Conditions Standard (the Standard) does not apply to an employee in relation to a matter if a pre-reform certified agreement, pre-reform AWA or section 170MX award also deals with one of the matters covered by the Standard. (The Standard guarantees minimum rates of pay, maximum hours of work, and minimum entitlements to annual leave, personal/carer's leave, and parental leave).

Prior to this amendment, clause 30 of Schedule 7 provided that the Standard did not apply to such industrial instruments. This prevented the Standard from applying even if the pre-reform instrument did not deal with the minimum entitlements dealt with by the Standard.

The amendment ensures that the Standard operates to fill any gaps, to the extent that a pre-reform certified agreement, pre-reform AWA or section 170MX award does not deal with matters covered by the Standard.

The retrospective operation of the amendment, from the commencement of WorkChoices (27 March 2006), ensures continuity of employee entitlements in cases where the Standard would have otherwise applied. Employers affected by the retrospective application of the amendment to Clause 30 of Schedule 7 are not penalised for relying on the WR Act as it stood during the period from 27 March 2006 to the commencement of the amendment (12 December 2006).

A similar amendment was also made to clause 15E of Schedule 8 of the WR Act, relating to preserved State agreements.

Estimated cost: Based on the FOI calculator it has taken approximately 2 hours and 15 minutes at an estimated cost of \$44 to prepare this answer.