Australian Government

WorkChoices

WorkChoices and federal awards and agreements

FACT SHEET 2

Federal awards

Employers and employees who were bound by a federal award immediately before WorkChoices commenced will continue to be bound by that award.

Employers and employees covered by the Workplace Relations Act (including constitutional corporations and employers in the Australian Capital Territory and the Northern Territory) will continue to be bound by their award.

Other parties who were bound by a federal award before commencement (including employers in Victoria that are not corporations) will continue to be bound by a 'transitional' award. Transitional awards will operate for a period of five years to allow employers to decide whether to remain in the federal system (by incorporating as a trading or financial corporation), or move to a state system.

The material in this fact sheet mainly relates to employers and employees covered by the new WorkChoices system. There are some important differences in the treatment of transitional awards (see Transitional Awards, below).

Changes to allowable award matters

Under WorkChoices, the following matters can be included in awards (known as allowable award matters):

- ordinary time hours of work, rest breaks, notice periods and variations to working hours;
- incentive-based payments and bonuses;
- annual leave loadings;
- ceremonial leave;
- leave for the purpose of seeking other employment after notice of termination;

- state or territory public holidays, entitlements of employees to payment in respect of those days, and days to be substituted for public holidays;
- monetary allowances (for expenses, responsibilities or skills not included in rates of pay, or for the performance of particular tasks, or work under certain conditions or locations);
- loadings for working overtime or for shift work;
- penalty rates;
- redundancy pay by an employer of 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 to the extent necessary to ensure that their overall conditions of employment are fair and reasonable.

Terms in awards that do not fall under this list will no longer be enforceable. These matters include provisions that deal with entitlements covered by the Fair Pay and Conditions Standard (the Standard). These are discussed in more detail below.

Under WorkChoices, a number of terms currently contained in some awards will become non-allowable and will no longer be enforceable. These include:

- conversion from casual employment to another type of employment;
- restrictions on the range and duration of training arrangements;
- restrictions on the engagement of independent contractors and requirements relating to the conditions of their engagement;
- union picnic days; and
- trade union training leave.

Wages and hours

Under WorkChoices, minimum wages will no longer be included in awards (other than transitional awards).

Classification-based wages and casual loadings are instead included in Australian Pay and Classification Scales (APCSs). APCSs are initially taken from federal and state awards. Wage rates will be set and adjusted by the Australian Fair Pay Commission (Fair Pay Commission).

For more information about minimum wages see the 'WorkChoices and minimum rates of pay' fact sheet.

Provisions specifying hours of work will remain in awards, but will be subject to the Standard after a transitional three-year period. The Standard guarantees that a person cannot be required or requested to work more than 38 ordinary hours of work per week, plus reasonable additional hours. If agreed in writing, the 38 ordinary hours per week may be averaged over a period of no more than 12 months.

Award provisions that require more than 38 ordinary hours of work per week must be varied to comply with the Standard within three years of WorkChoices commencing. If an award currently provides for less than 38 ordinary hours, this will not change, as it is consistent with the Standard.

Preserved award terms

Under WorkChoices, annual leave, personal/carer's leave, parental leave, long service leave, jury service, notice of termination and superannuation provisions in awards will no longer be allowable

and can not be included in awards or varied. However, current award provisions where an employee's entitlements for annual leave, personal/carer's leave and parental leave is more generous than the Standard, the preserved award term will apply.

Preserved terms will continue to apply in relation to long service leave, jury service and notice of termination.

Preserved terms about superannuation will continue to apply until 30 June 2008, when specific superannuation legislation will come into effect.

Preserved award terms will not bind employers who become covered by the award after the commencement of WorkChoices.

Preserved terms may be overridden by an Australian Workplace Agreement (AWA) or collective agreement.

For more information about preserved award terms see the 'WorkChoices and awards' fact sheet.

Award simplification and rationalisation

Under WorkChoices, awards will be simplified and rationalised to remove duplication and complexity.

An Award Review Taskforce has been established to recommend an approach to award rationalisation. For information about the award rationalisation process, visit www.awardreviewtaskforce.gov.au.

The Australian Industrial Relations Commission (AIRC) will be required to carry out award rationalisation if requested by the Minister for Employment and Workplace Relations.

Award variation

An award may be varied by the AIRC:

- as a result of an award rationalisation or award simplification process;
- if the variation is essential to maintain minimum safety net entitlements;
- if an award term is ambiguous or uncertain to remove the ambiguity or uncertainty;
- to bind additional employers, employees or organisations;
- to remove objectionable provisions from awards;
- in circumstances set out in the regulations.

However, the AIRC may only make new awards as part of the award rationalisation process.

Becoming bound to an award after WorkChoices commencement

Employers, organisations and employees who are not covered by an award on commencement will not become bound to an award other than by order of the AIRC.

The AIRC will decide who is bound by awards made or varied during award rationalisation. Rationalised awards may identify employers as part of a class (such as an industry), rather than by name.

Transitional awards

For employers who are not covered by WorkChoices (e.g. employers who are not constitutional corporations) their current awards will continue as 'transitional' awards. Transitional awards operate for up to five years from WorkChoices commencement. Employers covered by transitional awards have five years to decide whether to remain in the federal system (e.g. by incorporating) or move to a state system. Employers can choose to 'opt out' of the

transitional system, for example, by making a state agreement.

The Standard does not apply to transitional awards. As a result wages, classifications, annual leave, personal/carer's leave and parental leave remain in transitional awards.

The AIRC has power to prevent and settle industrial disputes about allowable award matters by conciliation. The AIRC is able to vary monetary entitlements, including wages in transitional awards, based on the wage setting decisions of the Fair Pay Commission. However the AIRC cannot make new transitional awards. Under WorkChoices, wages are set by the Fair Pay Commission.

The AIRC may make an order revoking a transitional award if it is satisfied that the award is obsolete or no longer capable of operating and it would not be contrary to the public interest to revoke the award.

Transitional arrangements

Federal agreements

AWAs made before the commencement of WorkChoices will continue to operate even after they pass their nominal expiry date unless terminated or replaced by a new AWA.

Pre-reform AWAs cannot be varied after the commencement of WorkChoices. It is not necessary for pre-reform AWAs to comply with the Standard because these AWAs were assessed against the no-disadvantage test prior to approval.

A pre-reform AWA may be terminated using the termination provisions which applied before WorkChoices. If a pre-reform AWA is terminated but not replaced by a new AWA, an employee's entitlements will come from:

- any applicable certified agreement or collective agreement, or in the absence of such an agreement;
- an applicable award.

Certified agreements

Certified agreements made before the commencement of WorkChoices will continue to operate until they are replaced by a collective agreement or an AWA made after WorkChoices commences.

A certified agreement can be replaced with an AWA or a collective agreement at any time after WorkChoices commences without waiting for the expiry of the certified agreement to pass. However, parties will not be able to take protected industrial action if their agreement has not passed its nominal expiry date.

Pre-reform certified agreements cannot be varied or extended after the commencement of WorkChoices. These agreements will not need to comply with the Standard for the period of their operation because they were assessed against the no-disadvantage test prior to certification.

If a pre-reform certified agreement contains a clause that can prevent an employer from making an AWA, that clause will be void and unenforceable after the commencement of WorkChoices.

Certified agreements made prior to the commencement of WorkChoices will cease to have effect when terminated, or replaced by a new agreement. In these circumstances, employees' entitlements will come from the applicable award.

Further information

For more information on agreement making, contact the Office of the Employment Advocate on 1300 366 632.