



Australian Government

WorkChoices

Transitional arrangements

WorkChoices covers constitutional corporation employers and their employees, including those employers and employees previously covered by the state workplace relations systems of New South Wales, Queensland, South Australia, Western Australia and Tasmania.

State employers and employees who are entering the new federal system for the first time are covered by transitional arrangements from the date of commencement of WorkChoices.

There are two types of state transitional awards and agreements:

- a notional agreement preserving a state award (NAPSA) for employers and employees covered by state awards and/or laws; and
- a preserved state agreement (PSA) for employers and employees covered by a state agreement.

State awards

The state award and applicable state or territory laws will become a 'notional agreement preserving a state award' (NAPSA) in the federal system on commencement of WorkChoices. Some content in a NAPSA will be void under the Workplace Relations Act, as it is prescribed as 'prohibited content' under the Regulations. This includes anti-AWA clauses and restrictive apprenticeships clauses.

A NAPSA will operate for a maximum of three years.

New federal workplace agreements can be made at any time to replace the operation of the NAPSA, or the NAPSA may be terminated.



WorkChoices and state awards and agreements

Where a federal workplace agreement has not been made by the end of the three year transitional period to replace a NAPSA, or the NAPSA has not been terminated, the employers and employees bound by the NAPSA will be covered by the appropriate rationalised federal award for their industry.

Terms of a notional agreement preserving a state award

A NAPSA will include any term and condition of employment that was in the original state award, except for terms that relate to wages or wage and classification structures. Wage and classification structures will instead form part of a preserved Wage and Classification Scale.

NAPSAs will also include certain state or territory law provisions that would have previously determined a term or condition of employment of an employee. These provisions are known as preserved entitlements.

Preserved entitlements are:

- annual leave or annual leave loadings;
- parental leave (including maternity leave and adoption leave);
- personal/carer's leave;
- bereavement leave;
- ceremonial leave;
- notice of termination;
- redundancy pay;
- loadings for working overtime or shift work;
- penalty rates (including rates for working on a public holiday);
- rest breaks; and
- other entitlements prescribed by legislation.

Any other matter that was previously determined by a state or territory industrial law will not be included in a NAPSA.

The Standard and NAPSAs

The Australian Fair Pay and Conditions Standard (the Standard) will apply to all employees covered by a NAPSA. If the Standard makes provision for a matter contained in a NAPSA, then the term of the NAPSA about that matter is unenforceable, with the exception of preserved notional terms and preserved notional entitlements.

Preserved notional terms

Preserved notional terms in NAPSAs are the equivalent of preserved award terms in awards. These are:

- Annual leave;
- Personal/carer's leave;
- Parental leave, including maternity and adoption leave;
- Long service leave;
- Notice of termination;
- Jury service;
- Superannuation (until 30 June 2008).

Preserved notional entitlements

Where an employee bound by the NAPSA has an entitlement under a preserved notional term this is called a 'preserved notional entitlement'. The preserved notional entitlement is 'frozen' at commencement. This principle also applies for preserved federal award entitlements.

For preserved notional entitlements about annual leave, personal/carer's leave and parental leave, the preserved notional entitlement will apply where it is more generous than the Standard.

For long service leave, notice of termination, jury service and superannuation the preserved notional entitlement will apply.

Federal awards and NAPSAs

A federal award will replace a NAPSA when the parties become bound to a federal award after either asking the AIRC to become bound, or if a rationalised award applies to them on its terms. A federal award will include any preserved notional terms that were in the NAPSA, where the:

- federal award is binding on an employer or employee because of award rationalisation; and
- an employer or employee was covered immediately before the making or variation of the federal award by a NAPSA.

The preserved notional terms in the federal award will only apply to the employer who was covered by the NAPSA (not other employers also bound by the award).

Protected notional conditions

Protected notional conditions apply when employees and employers bound by a NAPSA make a workplace agreement.

Protected notional conditions are terms about:

- rest breaks;
- incentive based payments and bonuses;
- annual leave loadings;
- observance of public holidays or payment in respect of those days;
- days to be substituted for public holidays;
- monetary allowances for:
 - expenses incurred in the course of employment; or

- responsibilities or skills that are not taken into account in rates of pay for employees; or
- disabilities associated with the performance of work in particular conditions or locations;
- loadings for overtime or shift work;
- penalty rates;
- outworker conditions; and
- other conditions prescribed by regulation.

Any protected notional condition in the NAPSA will be included in the agreement (where an employee who would have been covered by a NAPSA makes a workplace agreement), unless the agreement expressly changes or excludes the operation of the condition.

Varying a NAPSA


A NAPSA can be varied by the Australian Industrial Relations Commission (AIRC) in limited circumstances. The AIRC may remove ambiguity or uncertainty and discrimination.

The Office of the Employment Advocate (OEA) may also remove prohibited content.

State agreements

State agreements covering employers and employees moving to the federal system will become preserved state agreements (PSA) upon commencement of WorkChoices. Some content in preserved state agreements will be void under the Workplace Relations Act, such as anti-AWA clauses and restrictive apprenticeships clauses.

A PSA will not be able to be varied or extended during the transitional period to extend its coverage or duration.



The nominal expiry date of the PSA is the day on which the original agreement would have nominally expired, unless that date is more than three years after the commencement of the agreement. Where this is the case, the nominal expiry date is the last day of that three year period.

A PSA will continue to operate until terminated or replaced with a new workplace agreement.

The terms of a PSA

The Standard does not apply to employees and employers bound by a PSA.

A PSA will include any term and condition of employment that were in the original state agreement (including terms and conditions from an award).

PSAs will also include certain state or territory law provisions that prior to commencement of WorkChoices would have determined a term and condition of employment of an employee bound by a PSA. These provisions are known as preserved entitlements (and cover the same matters as preserved entitlements for NAPSAs).

Any other matter that was previously determined by a state or territory industrial law will not be included in a PSA.

A federal award does not apply to an employee or employer bound by a PSA.

Protected notional conditions apply when employees and employers bound by a PSA make a new workplace agreement under WorkChoices, unless the agreement expressly changes or excludes the operation of the condition.

Varying a PSA

A PSA can be varied by the AIRC in limited circumstances. The AIRC may remove ambiguity or uncertainty and discriminatory clauses.

The OEA may also remove prohibited content.

WorkChoices is a new system of workplace relations legislation that covers up to 85 per cent of Australian employees. This series of fact sheets is available to assist workers and employers to understand their rights and obligations under the legislation.

For more information call the
WorkChoices Infoline on **1300 363 264**
or visit the **WorkChoices** website
www.workchoices.gov.au