

EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

SENATE LEGISLATION COMMITTEE - QUESTIONS ON NOTICE 2008-09 BUDGET ESTIMATES HEARING

Outcome 9

DEEWR Question No. EW95_09

Senator Abetz provided in writing.

Question

Agreements made prior to Forward with Fairness

Which agreements made under the Workplace Relations Act 1996 and prior to the introduction of Forward with Fairness can be extended or varied prior to their nominal expiry date?

Answer

Section 367 of the *Workplace Relations Act 1996* (WR Act) provides that a workplace agreement can be varied at any time while it is in operation.

However, the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* (Transition Act) inserted clause 5 of Schedule 7A into the WR Act, which restricts the variation of Australian Workplace Agreements (AWAs). An AWA cannot be varied under Division 8 of Part 8, except where:

- the employer varies the agreement in response to a notice by the Workplace Authority Director that it does not pass the fairness test; or
- the Workplace Authority Director makes a variation to remove prohibited content; or
- the agreement is varied to remove sex discrimination; or
- the Court makes an order varying the terms of the agreement.

Agreements made prior to the commencement of Work Choices (pre-reform certified agreements) could not be varied or extended after the commencement of Work Choices, except for the purpose of removing ambiguity or uncertainty (clause 13(1)(k) of Schedule 7 of the WR Act).

The Transition Act also included amendments to enable the Australian Industrial Relations Commission (Commission) to approve variations or extensions of agreements made prior to the commencement of Work Choices (pre-reform certified agreements) where the Commission is satisfied that the parties:

- genuinely agree to the variation or extension; and
- have not organised or engaged in, or threatened to organise or engage in, industrial action against another party to the agreement or applied for a protected action ballot after the day the Bill was introduced (13 February 2008).

The Transition Act gave similar powers to the Commission to vary or extend preserved State collective agreements.