

**SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCE COMMITTEE  
INQUIRY INTO GOVERNMENT ADVERTISING AND ACCOUNTABILITY**

**QUESTIONS FOR THE DEPARTMENT OF EMPLOYMENT AND WORKPLACE  
RELATIONS**

**Cost of WorkChoices Industrial Relations Campaign**

**Questions:**

With reference to the WorkChoices Industrial Relations Campaign,

- 1) For each of the financial years 2004-05 and to date in 2005-06:
    - (a) what is the cost of this advertising campaign; and
    - (b) what is the breakdown of these costs for: (a) television (TV) placements; (b) radio placements; (c) newspaper placements; (d) printing and mail outs; (e) research; (f) call centres; and, (g) web site design and hosting?
  - 2) What: (a) creative agency or agencies; and (b) research agency or agencies; (c) mail houses; (d) printers; (e) call centre operators; and, (f) web site designers and/or hosts have been engaged for the campaign?
  - 3) Provide copies of all contracts entered into by the Department with (a) creative agency or agencies; and (b) research agency or agencies; (c) mail houses; (d) printers; (e) call centre operators; and, (f) web site designers and/or hosts engaged for the campaign?
  - 4) Provide a copy of the initial advice received by the Department from Universal McCann recommending expenditure of \$34 million "on the costs of placing particular ads in different forms of media" which was referred to by Mr Kovacic in the Senate Employment, Workplace Relations and Education Legislation Committee Estimates Hearing of 3 November 2005.
  - 5) When was the initial figure of \$34 million for the entire campaign including call centre and booklet production costs approved and by whom?
  - 6) On what date was the budget revised to \$44.3 million for advertising costs and consultancies associated with advertising?
  - 7) On what basis was the budget revised upwards by \$10 million? Provide copies of any advice from other government agencies, internal communications management documents or consultants that led to the revised advertising budget figure?
  - 8) Who approved the revised budget of \$44.3 million and when?
  - 9) Was this decision made before or after the ACTU advertising campaign was mooted?
  - 10) What discussions took place between the Department and the GCU over the impact of the ACTU campaign?
  - 11) Were any Ministers or Ministerial staff involved in any aspect of these discussions?
  - 12) At what point was Minister Andrews or his office informed of the increased campaign advertising budget?
  - 13) Who, in fact, was informed first?
  - 14) Who in Minister Andrew's office is the contact with GCU? Who is Minister Andrews office's primary contact with the Department for matters relating to the WorkChoices campaign?
  - 15) What work on the WorkChoices campaign was undertaken by Creative Agency (referred to in the Senate Estimates transcript of 3 November as a market research and public relations consultancy)? What was the value of this work, when was this agency appointed and what tender appointment processes applied?
  - 16) What is the value of work conducted by Jackson Wells Morris to date? What additional expenditure does the Department expect to incur with Jackson Wells Morris from 10 November 2005 to the cessation of their contract on 27 January 2006?
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- 17) What is the value of work, by function, conducted by Dewey Horton on the campaign?
- 18) Provide full details of Mr Mark Pearson's company, Brandmark's involvement and remuneration as subcontractors to Dewey Horton?
- 19) Provide full details of all payments made to performers, extras, location owners or other persons or companies engaged in the production of the WorkChoices advertisements regardless of whether these payments were made directly by the Department, creative agencies or other consultants engaged in the conduct of the campaign and regardless of whether the performers or extras actually appeared in the advertisements. The information provided should not breach the privacy of individual or company concerned but should include (a) Date of work; (b) nature of services provided; (c) employing agency or company; (d) amount paid or payable; and, (e) whether individual or company was required to sign appropriate releases.

**Answers:**

- 1) No payments were made in the 2004-2005 financial year. The following answers relate only to the 2005-2006 financial year.
    - (a) The total projected budget is \$44.3 million (excluding GST) for the WorkChoices Advertising campaign and \$10.8 million (excluding GST) for the WorkChoices Information and Education campaign.
    - (b) Refer to Attachment A for a breakdown of the WorkChoices Advertising campaign and WorkChoices Information and Education campaign costs.
  - 2)
    - (a) Dewey & Horton.
    - (b) Colmar Brunton Social Research Pty Ltd.
    - (c) Salmat.
    - (d) iPrint and JS McMillan.
    - (e) UCMS; Stellar and Telstra.
    - (f) None as this work was undertaken by the Department. Costs incurred for such activities are met by Departmental allocations.
  - 3)
    - (a) See Attachment B for a copy of the contract between the Department and Dewey & Horton.
    - (b) See Attachment C for a copy of the contract between the Department and Colmar Brunton Social Research.
    - (c) As Salmat was contracted to supply mail-house services for the Department for the period encompassing 1 June 2005 to 1 June 2008, it was not necessary to prepare a separate contract for the distribution of the WorkChoices booklet.
    - (d) JS McMillan is the preferred printer for the Department. Under this arrangement the Department does not have an exclusive contract with JS McMillan or a requirement to only use JS McMillan. The Department asked JS McMillan to provide a quote for the printing of one million copies of the 16pp booklet and accepted the quoted price on 1 October 2005. iPrint was approached by the Department to produce a print run of five million booklets. Consistent with Commonwealth Procurement Guidelines, the Department was not required to seek multiple quotes or offer this work through an open tender arrangement. The Department accepted the quoted price from iPrint on 7 October 2005.
    - (e) The Department has an existing contract with Telstra to provide telecommunication services. It was therefore not necessary to prepare a
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separate contract in relation to the WorkChoices Information and Education campaign. Stellar and UCMS were approached to provide additional services and were engaged through a letter of intent on 7 October 2005. See Attachments D and E for a copy of these letters of intent.

(f) N/A.

- 4) See Attachment F for a copy of the Universal McCann Media Overview Plan as at 2 November 2005.
  - 5) The initial figure was approved on 21 September 2005 by senior Ministers.
  - 6) 9 October 2005.
  - 7) In consultation with the Ministerial Committee on Government Communications (MCGC) and the Government Communications Unit (GCU) the elements of the campaign and the allocated budget were refined. The parties took a view on what would be an appropriate amount to spend on the campaign to achieve its objectives, keeping in mind that the workplace relations reforms are a complex and important matter and proper public information should be provided. Ultimately it was decided that an appropriate spend was \$44.3 million.
  - 8) See questions 5 and 6 above.
  - 9) The development of the workplace relations campaign coincided with the Prime Minister's announcement on 26 May 2005. The process of developing the estimated costs of the campaign was an iterative process which evolved as consideration took place on the nature of the campaign, its scope, objectives, duration and breadth.
  - 10) None.
  - 11) N/A.
  - 12) 9 October 2005.
  - 13) The Department does not know whether the Minister or his Office was informed first.
  - 14) Discussions relating to the WorkChoices Advertising campaign and the WorkChoices Information and Education campaign occurred between the Department and the GCU. The GCU did not deal directly with the Minister's Office in relation to the WorkChoices campaign. Minister Andrew's Chief of Staff is the primary contact with the Department for matters relating to the WorkChoices Advertising campaign and the WorkChoices Information and Education campaign.
  - 15) The MCGC selected Dewey & Horton as the creative agency on 9 August 2005 following a selection process. Dewey & Horton was one of four creative agencies asked to pitch for the project. Dewey & Horton were selected based on the strength of the creative strategy they presented. The processes followed had regard to the Australian Government Procurement Guidelines, which are based on the principles of value for money, open and effective competition, ethics and fair dealing, and accountability and reporting. The value of the contract between the Department and Dewey & Horton is \$2.9 million. In providing services to the Department, Dewey & Horton developed a creative campaign strategy and creative material, and managed production services for television, radio and print.
  - 16) To date, the Department has been invoiced \$286,173.58 (GST inclusive) by Jackson Wells Morris in relation to the WorkChoices Advertising campaign and the WorkChoices Information and Education campaign.
  - 17) The value of the contract between the Department and Dewey & Horton contains two elements. Firstly, an amount of \$332,046 (GST inclusive) is payable as an agency
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retainer fee. In the second instance, an amount of \$2,280,896 (GST inclusive) is payable for production costs.

- 18) A total of \$328,968 has been paid by Dewey & Horton to Brandmark consulting. A copy of Brandmark's company details is set out in Attachment G.
  - 19)
    - (a) The television advertisements were filmed at 11 Melbourne locations over three filming periods on 17 and 18 September 2005; 19 and 20 September 2005; and 2 and 3 October 2005.
    - (b) Individuals provided their performance services for the workplace relations campaign.
    - (c) Casting agents for filming on 17 and 18 September were Little People, Bambini, Munchkins, CTCA, Small Fry, Azure, Visions, Centrestage, KIT and EPIC. Casting agents for filming on 19 and 20 September were Bambini, Munchkins, China Arts, Small Fry, Azure, Visions, Centrestage, Barton Buckle, EPIC and Active. Casting agents for filming on 2 and 3 October were Munchkins, China Arts, Small Fry, Centrestage, Active, Bayside, CTA, Emerging Artists, Fontinis, FRM, Kaleidoscope, KT, MAT, NOW, Ripleys and Select.
    - (d) See Attachment H for a breakdown of amounts paid to performers, extras and location owners.
    - (e) All actors and real workers were required to sign a talent release form prior to being filmed. The form states that the client is the 'Australian Federal Government Department of Employment & Workplace Relations' and that the product is provisionally entitled 'Workplace Relations'. See Attachment I for a copy of the talent release form.
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**WORKCHOICES ADVERTISING  
CAMPAIGN**

		<b>ESTIMATED ACTUAL COST (\$ mill)</b>
<b>ITEM</b>	<b>BUDGET (\$ mill)</b>	
<b>DEPARTMENTAL EXPENSE</b>		
Research	\$2.000	\$1.829
Public Relations	\$0.580	\$0.251
Advertising and creative	\$2.000	\$2.613
Advertising Costs (Radio and print advertising 9 July - 24 July 2005)	\$2.936	\$2.750
Television advertisements	\$22.765	\$30.902 <sup>1</sup>
Print Media	\$8.211	
Radio	\$3.490	
Internet	\$0.396	
NESB	\$0.958	
Indigenous media	\$0.958	
Print handicapped	\$0.026	
<b>Total Costs re WorkChoices Advertising Campaign</b>	<b>\$44.32</b>	<b>\$38.343</b>
<b>WORKCHOICES INFORMATION &amp; EDUCATION</b>		
		<b>ESTIMATED ACTUAL COST (\$ mill)</b>
<b>ITEM</b>	<b>BUDGET (\$ mill)</b>	
<b>DEPARTMENTAL EXPENSE</b>		
Outsourced call centre	\$8.124	\$3.880
Printing & Distribution	\$1.848	\$2.181
Mail house	\$0.810	\$1.067
<b>Total Costs re WorkChoices Information &amp; Education</b>	<b>\$10.78</b>	<b>\$7.128</b>

**Note:**

Figures are GST exclusive.

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<sup>1</sup> The estimated actual cost is lower than the budget because of efficiencies in buying and the effectiveness of the placement agency.

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**STANDARD FORM  
ADVERTISING CONTRACT**

**BETWEEN**

**COMMONWEALTH OF AUSTRALIA**  
represented by the  
**Department of Employment and Workplace Relations**

**AND**

Dewey & Horton Pty Ltd  
ABN: 102 875 114

**in relation to services as a creative agency for the workplace  
relations reform communications campaign**

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**THIS CONTRACT** is made on the     day of November 2005.

BETWEEN

**COMMONWEALTH OF AUSTRALIA** ('the Commonwealth'), acting through and represented by the Department of Employment and Workplace Relations

AND

**DEWEY & HORTON PTY LTD, ABN 102 875 114:** of Level 1, 31 Flinders Lane, Melbourne ('the Contractor')

**RECITALS:**

- A.     The Commonwealth, acting through the Department of Employment and Workplace Relations, requires the Services of a creative agency for the workplace relations reform communications campaign.**
  
- B.     The Contractor has fully informed itself on all aspects of the work required to be performed and has submitted the proposal and quotation referred to in Item A.**
  
- C.     The Commonwealth has agreed to accept the Consultant's offer to provide the Consultancy Services upon the terms and conditions contained in this Contract.**

**IT IS AGREED:**

**1     *Interpretation***

1.1 In this Contract, unless the contrary intention appears:

“**Account Manager**” means the person nominated by the Contractor to manage the Contract on behalf of the Contractor and act as initial point of contact for all queries under the Contract;

“**Advisers**” means a party's agents, contractors or advisers engaged in, or in relation to, the performance or management of this Contract;

“**Business Day**” in relation to the doing of any action in a place, means a weekday other than a public holiday in that place;

“**Campaign**” means the advertising campaign for the workplace relations reform communications campaign more particularly described in Item B;

“**Campaign Period**” means the period from 15 August 2005 to 30 November 2005 inclusive;

“**Commencement Date**” means the date of this Contract unless otherwise specified in Item D;

“**Commonwealth Material**” means any Material provided by or on behalf of the Commonwealth to the Contractor for the purposes of this Contract or which is copied or derived from Material so provided;

“**Confidential Information**” means information that:

if provided by the Commonwealth to the Contractor:

- (a) is listed in Item M;
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or otherwise

- (b) is by nature confidential;
- (c) is designated by the Commonwealth as confidential; or
- (d) the Contractor knows or ought to know is confidential;

or,

if provided by the Contractor to the Commonwealth:

- (e) is listed in Item M;

but does not include information which:

- (f) is or becomes public knowledge other than by breach of this Contract;
- (g) is in the possession of a party without restriction in relation to disclosure before the date of receipt from the other party; or
- (h) has been independently developed or acquired by the party in possession of the information.;

**“Contract”** means this Contract including the Schedule and all annexures and/or attachments;

**“Contract Material”** means all Material:

- (a) brought into existence for the purpose of performing this Contract;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied or derived from Material referred to in paragraphs (a) or (b);

**“Contractor”** includes, where the context permits, the officers, employees, volunteers, agents and subcontractors of the Contractor;

**“Department”** means the Commonwealth Department of the Prime Minister and Cabinet or such other Department s may from time to time administer this Contract on behalf of the Commonwealth;

**“Exempt Material”** has the meaning ascribed to it in clause 11.2;

**“General Interest Charge Rate”** has the same meaning given by section 8AAD of the *Taxation Administration Act 1953*;

**“Intellectual Property”** includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include Moral Rights, the rights of performers or rights in relation to Confidential Information;

**“Material”** means the subject matter of any category of Intellectual Property rights;

**“Moral Rights”** includes the following rights of an author of copyright Material:

- a. the right of attribution of authorship;
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- b. the right of integrity of authorship; and
- c. the right not to have authorship falsely attributed;

“**Music**” has the meaning ascribed to it in clause 11.2(c);

“**Project Officer**” means the person nominated by the Department as the manager of the contract on behalf of the Department, being the person specified by name or position in Item L or any substitute notified in writing to the Contractor;

“**Services**” means the services described in Item C and required to be supplied under this Contract;

“**Specified Personnel**” means the personnel specified in Item G as personnel required to undertake the Services or part of the work constituting the Services;

“**Talent**” means any artist, model, actor, person or organisation which the Contractor proposes to perform or offer endorsements as part of the Services;

“**Third Party Interest**” means any legal or equitable right, interest, power or remedy in favour of any person other than the Commonwealth or the Contractor in connection with the Contract, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest;

“**writing**” means any representation of words, figures or symbols capable of being rendered in a visible form.

1.2 In this Contract, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) clause headings, words capitalised or in bold format and notes in square brackets (“[ ]”) are inserted for convenience only, and have no effect in limiting or extending the language of provisions, except for the purpose of rectifying any erroneous cross-reference;
- (e) all references to clauses are clauses in this Contract;
- (f) reference to an Item is to an Item in the Schedule;
- (g) all references to dollars are to Australian dollars and this Contract uses Australian currency;
- (h) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended; and
- (i) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.3 The Schedule and annexures or attachments (if any) form part of this Contract. In the event of any conflict between the terms and conditions

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contained in the clauses of the Contract and any part of the Schedule (and annexures or attachments, if any) then the terms and conditions of the clauses will take precedence. In the event of any conflict between any part of the Schedule and any part of any annexures or attachments, if any, then the Schedule will take precedence.

- 1.4 This Contract records the entire agreement between the parties in relation to its subject matter.
- 1.5 No variation of this Contract is binding unless it is agreed in writing and signed by the parties.
- 1.6 Any reading down or severance of a particular provision does not affect the other provisions of this Contract.
- 1.7 This Contract is to be construed in accordance with the laws of the Australian Capital Territory.
- 1.8 This Contract is formed and is dated as at the date it has been executed by both parties. The terms of this Contract apply on and from the Commencement Date.

## **2 Provision of Services**

- 2.1 The Contractor must supply the Services in accordance with Item C and, in particular, must:
    - (a) perform the Services in accordance with relevant best practice and relevant Commonwealth and industry standards and guidelines, including those specified in Item E;
    - (b) comply with the time frame for the performance of the Services specified in Item D, and
    - (c) obtain any approvals set out in Item C.
  - 2.2 The Contractor agrees to be fully responsible for the performance of the Services and for ensuring compliance with the requirements of this Contract, and will not be relieved of that responsibility because of any:
    - (a) involvement by the Commonwealth in the performance of the Services;
    - (b) payment made to the Contractor on account of the Services;
    - (c) subcontracting of the Services; or
    - (d) acceptance by the Commonwealth of replacement personnel.
  - 2.3 The Contractor must submit all creative concepts developed by the Contractor as part of the Services to the Project Officer for approval prior to inclusion in the production brief.
  - 2.4 The Contractor must submit the production brief, required as part of the Services and prepared in accordance with Items C and E, to the Project Officer for approval prior to implementation of any part of the production brief.
  - 2.4 The Contractor must submit the production brief and estimated production costs, required as part of the Services and prepared in accordance with Items C and E, to the Project Officer for approval prior to implementation of any part of the production brief. Following approval of the production brief and production costs any proposed changes in production costs will be subject to approval by the Project Officer.
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### **3 Fees, Allowances, Expenses and Assistance**

- 3.1 The Commonwealth must pay to the Contractor the fees and any allowances and reimburse expenses as specified in Item F.
- 3.2 The amounts specified in Item F as payable to the Contractor for performance of the Services have been calculated on the basis of information supplied by the Contractor in the remuneration template required by the Department. The parties acknowledge that production and other costs may be estimates only at the time of entering into this Contract. The Contractor must use the remuneration template to support clarification of actual costs where estimates have been provided and costs applicable to any change to the Services required by the Department. The Commonwealth will not pay any amounts to the Contractor which have not been detailed in a remuneration template and approved by the Department.
- 3.3 The Commonwealth will be entitled, in addition to any other right it may have, to delay payment or any instalment of fees, allowances or expenses until the Contractor has completed to the satisfaction of the Project Officer that part of the Services to which the payment relates.
- 3.4 Fees, allowances and expenses must be invoiced in accordance with clause 24 of this Contract. The Commonwealth must pay correctly rendered invoices within 30 days.
- 3.5 The Commonwealth agrees to provide the facilities and assistance specified in Item K.
- 3.6 The amounts payable under this Contract include an amount to cover any liability of the Contractor for Goods and Services Tax (GST) on any supplies made by the Service Provider under this Contract which are taxable supplies within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).
- 3.7 If a party fails to pay an amount payable by it to the other party under this Contract by the due date for payment, the first mentioned party must also pay to the other party simple interest on such unpaid amount at the General Interest Charge Rate calculated daily from the next day after the due date up to and including the date of payment.

### **4 Dealing with Copies**

- 4.1 For the purposes of this clause 4, 'Copy' means any document, device, article or medium in which Commonwealth Material, Contract Material or Confidential Information of the Commonwealth is embodied.
  - 4.2 Property in each Copy vests or will vest in the Commonwealth.
  - 4.3 The Contractor agrees to establish and maintain procedures to secure all Copies against loss and unauthorised access, use, modification or disclosure.
  - 4.4 The Contractor must ensure that Copies are used, copied, supplied or reproduced only for the purposes of this Contract and strictly in accordance with any conditions or restrictions set out in this Contract or notified from time to time in writing by the Commonwealth.
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- 4.5 The Commonwealth grants or must procure a royalty-free, non-exclusive licence for the Contractor to use, reproduce and adapt Commonwealth Material for the purposes of this Contract.
- 4.6 The Contractor may retain one copy of the Contract Material but may only use that Material for purposes approved by the Commonwealth.
- 4.7 Upon the expiration or termination of this Contract the Contractor agrees to ensure that all Copies are delivered to the Commonwealth or otherwise dealt with as directed by the Commonwealth.

## **5 Disclosure of information**

### Confidential Information not to be disclosed

- 5.1 Subject to clause 5.5(a), a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- 5.2 In giving written consent to the disclosure of the Commonwealth's Confidential Information, the Commonwealth may impose such conditions as it thinks fit, and the Contractor agrees to comply with these conditions.

### Written Undertakings

- 5.3 The Commonwealth may at any time require the Contractor to arrange for:
  - (a) its Advisers; or
  - (b) any person with a Third Party Interest;to give a written undertaking in the form of a deed relating to the use and non-disclosure of the Commonwealth's Confidential Information.
- 5.4 If the Contractor receives a request under clause 5.3, it must promptly arrange for all such undertakings to be given.

### Exceptions to Obligations

- 5.5 The obligations on the parties under this clause 5 will not be taken to have been breached to the extent that Confidential Information:
    - (a) is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
    - (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of Contract-related activities;
    - (c) is disclosed by the Commonwealth to the responsible Minister;
    - (d) is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
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- (e) is shared by the Commonwealth within the Commonwealth's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
- (f) is authorised or required by law to be disclosed;
- (g) is disclosed by the Commonwealth and is information in a material form in respect of which an interest, whether by licence or otherwise, in the Intellectual Property rights in relation to that material form, has vested in, or is assigned to, the Commonwealth under this Contract or otherwise, and that disclosure is permitted by that licence or otherwise; or
- (h) is in the public domain otherwise than due to a breach of this clause 5.

#### Obligations on Disclosure

5.6 Where a party discloses Confidential Information to another person:

- (a) pursuant to clauses 5.5(a), 5.5(b) or 5.5(e), the disclosing party must:
  - (i) notify the receiving person that the information is Confidential Information; and
  - (ii) not provide the information unless the receiving person agrees to keep the information confidential; or
- (b) pursuant to clauses 5.5(c) and 5.5(d), the disclosing party must notify the receiving party that the information is Confidential Information.

#### Additional Confidential Information

5.7 The parties may agree in writing after the date of this Contract as a variation to this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract.

#### Period of Confidentiality

- 5.8 The obligations under this clause 5 continue, notwithstanding the expiry or termination of this Contract:
- (a) in relation to an item of information described in Item M, for the period set out in Item M in respect of that item; and
  - (b) in relation to any information which the parties agree in writing after the date of this Contract is to constitute Confidential Information for the purposes of this Contract – for the period agreed by the parties in writing in respect of that information.

#### No Reduction in Privacy Obligations

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- 5.9 Nothing in this clause 5 derogates from any obligation which the Contractor may have either under the *Privacy Act 1988* as amended from time to time, or under this Contract, in relation to the protection of Personal Information.

## **6. Protection of Personal Information**

### Application of Clause

- 6.1 This clause applies only where the Contractor deals with personal information when, and for the purpose of, providing the Services under this Contract.

### Definition and Interpretation applicable to Clause 6

- 6.2 In this clause 6, the terms ‘agency’, ‘approved privacy code’ (APC), ‘Information Privacy Principles’ (IPPs), and ‘National Privacy Principles’ (NPPs) have the same meaning as they have in section 6 of the Privacy Act, and ‘personal information’, which also has the meaning it has in section 6 of the Privacy Act, means:

‘information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion’.

### Obligations of Contractor in relation to personal information

- 6.3 The Contractor acknowledges that it is a ‘contracted service provider’ within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of the Services under this Contract:
- (a) to use or disclose personal information obtained during the course of providing the Services under this Contract, only for the purposes of this Contract;
  - (b) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
  - (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
  - (d) to notify individuals whose personal information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
  - (e) not to use or disclose personal information or engage in an act or practice that would breach section 16F (direct marketing) of the Privacy Act, an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Contractor, unless:
    - (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or
    - (ii) in the case of an NPP or an APC – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorised by this Contract is inconsistent with the NPP or APC;
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- (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with an NPP or an APC binding a party to this Contract;
  - (g) to immediately notify the agency if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 6, whether by the Contractor or any subcontractor;
  - (h) to ensure that any employee of the Contractor who is required to deal with personal information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause 6.
- 6.4 The Contractor agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause, including the requirement in relation to subcontracts.

#### Indemnity for Breach of Obligation

- 6.5 The Contractor agrees to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause 6, or a subcontractor under the subcontract provisions referred to in subclause 6.4.

## **7 Compliance with laws and policies**

- 7.1 The Contractor must, when using the Commonwealth's premises or facilities, comply with all reasonable directions and Commonwealth procedures relating to occupational health (including the Commonwealth's smoke free work place policy), safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.
- 7.2 The Contractor agrees, in carrying out this Contract, to comply with all relevant legislation and standards of the Commonwealth or of any State, Territory or local authority, and in particular:
- (a) all relevant legislation of the Commonwealth (particularly the *Crimes Act 1914*, *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, *Equal Opportunity for Women in the Workplace Act 1992* and *Disability Discrimination Act 1992*), or of any State, Territory or local authority; and
  - (b) any accepted industry standards for advertising, including Australian Broadcasting Authority standards for broadcast advertising.

## **8 Compliance with employment policies**

- 8.1 The Contractor must, in its dealings with its employees, have due regard to Commonwealth policies on employment, including the *Workplace Relations Act 1996*, and obligations under relevant occupational health and safety laws.
- 8.2 If requested by the Commonwealth before any payment of fees or any costs is made, the Contractor must provide a written statement verifying that all
-

remuneration payable to its employees has been paid for work done relating to this Contract during the period to which the payment relates.

- 8.3 The form of the statement under subclause 8.2 may be required by the Commonwealth in a particular form, including a:
- (a) statutory declaration; or
  - (b) form specified under any relevant legislation, including regulations relating to section 127 of the *Industrial Relations Act 1996* (NSW) or any similar State or Territory laws as amended or replaced from time to time.
- 8.4 The Contractor acknowledges that the Commonwealth may withhold any payment due to the Contractor under this Contract until the Contractor gives a written statement under clause 8, for any period up to the date of the statement, and that any rights pertaining to late payment under this Contract do not apply to any payment withheld under this subclause 8.4.
- 8.5 The parties agree that a notice from the Commonwealth regarding any State or Territory legislation that applies to this Contract, such as referred to in paragraph 8.3(b), will be conclusive for the purposes of this Contract.
- 8.6 The Contractor must keep a copy of any written statement provided under this clause for any reasonable period notified by the Commonwealth or as prescribed under the legislation referred to in paragraph 8.3(b) (being at least 6 years for the purposes of the *Industrial Relations Act 1996* (NSW), sub section 127(4), whichever is longer).

## **9 Indemnity**

- 9.1 The Contractor agrees to indemnify the Commonwealth from and against any:
- (a) liability incurred by the Commonwealth ;
  - (b) loss of or damage to property of the Commonwealth; or
  - (c) loss or expense incurred by the Commonwealth in dealing with any claim against all or any of them including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by them,
- arising from:
- (d) any breach by the Contractor of this Contract;
  - (e) an act or omission involving fault on the part of the Contractor in connection with this Contract.
- 9.2 The Contractor's liability to indemnify the Commonwealth under clause 9.1 will be reduced proportionately that any act or omission involving fault on the part of the Commonwealth contributed to the relevant liability, loss or damage, or loss or expense.
- 9.3 The right of the Commonwealth to be indemnified under this clause 9 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.
- 9.4 In this clause 9, "Commonwealth" includes officers, employees and agents of the Commonwealth.
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- 9.5 The Contractor must ensure that all subcontracts issued in furtherance of this Contract include an indemnity by the subcontractor in favour of the Commonwealth in similar terms to the provisions of this clause.

## **10 Conflict of interest**

- 10.1 For the purposes of this clause 10, 'Conflict' means any matter, circumstance, interest, or activity affecting the Contractor (including the officers, employees, agents and subcontractors of the Contractor) which may or may appear to impair the ability of the Contractor to provide the Services to the Commonwealth diligently and independently.
- 10.2 The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in the performance of its obligations under this Contract by itself or by any of its employees, agents or subcontractors.
- 10.3 The Contractor must not, and must ensure that any employee, agent or subcontractor of the Contractor, does not engage in any activity or obtain any interest during the course of this Contract that is likely to create a Conflict.
- 10.4 If during the term of this Contract a Conflict arises, or appears likely to arise, the Contractor undertakes to:
- (a) notify the Commonwealth immediately in writing;
  - (b) make full disclosure of all relevant information relating to the Conflict; and
  - (c) take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the Conflict.

## **11 Intellectual Property**

- 11.1 Intellectual Property in all Contract Material vests or will vest in the Commonwealth.
- 11.2 Clause 11.1 does not apply to the following Material ("**Exempt Material**"):
- (a) any Commonwealth Material incorporated into Contract Material;
  - (b) existing Material which is specified in Item J;
  - (c) existing music (including the score and lyrics (if any), performances of the foregoing, and any sound recording and/or cinematograph film of such performance);
  - (d) any other Material subsequently proposed to be used for the Campaign where the Commonwealth agrees in writing that the Material may be treated as Exempt Material for the purposes of this clause.
- 11.3 The Contractor grants to the Commonwealth, or must procure the grant to the Commonwealth of, a non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, distribute and communicate the Exempt Material for the Campaign and associated or consequential purposes, including for purposes of any report, documentary, archival activity or historical research.
- 11.4 If requested by the Commonwealth to do so, the Contractor must bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause. In particular, the Contractor must ensure that all freelance subcontractors agree to the provisions of this clause.
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- 11.5 Without limitation to clause 11.4, in relation to any Music the Contractor must obtain a licence from all third parties with an interest in the Material using the form of “Music Clearance” set out in the Annex, or such other form as is approved from time to time by the Commonwealth.
- 11.6 In relation to any other category of Exempt Material the Contractor must obtain a licence from all third parties with an interest in the Material in such form as is approved from time to time by the Commonwealth.
- 11.7 The Contractor warrants that it is entitled, or will be entitled or will procure that it is entitled at the relevant time, to deal with the Intellectual Property in any Contract Material in the manner provided for in this clause.

## **12 Moral Rights**

- 12.1 For the purposes of this clause 12, ‘**Permitted Acts**’ means any of the following classes or types of acts or omissions:
- (a) using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship;
  - (b) supplementing the Contract Material with any other Material;
  - (c) using the Contract Material in a different context to that originally envisaged; and
  - (d) the acts or omissions specifically set out in Item N;
- but does not include false attribution of authorship.
- 12.2 Where the Contractor is a natural person and the author of the Contract Material, he or she consents to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth.
- 12.3 In any other case, the Contractor agrees:
- (a) to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth. (whether occurring before or after the consent is given); and
  - (b) upon request, to provide the executed original of any such consent to the Commonwealth.
- 12.4 The Contractor acknowledges that its attention has been drawn to the Department’s general policies or practices regarding Moral Rights as described in Item N.
- 12.5 This clause 12 does not apply to any Commonwealth Material incorporated in the Contract Material.

## **13 Audit**

- 13.1 The Contractor agrees to give to the Project Officer, or to any persons authorised in writing by the Project Officer, access to premises occupied by the Contractor where the Services are being performed, and permit those persons to inspect and take copies of any Material relevant to the Services.
- 13.2 The rights referred to in clause 13.1 are subject to:
- (a) the provision of reasonable prior notice by the Project Officer;
  - (b) the Contractor’s reasonable security procedures; and
  - (c) if appropriate, execution of a deed of confidentiality relating to non-disclosure of the Contractor’s confidential information.
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- 13.3 Without in any way affecting the statutory powers of the Auditor-General under the *Auditor-General Act 1997* and subject to the provisions of that Act, the Auditor-General is a person authorised for the purposes of this clause 13.
- 13.4 Subject to clause 13.5, the parties agree that the Commonwealth Auditor-General, Ombudsman or a Minister as a result of a request from Parliament (including a representative of a Parliamentary Committee, howsoever constituted), or their delegate showing proof of the delegation in writing, may, for the purpose of performing their statutory or Parliamentary functions, at reasonable times and on giving reasonable notice to the Contractor:
- (a) require the provision by the Contractor, its employees, agents or subcontractors, of the Commonwealth Material and/or Contract Material and any other Material and information directly related to this Contract;
  - (b) have access to the Contractor's premises for the purposes of inspecting and copying the Commonwealth Material and/or Contract Material and any other documentation and Material, however stored, in the custody or under the control of the Contractor, its employees, agents or subcontractors directly related to this Contract; and
  - (c) where relevant, inspect any property or assets of the Commonwealth held on the Contractor's premises or within the Contractor's control.
- 13.5 The Contractor must immediately inform the Project Officer of any approach made to it by any of the parties referred to in clause 13.4, and the Contractor must follow any direction from the Commonwealth regarding whether the Contractor or the Commonwealth should deal with the inquirer and any issue regarding the inquirer recognising obligations of privacy or confidentiality, or any immunity from disclosure, that may apply to any matter referred to in clause 13.4.
- 13.6 The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains equivalent provisions granting the rights specified in this clause 13.
- 13.7 This clause 13 applies for the term of this Contract and for a period of 5 years from the date of expiration or termination.

## **14 Insurance**

- 14.1 The Contractor agrees, for so long as any obligations remain in connection with this Contract:
- (a) to effect and maintain the insurance of the type and for the value specified in Item I for all the Contractor's obligations under this Contract, including those which survive the expiration or termination of this Contract; and
  - (b) upon request, to provide proof of insurance acceptable to the Commonwealth.
- 14.2 This clause will continue in operation for so long as any obligations remain in connection with the contract.
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## **15 Negation of employment, partnership and agency**

- 15.1 The Contractor must not represent itself, and must ensure that its employees do not represent themselves, as being an employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.
- 15.2 The Contractor will not by virtue of this Contract be or for any purpose be deemed to be an employee, partner or agent of the Commonwealth, or as having any power or authority to bind or represent the Commonwealth.

## **16 Termination and reduction**

- 16.1 The Commonwealth may, at any time by written notice, terminate this Contract or reduce its scope. If this Contract is so terminated or its scope reduced, the Commonwealth will be liable only for:
- (a) payments under the payment provisions of this Contract for the Services affected and rendered before the effective date of termination or reduction; and
  - (b) subject to clause 16.3 any reasonable costs incurred by the Contractor and directly attributable to the termination or reduction of this Contract.
- 16.2 Upon receipt of a notice of termination or reduction the Contractor must:
- (a) stop work as specified in the notice;
  - (b) take all available steps to minimise loss resulting from that termination or reduction and to protect Commonwealth Material and Contract Material; and
  - (c) continue work on any part of the Contract not affected by the notice.
- 16.3 The Commonwealth will not be liable to pay compensation in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract for the Services, together exceed the total value of fees payable in accordance with this Contract. The Contractor will not be entitled to compensation for loss of prospective profits.

## **17 Default**

- 17.1 If either party is in default under this Contract due to failure to perform or observe any obligation or undertaking to be performed or observed on its part under this Contract, the party not in default may, subject to clause 17.2, by notice in writing to the other party, terminate this Contract without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party.
- 17.2 Where the default is capable of being remedied, a party must not exercise its rights of termination under clause 17.1 or 17.3 unless:
- (a) it has first given to the other party notice in writing specifying the default and requiring the other party to remedy it within the time (being not less than 10 working days) specified in the notice; and
  - (b) the default is not remedied within the time allowed.
- 17.3 If the Contractor:
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- (a) being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing the corporation under external administration;
- (b) in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors; or
- (c) assigns the Contract other than in accordance with clause 20;

the Commonwealth may, by notice in writing, terminate this Contract without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party.

## **18 Waiver**

- 18.1 A waiver by either party in respect of any breach of a condition or provision of the Contract will not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. The failure of either party to enforce at any time any of the provisions of this Contract will in no way be interpreted as a waiver of such provision.

## **19 Dispute resolution**

- 19.1 The parties agree that a dispute arising under this Contract must be dealt with as follows:
- (a) the party claiming that there is a dispute must give to the other party a notice setting out the nature of the dispute;
  - (b) within 7 Business Days each party must nominate a representative not having any prior involvement in the dispute;
  - (c) the representatives must try to settle the dispute by direct negotiation between them;
  - (d) failing settlement within a further 14 Business Days, the parties may agree to refer the dispute to an independent third person with power:
    - (i) to intervene and direct some form of resolution, in which case the parties shall be bound by that resolution; or
    - (ii) to mediate and recommend some form of non-binding resolution;
  - (e) the parties shall cooperate fully with any process instigated under clause 19.1(d) in order to achieve a speedy resolution;
  - (f) failing a resolution within a further 28 days, either party may commence legal proceedings.
- 19.2 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Contract.
- 19.3 This clause 19 does not apply to:
- (a) action by the Commonwealth under or purportedly under clauses 16.1 or 17.3.
  - (b) action by either party under or purportedly under clause 17.1.
  - (c) either party commencing legal proceedings for urgent interlocutory relief.
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## **20 Assignment and novation**

- 20.1 The Contractor cannot assign its obligations, and agrees not to assign its rights, under this Contract without, in either case, prior approval in writing from the Commonwealth.
- 20.2 The Contractor must not consult with any other person or body for the purposes of entering into an arrangement which will require novation of the Contract without first consulting the Commonwealth.
- 20.3 The Commonwealth must not withhold approval of an assignment to a wholly owned subsidiary of the Contractor if:
- (a) the proposed assignee is sufficiently capitalised to meet all of the Contractor's obligations under the Contract, including indemnities;
  - (b) the Specified Personnel continue to provide the Services, subject to the terms of this Contract;
  - (c) the Contractor guarantees the performance of this Contract by the assignee and any liability on the part of the assignee arising under this Contract;
  - (d) the proposed assignee fully complies with all criteria applied to the Contractor as a tenderer for provision of the Services; and
  - (e) the Contractor provides to the Commonwealth all information reasonably required to determine compliance under clause 20.3.

## **21 Notices**

- 21.1 Any notice, request or other communication to be given or served under this Contract must be in writing and dealt with as follows:
- (a) if given by the Contractor to the Commonwealth - addressed and forwarded to the Project Officer at the address indicated in Item L or as otherwise directed by the Project Officer; or
  - (b) if given by the Commonwealth to the Contractor - signed by the Project Officer or his or her nominee and forwarded to the Contractor at the address indicated in Item H.
- 21.2 Any such notice, request or other communication must be delivered by hand or sent by pre-paid post or facsimile or electronic mail, to the address of the party to which it is sent.
- 21.3 Any notice, request or other communication will be deemed to be received:
- (a) if delivered personally, on the date of delivery;
  - (b) if sent by pre-paid post, upon deliver to the relevant address; or
  - (c) if sent electronically, upon actual receipt by the addressee.
- 21.4 A notice received:
- (a) after 5:00pm on a Business Day; or
  - (b) on a day that is not a Business Day;
- is deemed to be received on the next Business Day.

## **22 Subcontracting and suppliers**

- 22.1 The Contractor must not, without the prior written approval of the Commonwealth, subcontract the performance of any part of the Contract.
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- 22.2 The Commonwealth may impose any terms and conditions it considers appropriate when giving its approval under clause 22.1.
- 22.3 Despite any approval given by the Commonwealth, the Contractor will be responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Contract.
- 22.4 The Contractor must ensure that a subcontractor is aware of all terms and conditions of this Contract relevant to the subcontractor's part in the provision of the Services and must include in any subcontract for the performance of any part of the Services provisions equivalent to clauses 5, 6, 16 and 13 of this Contract.
- 22.5 The Contractor must pay the subcontractors in accordance with the terms of the relevant subcontract.
- 22.6 When the Contractor intends subcontracting television commercial production it must obtain written competitive quotations for the work from at least three potential subcontractors, all of which must be provided to the Project Officer when seeking the approvals required under clauses 29.1 and 29.2.
- 22.7 When the Contractor intends subcontracting production other than that referred to in subclause 22.6 with a value of at least \$10,000, it must obtain written competitive quotations for the work from at least three potential subcontractors, all of which must be provided to the Project Officer when seeking the approvals required under clauses 29.1 and 29.2.
- 22.8 When a subcontractor or supplier offers a discount for early payment of its invoice, the Account Manager must consult with the Project Officer to decide if early payment is to be made.
- 22.9 The Contractor must provide to the Project Officer each month a report listing all the subcontracts awarded or orders placed during the preceding month. Copies of subcontracts awarded or orders placed must be provided to the Project Officer on demand.
- 22.10 Requests for approval to proceed with a subcontract for any part of the Services are to be made in writing to the Project Officer. Approvals must be granted, or refused, by the Project Officer or appropriate Commonwealth delegate in writing.
- 22.11 The Contractor must seek approval of cost estimates for Services to be provided by subcontractors or suppliers other than the Contractor prior to entering into any commitments for, or commencing, those Services. All estimates must be based on net cost without commission or Contractor's mark-up.

## **23 Liaison**

- 23.1 The Contractor must liaise with and report to the Project Officer regularly and as reasonably required by the Project Officer during the period of this Contract.
- 23.2 The Contractor may nominate from time to time a person who has authority to receive and sign notices and written communications under this Contract and accept any request or direction in relation to the Contract.
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## **24 Invoices**

- 24.1 The Contractor must submit invoices for payment as specified in Item F, subject to the provisions of this clause 24. In relation to taxable supplies made under this Contract, the Contractor must issue the Commonwealth a tax invoice in accordance with the *A New Tax System (Goods and Services Tax) Act 1999*.
- 24.2 If an invoice is found to have been incorrectly rendered after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and without limiting recourse to other available means, may be offset against any amount subsequently due by the Commonwealth to the Contractor.
- 24.5 If any monies due to the Commonwealth remain unpaid or unrepaid after the date on which they should have been paid or repaid the Commonwealth is entitled to be compensated for the loss suffered by reason of the withholding of those moneys.
- 24.6 Advertising production costs may be invoiced as follows:
- (a) 50% of television production costs may be claimed in the month prior to commencement of shooting;
  - (b) the remaining 50% of television production costs may be claimed on delivery of the finished material; and
  - (c) for all other production costs, on approval of the Contractor's estimates by the Project Officer, monthly in arrears for expenditure incurred in the previous month.
- 24.7 All costs, including production and those associated with subcontractors and suppliers, must be invoiced at net cost, without commission or Contractor's markup.
- 24.8 All invoices must be fully itemised to shall all costs including hours claimed and disbursements.

## **25 Government taxes, duties and charges**

- 25.1 All taxes, duties and charges imposed or levied in Australia or overseas in connection with the performance of this Contract must be borne by the Contractor.
- 25.2 Where a variation in a government tax, duty or charge affects an item included in the fees and allowances, the party so affected may apply to the other party to vary the fees and allowances to take account of the variation in the tax, duty or charge, but where that variation increases the fees and allowances, that increase must not take effect, and the Commonwealth is not obliged to pay the amount claimed to be attributable to that tax, duty or charge, unless and until the Commonwealth is satisfied that:
- (a) the claimed increase is actually attributable to that tax, duty or charge; and
  - (b) the tax, duty or charge increase has affected the fees and allowances for supplying the Services.
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## **26 Talent agreement**

- 26.1 The Contractor must provide the Project Officer with written evidence that Talent has agreed to participate in the Contract and is suitably qualified or experienced to participate.
- 26.2 The Contractor must ensure that, prior to any commitment to Talent, adequate and appropriate performance clearances, authorities, consents and acknowledgments (if any) applicable to Talent are obtained and details are provided to the Project Officer, including any documentation required in relation to intellectual property as provided under clause 11 of this Contract.
- 26.3 All agreements engaging Talent for the purposes of this Contract must be subject to approval by the Project Officer in accordance with clause 22 and must contain provisions which are consistent with the terms of this agreement, in particular those provisions regarding the ownership of Intellectual Property.
- 26.4 All documentation relating to the engaging of Talent is to be retained and delivered to the Project Officer at the completion or earlier termination of this Contract.

## **27 Specified Personnel**

- 27.1 The Contractor must ensure that the Specified Personnel listed in Item G undertake their nominated work.
- 27.2 Where Specified Personnel are unable to undertake their work, the Contractor must notify the Project Officer immediately. The Contractor must, if so requested by the Project Officer, provide replacement personnel acceptable to the Project Officer. at no additional cost and at the earliest opportunity.
- 27.3 The Project Officer may, at its absolute discretion, give notice requiring the Contractor to remove personnel (including Specified Personnel) from work on the Services. The Contractor must, at its own cost, promptly arrange for the removal of such personnel from work on the Services and their replacement with personnel acceptable to the Project Officer.
- 27.4 If the Contractor is unable to provide acceptable replacement personnel the Commonwealth may terminate this Contract in accordance with the provisions of clause 17.

## **28 Survival**

- 28.1 Unless the contrary intention appears, the expiration or earlier termination of this Contract shall not affect the continued operation of any provision relating to:
- (a) licensing of Intellectual Property;
  - (b) Confidential Information;
  - (c) the protection of Personal Information;
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- (d) audit;
- (e) information security; or
- (f) an indemnity;

or any other provision which expressly or by implication from its nature is intended to survive the expiration or earlier termination of the Contract.

SIGNED by the parties on the day and year first given above.

**SIGNED** on behalf of the  
COMMONWEALTH OF AUSTRALIA

by \_\_\_\_\_  
**John Kovacic, Department of Employment and Workplace Relations**

in the presence of

\_\_\_\_\_

\_\_\_\_\_

**SIGNED** by the said

\_\_\_\_\_  
**Edward Horton, Dewey & Horton**

\_\_\_\_\_

\_\_\_\_\_  
**Christopher Dewey, Dewey & Horton**

\_\_\_\_\_

In the presence of

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **SCHEDULE**

### **A. Proposal and Quotation (see Recitals)**

The Contractor has submitted a proposal for the provision of the Services. The Department wishes to accept that proposal, on the terms and conditions set out in this Schedule.

### **B. The Campaign (see clause 1.1)**

On 26 May 2005, the Prime Minister announced workplace reforms aimed at modernising Australia's workplace relations system. The reform measures will impact on most, if not all working age Australians and their families.

A national communication campaign is planned for early 2006, following passage of the workplace relations legislation to inform employees and employers about the reforms and to promote the benefits of the reforms. In the immediate term, leading up to the introduction of the workplace relations legislation into Parliament a preliminary creative strategy is needed to provide accurate information about the reforms and to counter misinformation.

The purpose of the advertising campaign is to inform and educate the Australian public, specifically all working age Australians and business owners, of the proposed major reforms to how Australia's workplace relations system operates. There will be a particular emphasis on educating workers and their families about the proposed changes, as well as providing the wider community with an understanding of why the reforms are needed and subsequently, the implications of the outcome.

### **C. Services (see clauses 1.1, 2.1 and 4.2)**

The services to be provided by the Contractor are:

#### **C.1 CREATIVE SERVICES AND PRODUCTION MANAGEMENT**

##### **(a) Campaign strategy development**

C1.1 The Consultant must develop a creative strategy to achieve the communication aims of:

- a) informing and educating the Australian public, specifically all working age Australians and business owners, of the proposed reforms to how Australia's workplace relations system operates; and
- b) placing particular emphasis on educating workers and their families about the proposed workplace relations changes, as well as providing the wider community with an understanding of why the reforms are needed and subsequently, the implications of the reforms.

C1.2 The Consultant must present the draft creative strategy to the Department and the Ministerial Committee on Government Communication for approval.

##### **(b) Creative development**

C1.3 Immediately following verbal approval of the creative strategy by the Department and the Ministerial Committee on Government Communications, the

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Consultant must commence creative development of the concept based on the approved campaign strategy.

C1.4 The creative material may include (but is not limited to):

- a) television executions;
- b) radio executions; and
- c) print executions.

C1.5 The Consultant must provide the Department and the Ministerial Committee on Government Communications with draft creative material for consideration and approval in a format to be nominated by the Department.

C1.6 The Consultant must produce presentation materials based upon the creative concepts. Where requested by the Department, the Consultant must provide a copy of the presentation materials to such parties as advised by the Department to the Consultant in writing.

C1.7 The Consultant must present draft creative materials to the Ministerial Committee on Government Communications based upon the approved creative concepts at times to be advised by the Department.

**(c) Production services**

C1.8 Following approval by the Department and the Ministerial Committee on Government Communication of the creative executions developed for the campaign, the Consultant is required to manage production services including (but not limited to):

- a) For television and radio executions:
    - i. audio and video recording and filming
    - ii. sound recording and mixing
    - iii. post-production
    - iv. editing
    - v. dub duplication and dispatch
    - vi. computer animation and graphics
    - vii. music composition
  - b) For print executions:
    - i. design
    - ii. preparation and dispatch of black and white print material for newspapers
    - iii. paintbox retouching
    - iv. reprographics
    - v. digital proofing
    - vi. photography
-

vii. digital printing

## **C.2 MEDIA PLACEMENT**

C2.1 The Contractor must create and deliver the specified advertisements to the Commonwealth's master media planning and placement agency in a form ready for duplication/publication.

C2.2 The advertisements and form of the product to be delivered by the Contractor are to be determined in consultation with the Department and the master placement agency.

C2.3 Each of the advertisements referred to above shall include Federal Government branding. Usually this is represented by the Commonwealth Coat of Arms and the words "Commonwealth Government" / "Commonwealth Government Initiative" / "Federal Government" / "Australian Government" or similar as advised by the department.

C2.4 All advertisements are required to carry Commonwealth Government authorisation tags in a form specified by the Department.

## **C.3 Reporting**

C.3.1 Upon completion of production of each item specified in C.1, the Consultant will provide progress reports which include a description of the work completed and an estimate of the costs incurred to date. These reports will be provided via email or verbally (as required by the Department).

## **C.4 Approvals**

C.4.1 The Commonwealth shall have the right to approve the form of all credits, copyright notices and disclaimers to appear in the advertising produced by the Consultant.

## **D. Timing (see clause 2.1(b))**

D1.1 The Consultant must provide presentation material based upon draft creative concepts to Colmar Brunton Social Research Pty Ltd on an ongoing basis on dates to be advised to the Consultant in writing.

D1.2 The Consultant must present the draft advertisements to the Ministerial Committee on Government Communications on an ongoing basis on dates to be advised to the Consultant in writing.

D1.3 The Consultant must provide the final completed advertisements the master placement agency on a date to be advised by the Department.

## **E. Service Levels (see clause 2.1(a))**

E1.1 The Contractor must perform the Services in accordance with:

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- a) *The Commonwealth Style Manual*, AUSINFO, Canberra (latest edition);
- b) *Guidelines for Commonwealth Information Published in Electronic Format*, AUSINFO, Canberra (<http://www.ausinfo.gov.au/guidelines/index.html>);
- c) *Policy on the use of non-discriminatory language and images in Government advertising and information material*, Ministerial Committee on Government Information and Advertising, Office of Government Information and Advertising, 1996;
- d) Privacy Advisory Committee, *Outsourcing and Privacy: Advice for Commonwealth agencies considering contracting out (outsourcing) information technology and other functions*, Privacy Commissioner, August, 1994 (a stand-alone document which can also be found in: Privacy Commissioner, *Federal Privacy Handbook: A Guide to Federal Privacy Law and Practice*, Redfern Legal Centre Publishing, Sydney, Release 4, January 1995);
- e) *Australian Standards for Document Management (AS4390)*;

E1.2 The Contractor must ensure that its recommendations and proposals are always legal, decent, honest, truthful, culturally and socially sensitive, and are not false, indecent, libellous, defamatory or in any other way prejudicial to the Commonwealth's interest.

E1.3 The Contractor must at all times act in accordance with any applicable industry codes of conduct.

## **F. Fees (see clauses 3.1, 24.1 and 24.2)**

F1.1 The total fees payable for this Contract are as follows:

- a) The agency retainer fee will be capped at \$332,046.00 (GST inclusive)
- b) In addition to the agency retainer fee, the Commonwealth will reimburse the Contractor for all production costs incurred in performing the Services. The amounts payable under this subclause will be capped at \$2,280,896.00 (GST inclusive).

F1.2 Invoices must be submitted to the Project Officer and must include:

- a) title of the Services;
- b) name of Project Officer;
- c) contract number or purchase order number (if any);

F1.3 The due date for payment by the Commonwealth is 30 days after delivery of a correctly rendered invoice which is cleared by the Project Officer for payment.

## **G. Specified personnel (see clause 27.1)**

The following personnel must be used to deliver the nominated role:

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Personnel	Role
Edward Horton	Creative Director, including attendance at MCGC meetings

**H. Contractor’s contact for notices (clause 21.1(b))**

The Contractor’s contact for receipt of notices will be:

Stefanie Koster  
 Managing Director  
 Dewey & Horton  
 Level 1, 31 Flinders Lane  
 Melbourne VIC 3000

**I. Contractor’s insurance (clause 14.1(a))**

The agency must maintain:

- workers’ compensation insurance for an amount required by the relevant State or Territory legislation; and
- commercial general liability insurance covering liability arising from premises, operations, independent contractors, personal injury, products completed operations, and liability assumed under an insured contract on an occurrence basis, with a limit of not less than \$5 million each occurrence and in the aggregate; and
- professional indemnity insurance for an amount of not less than \$5 million.

**J. Pre-existing Intellectual Property (clause 11.2(b))**

None specified

**K. Assistance to be provided by the Commonwealth**

Not applicable

**L. Project Officer’s contact details (see clause 21.1(a))**

The Project Officer’s contact details are:

John Kovacic  
 Group Manager  
 Workplace Relations Policy Group  
 Department of Employment and Workplace Relations  
 Level 3, Garema Court  
 148-180 City Walk  
 Canberra City ACT 2601

**M. Confidential Information (see clause 5)**

- A. Commonwealth’s Confidential Information

1. Contract Provisions/Schedules/Attachments

Item	Period of Confidentiality

2. Contract-related material

Item	Period of Confidentiality
<i>All information provided by the Commonwealth to the Consultant under this Contract, whether provided verbally and/or in writing</i>	7 years from the completion of all work required to be performed under this Contract.

B. Service Provider’s Confidential Information

1. Contract Provisions/Schedules/Attachments

Item	Period of Confidentiality

2. Contract-related material

Item	Period of Confidentiality

**N. Moral Rights (see clause 12)**

In addition to those set out in clause 12.1, the following are ‘Permitted Acts’ for the purposes of clause 12.1(d):

- use of the Contract Material for advertising, merchandising or promotional purposes of any kind.

Commonwealth of Australia

MUSIC CLEARANCE

- Copyright Material :** WorkChoices advertising music  
*[identify the copyright material, for example, give song title in quotation marks]*
- as performed : At Rosco Productions on 4 October 2005  
*[specify place and date of performance]*
- Interested Parties :**
- (i) Musical work Rosco Productions  
*[identify the owner of copyright in the score ]*
- (ii) Literary work N/A  
*[identify the owner of copyright in the associated lyrics.]*
- (iii) Performance(s) Ross Inglis  
*[identify the performer(s)]*
- (iv) Recording (sound/video) Rosco Production  
*[identify the owner of copyright in the sound recording, or film, if not the Commonwealth]*
- Proposed Campaign :** The WorkChoices advertising campaign is intended to provide the Australian public with factual information and advice on the proposed changes to the Australian workplace relations system and how the changes may affect them.  
The campaign ran in the national media from 9 October 2005 to 30 October 2005.  
*[include a short narrative to explain the nature of the Campaign, including dates when it is to occur. Include any particulars that are likely to be relevant to a decision by a Party to give or not to give their consent.]*
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## CONDITIONS

1. Each Party warrants that they hold an interest as specified above in the Copyright Material.
  2. Each Performer acknowledges that he or she has authorised the Commonwealth to make the Recording and to synchronise that Recording onto the sound track of a film.
  3. Each other Party grants to the Commonwealth a non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, distribute and communicate the Copyright Material for the Proposed Campaign and associated or consequential purposes, including for purposes of any report, training, documentary, archival activity or historical research relating to the Campaign. During the period of the Campaign the Licence is exclusive of any other use of the Material for advertising or for a purpose which might be confused as being part of the Campaign or as linked with the Campaign.
  4. The Parties understand that the Commonwealth intends, at its option, to conduct the Proposed Campaign as described above, but will not be bound to do so and will not be obliged to use the Copyright Material.
  5. This document is executed by or on behalf of each Party for the consideration that has been separately arranged between them and the Commonwealth (or its agents).
  6. The document and such separate arrangements referred to in condition 5 constitute the whole agreement between the Parties and the Commonwealth with respect to use of the Copyright Material, and override any prior agreement to the extent of any inconsistency.
  7. Each Party undertakes to join in any further documents and cooperate with and assist the Commonwealth where reasonably required in order to give effect to the licence and to facilitate the Proposed Campaign.
  8. Each person signing this document as agent on behalf of a Party warrants that they are authorised to do so.
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**SIGNED BY OR ON BEHALF OF INTERESTED PARTIES:**

*NB : If under 18 years a parent or guardian must sign.*

Party (please print)	(i) Signature; (ii) name (where a person signs on behalf of Party)	Capacity in which signing . . . Party    Parent    Agent	Date
		q    q    q	
		q    q    q	
		q    q    q	
		q    q    q	
		q    q    q	

# **CONSULTANCY CONTRACT**

between

**COMMONWEALTH OF AUSTRALIA**

as represented by the  
**Department of Employment and Workplace Relations**

and

Colmar Brunton Social Research Pty Ltd  
ABN: 63 090 919 378

regarding Consultancy Services for  
research for the workplace relations reform communications campaign

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THIS CONTRACT is made  
between  
the **COMMONWEALTH OF AUSTRALIA** ('the Commonwealth'), as represented  
by the Department of Employment and Workplace Relations ABN 40 376 417 416 (the  
'Department')  
and  
Colmar Brunton Social Research Pty Ltd ('the Consultant')  
Colmar Brunton Social Research Pty Ltd, trading as Colmar Brunton Social  
Research: ABN 63 090 919 378, a company incorporated under the *Corporations  
Act 2001 (Cth)* and having its registered office at 39 Torrens Street, Braddon ACT  
2612.

WHEREAS:

- A. The Commonwealth requires the provision of certain Consultancy Services to  
the Department for the purposes of conducting research for the workplace  
relations reform education campaign.

The Department is developing a communications strategy to inform and  
educate the Australian public, specifically all working age Australians and  
business owners, of the major reforms to how Australia's workplace relations  
system operates.

The purpose of the research to be undertaken by the Consultant is to assist in  
refining the campaign objectives for the communications campaign. Research  
is required to develop an effective communications strategy and key  
messages for the workplace relations reforms.

Given the broad nature of the audience it is expected that employers,  
employees and stakeholders will have differing levels of knowledge, attitudes  
and methods for sourcing information on employment related conditions.  
The Department needs to determine the level of understanding of the current  
workplace relations system and the attitudes of the audience groups towards  
the proposed workplace relations reforms. The research also needs to capture  
what the audience perceives to be the potential benefits and negatives of the  
changes.

- B. The Consultant has fully informed itself on all aspects of the work required to  
be performed and has submitted a proposal and quotation entitled  
'Developmental and Tracking Research for the Workplace Relations Reform  
Communications Campaign prepared for Department of Employment and  
Workplace Relations'.
- C. The Commonwealth has agreed to accept the Consultant's offer to provide  
the Consultancy Services upon the terms and conditions contained in this  
Contract.

**NOW IT IS HEREBY AGREED as follows:**

**1. Interpretation**

In this Contract, unless the contrary intention appears:

'**ABN**' has the same meaning as it has in the *A New Tax System (Australian  
Business Number) Act 1999*;

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**'Advisers'** means a party's advisers engaged in, or in relation to, the performance or management of this Contract;

**'Auditor-General'** means the person so appointed in accordance with the *Auditor-General Act 1997* or a properly appointed delegate;

**'Commonwealth'** means the Commonwealth of Australia, including, but not limited to, where the context so admits, the Commonwealth as represented by the Department;

**'Commonwealth Material'** means any Material provided by the Commonwealth to the Consultant for the purposes of this Contract or which is copied or derived from Material so provided;

**'Confidential Information'** means:

- (a) the information described in Schedule 3; and
- (b) information that is agreed between the parties in writing after the date of this Contract as constituting confidential information for the purposes of this Contract;

**'Consultancy Services'** means the services described in Item A of Schedule 1;

**'Consultant'** where the context so admits, includes the officers, employees, Advisers, agents and subcontractors of the Consultant;

**'Contract Material'** means, subject to clause 8, all Material:

- (a) brought into existence for the purpose of performing the Consultancy Services;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied or derived from Material referred to in paragraphs (a) or (b);

particularly including (but not necessarily exclusively) the Material described in Item B of Schedule 1;

**'Department'** means the Commonwealth Department of Employment and Workplace Relations or such other government agency or department as may, from time to time, administer this Contract on behalf of the Commonwealth;

**'General Interest Charge Rate'** has the same meaning given by section 8AAD of the *Taxation Administration Act 1953*;

**'Intellectual Property'** includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

**'GST'** means Goods and Service Tax payable under the GST Act;

**'GST Act'** means the *A New Tax System (Goods and Services Tax) Act 1999*;

**'Liaison Officer'** means the person for the time being holding, occupying or performing the duties of the office of the Department specified in Item BB of

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Schedule 2 or any other person specified by the Project Delegate in writing and notified to the Consultant;

**'Material'** includes documents, equipment, software, goods, information and data stored by any means;

**'Personal Information'** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

**'Privacy Commissioner'** means the person so appointed in accordance with the *Privacy Act 1988* or a properly appointed delegate;

**'Project Delegate'** means the person for the time being holding, occupying or performing the duties of the office of the Department specified in Item BB of Schedule 2 or any other person in writing and notified to the Consultant;

**'Secretary'** means the person for the time being holding, occupying or performing the duties of the office of Secretary to the Department and includes any other person designated in writing by that person to perform any function or to exercise any of the powers of the Secretary;

**'Specified Personnel'** means the personnel specified in Item E of Schedule 1 as personnel required to undertake the Consultancy Services or part of the work constituting the Consultancy Services;

**'Taxable Supply'** has the same meaning as it has in the GST Act; and

**'Third Party Interest'** means any legal or equitable right, interest, power or remedy in favour of any person other than the Consultant or the Department in connection with this Contract, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest.

1.1 In this Contract, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular; and
  - (b) words importing a gender include any other gender; and
  - (c) words importing persons include a partnership and a body whether corporate or otherwise; and
  - (d) clause headings, words capitalised or in bold format and notes in square brackets (" [ ]") are inserted for convenience only, and have no effect in limiting or extending the language of provisions, except for the purpose of rectifying any erroneous cross-reference; and
  - (e) all references to clauses are clauses in this Contract; and
  - (f) all references to dollars are to Australian dollars and this Contract uses Australian currency; and
  - (g) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended; and
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- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2 Schedule 1, Schedule 2, Schedule 3 and annexures (if any) form part of this Contract. In the event of any conflict between the terms and conditions contained in the clauses of this Contract and any part of the Schedules (and annexures if any), the terms and conditions of the clauses take precedence. In the event of any conflict between any part of the Schedules and any part of any annexures if any, the Schedules take precedence.

## **2. Provision of Consultancy Services**

- 2.1 The Consultant must perform the Consultancy Services (including the preparation of Contract Material) in accordance with Schedule 1 to a standard recognised as a high professional standard by the industry to which the Consultant belongs.
- 2.2 The Consultant must perform the Consultancy Services at the times specified in Item C of Schedule 1 and in the manner specified in Schedule 1 generally.

## **3. Fees, GST, Allowances and Assistance**

- 3.1 The Commonwealth must pay to the Consultant the reasonable and proper fees and allowances as specified in Item CC and Item DD of Schedule 2 and must meet and provide the reasonable and proper costs and assistance as specified in Item EE of Schedule 2.
- 3.1A The Commonwealth must pay the Consultant the fees for the Consultancy Services within 30 days from the later to occur of:
- (a) the receipt by the Department of the Consultancy Services and where required by this Contract, approval of the Consultancy Services;
  - (b) the receipt by the Department of a correctly rendered invoice in relation to the Consultancy Services;
- but only if:
- (c) the invoice totals an amount equal to or less than \$5,000,000 inclusive of GST;
- and
- (d) the Consultant is a Small Enterprise; and
  - (e) the cost of the Consultancy Services is a departmental item of the Department.
- 3.1B For the purposes of 3.1A, 'Small Enterprise' means an Australian or New Zealand enterprise that at the date of commencement of this Contract:
- (a) employs less than the full-time equivalent of 20 persons; or
  - (b) supplies information technology goods or services and otherwise meets the definition of small enterprise specified in any Commonwealth information technology industry development guidelines applicable to this Contract at that date.
- 3.1C For the purposes of clause 3.1A, 'departmental' has the same meaning as defined in the Commonwealth manual *Requirements and Guidance for the*
-

*Preparation of Financial Statements of Commonwealth Agencies and Authorities –  
Financial years ending on or after 30 June 2002.*

- 3.2 The fee determined in accordance with clause 3.1 includes GST for Taxable Supplies made by the Consultant under this Contract.
  - 3.3 Where Item CC of Schedule 2 provides that the Consultant is to be paid by progressive instalments (or by a single payment), the Commonwealth is entitled, without derogating from any other right it may have, to defer payment of an instalment (or the single payment) until the Consultant has completed to the satisfaction of the Commonwealth that part of the Consultancy Services to which that instalment (or the single payment) relates.
  - 3.4 The Consultant must submit invoices for payment in the manner specified in Item D of Schedule 1.
  - 3.5 The Consultant agrees to issue the Commonwealth with a tax invoice in accordance with the GST Act in relation to Taxable Supplies made by the Consultant under this Contract.
  - 3.6 If required by the *Taxation Administration Act 1953*, the Commonwealth will withhold a certain percentage of the amount claimed under an invoice that does not specify an ABN in respect of the Consultant.
  - 3.7 If an invoice is found to have been incorrectly rendered after payment, any underpayment or overpayment is recoverable by or from the Consultant, as the case may be, and without limiting recourse to other available means, may be offset against any amount subsequently due by the Commonwealth to the Consultant, whether under this Contract or any other contract the Commonwealth has with the Consultant.
  - 3.8 If a party fails to pay an amount payable by it to the other party under this Contract by the due date for payment, the first mentioned party must also pay to the other party simple interest on such unpaid amount at the General Interest Charge Rate calculated daily from the next day after the due date up to and including the date of payment.
  - 3.9 The Commonwealth is notionally liable to pay GST.
  - 3.10 Without limiting the generality of clause 3.2, if a supply made by the Commonwealth under this Contract is a Taxable Supply, the Commonwealth may, by notice in writing to the Consultant, require the Consultant to pay the Commonwealth within 30 days of receiving such notice, an amount equal to the amount of GST which is payable by the Commonwealth on the value of that Taxable Supply.
  - 3.11 The Commonwealth agrees to issue the Consultant with a tax invoice in accordance with the GST Act in relation to Taxable Supplies made by the Commonwealth under this Contract.
- 4. *Entire Agreement and Variation***
- 4.1 This Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Contract.
  - 4.2 No agreement or understanding varying or extending this Contract, including in particular the scope of the Consultancy Services in Item A of Schedule 1, is
-

legally binding upon either party unless in writing and signed by both parties.

**5. *Subcontracting***

- 5.1 Except where a subcontractor is one of the Specified Personnel, the Consultant must not, without the prior written approval of the Commonwealth, subcontract the performance of any part of the Consultancy Services. In giving written approval, the Commonwealth may impose such terms and conditions as it thinks fit.
- 5.2 The Consultant will not enter into any subcontract for the purpose of directly or indirectly fulfilling its obligations under this Contract unless such a subcontract obliges the subcontractor to comply with equivalent provisions to those contained in clause 12 and in this subclause.
- 5.3 The Consultant is fully responsible for the performance of the Consultancy Services notwithstanding that the Consultant subcontracts the performance of any part of those services.
- 5.4 Despite any approval given by the Commonwealth under clause 5.1, the Consultant is responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out, and that the work carried out meets the requirements of this Contract.
- 5.5 The Consultant must ensure that a subcontractor is aware of all terms and conditions of this Contract relevant to the subcontractor's part in the provision of the Consultancy Services.
- 5.6 The Consultant must pay the subcontractors in accordance with the terms of the relevant subcontract.

**6. *Specified Personnel and Other Personnel***

- 6.1 The Consultant must ensure that the Specified Personnel undertake work in respect of the Consultancy Services in accordance with the terms of this Contract.
- 6.2 Where Specified Personnel are unable to perform the work the Consultant agrees to notify the Commonwealth immediately. The Consultant must, if so requested by the Commonwealth, provide replacement personnel acceptable to the Commonwealth at no additional charge and at the earliest opportunity.
- 6.3 The Commonwealth may, at its absolute discretion, give notice requiring the Consultant to remove personnel (including Specified Personnel) from work in respect of the Consultancy Services. The Consultant must, at its own cost, promptly arrange for the removal of such personnel from work in respect of the Consultancy Services and their replacement with personnel acceptable to the Commonwealth.
- 6.4 If the Consultant is unable to provide acceptable replacement personnel the Commonwealth may terminate this Contract in accordance with the provisions of clause 21.

**7. *Liaison***

- 7.1 The Consultant must liaise with and report to the Project Delegate or the Liaison Officer as reasonably required by the Project Delegate during the period of this Contract.
-

- 7.2 The Consultant may nominate from time to time a person who has authority to receive and sign notices and written communications for the Consultant under this Contract and accept any request or direction in relation to the Consultancy Services.
- 8. *Contract Material***
- 8.1 Ownership of all Contract Material vests in the Commonwealth upon creation.
- 8.2 Upon the expiration or earlier termination of this Contract the Consultant must, subject to clause 12, deliver to the Department all Contract Material remaining in its possession save for one copy which must be retained for the Consultant's file.
- 8.3 The preceding subclauses of this clause apply subject to any stipulation to the contrary in Item B4 of Schedule 1.
- 9. *Commonwealth Material***
- 9.1 Ownership of all Commonwealth Material remains vested at all times in the Commonwealth.
- 9.2 Upon the expiration or earlier termination of this Contract, the Consultant must return to the Department all Commonwealth Material remaining in its possession.
- 9.3 The preceding subclauses of this clause apply subject to any stipulation to the contrary in Item B5 of Schedule 1.
- 9.4 The Consultant must ensure that the Commonwealth Material is used, copied, supplied or reproduced only for the purposes of this Contract.
- 9.5 The Consultant must use the Commonwealth Material strictly in accordance with any conditions or restrictions set out in Item B6 of Schedule 1, or notified from time to time in writing by the Commonwealth.
- 10. *Intellectual Property***
- 10.1 Subject to this clause, Intellectual Property in all Contract Material vests immediately or will vest in the Commonwealth.
- 10.2 Clause 10.1 does not affect the ownership of Intellectual Property in any Material which is specified in Item B7 of Schedule 1. However, the Consultant grants to the Commonwealth a permanent, irrevocable royalty-free, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Material anywhere in the world. Notwithstanding Part VII of the *Copyright Act 1968*, publication of the Material in accordance with this licence does not affect such ownership.
- 10.3 If requested by the Commonwealth to do so, the Consultant must bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause.
- 10.4 The Consultant warrants that it is entitled, or will be entitled or will procure that it is entitled at the relevant time, to deal with the Intellectual Property in any Contract Material in the manner provided for in this clause.
- 10.5 The Consultant warrants or undertakes that:
- (a) the author of any Contract Material, other than any Material which is specified in Item B7 of Schedule 1 (in this clause 10 'Existing Material'),
-

has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the Commonwealth's benefit; and

- (b) the author of any Existing Material has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the Commonwealth's benefit in relation to such Material used, reproduced, adapted and exploited in conjunction with the other Contract Material.

10.6 The operation of this clause 10 survives the expiration or earlier termination of the term of this Agreement.

#### **11. Disclosure of Information**

11.1 Subject to clause 11.5, a party must not, without the prior written approval of the other party, disclose any Confidential Information of the other party to a third party.

11.2 In giving written consent to the disclosure of the Commonwealth's Confidential Information, the Department may impose such conditions as it thinks fit, and the Consultant agrees to comply with these conditions.

11.3 If the Consultant has been requested to disclose or provide access to any Confidential Information of the Commonwealth, it must:

- (a) notify the Commonwealth in writing of the request providing sufficient notice to enable the Commonwealth to seek a protective order or other relief from disclosure; and
- (b) provide all assistance and co-operation which the Commonwealth reasonably considers necessary for that purpose.

11.4 The Commonwealth may at any time require the Consultant to arrange for:

- (a) any persons working on the provision of Consultancy Services under this Contract;
- (b) its Advisers; or
- (c) any person with a Third Party Interest;

to give a written undertaking in the form of a deed relating to the use and nondisclosure of the Commonwealth's Confidential Information. The Consultant must promptly arrange for all such undertakings to be given.

11.5 The obligations on the parties under this clause will not be taken to have been breached to the extent that the Confidential Information:

- (a) is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
  - (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of contract related activities;
  - (c) is disclosed by the Department to the Department's Minister or another Commonwealth Minister;
  - (d) is disclosed by the Department, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - (e) is authorised or required by law to be disclosed;
-



- (f) is disclosed by the Department and is information in a material form in respect of which an interest, whether by licence or otherwise, in the Intellectual Property in relation to that material form, has vested in, or is assigned to, the Department under this Contract or otherwise, and that disclosure is permitted by that licence or otherwise; or
  - (g) is in the public domain otherwise than due to a breach of this clause.
- 11.6 Where a party discloses the other party's Confidential Information to another person:
  - (a) pursuant to clauses 11.5 (a) or (b), the disclosing party must:
    - (i) notify the receiving person that the information is the other party's Confidential Information; and
    - (ii) not provide the information unless the receiving person agrees to keep the information confidential; or
  - (b) pursuant to clauses 11.5 (c) and (d), the disclosing party must notify the receiving party that the information is the other party's Confidential Information.
- 11.7 The parties may agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract.
- 11.8 Where the parties agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract, this documentation is incorporated into, and becomes part of this Contract, on the date by which both parties have signed this documentation.
- 11.9 The obligations under this clause continue, notwithstanding the expiry or termination of this Contract:
  - (a) in relation to an item of information described in Schedule 3 -- for the period set out in that Schedule in respect of that item; and
  - (b) in relation to any information which the parties agree in writing after the date of this Contract is to constitute Confidential Information for the purposes of this Contract – for the period agreed by the parties in writing in respect of that information.
- 11.10 Nothing in this clause derogates from any obligation which the Consultant may have under the *Privacy Act 1988* as amended from time to time, or under this Contract, in relation to the protection of Personal Information.

## **12. Protection of Personal Information**

- 12.1 This clause applies only where the Consultant deals with personal information when, and for the purpose of, providing the Services under this Contract.
  - 12.2 The Consultant acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act) and agrees in respect of the provision of Services:
    - (a) to use or disclose personal information obtained during the course of providing the Services under this Contract, only for the purposes of this Contract;
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- (b) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would amount to a breach of that IPP;
- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under the Privacy Act;
- (d) to notify individuals whose personal information the Consultant holds, that complaints about acts or practices of the Consultant may be investigated by the Privacy Commissioner who has power to award compensation against the Consultant in appropriate circumstances;
- (e) not to use or disclose personal information or engage in an act or practice that would breach section 16F (direct marketing), an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Consultant, unless:
  - (i) in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or
  - (ii) in the case of an NPP or an APC - where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorised by this Contract is inconsistent with the NPP or APC;
- (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with an NPP or an APC binding a party to this Contract;
- (g) to immediately notify the agency if the Consultant becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 12, whether by the Consultant or any SubConsultant;
- (h) to comply with any directions, guidelines, determinations or recommendations arising in relation to this Contract to the extent that they are not inconsistent with the requirements of this clause; and
- (i) to ensure that any employee of the Consultant who is required to deal with personal information for the purposes of this Contract is made aware of the obligations of the Consultant set out in this clause 12.

12.3 The Consultant agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Consultant has under this clause, including the requirement in relation to subcontracts.

12.4 The Consultant agrees to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Consultant or a subcontractor under this clause 12.

12.5 In this clause 12, the terms *agency*, *approved privacy code (APC)*, *Information Privacy Principles (IPPs)*, *National Privacy Principles (NPPs)* and *personal*

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*information* have the same meaning as they have in section 6 of the Privacy Act.

12.6 The provisions of this clause 12 survive the termination or expiration of this Contract.

**13. Official Secrets**

13.1 The Consultant:

- (a) acknowledges that it is aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets; and
- (b) undertakes with respect to any officer, employee, agent or subcontractor who will have access to documents, materials or information within the meaning of the section that prior to having such access the said officer, employee, agent and subcontractor will first be required by the Consultant to provide the Consultant with an acknowledgment that such officer, employee, agent or subcontractor is aware of the provisions of the section.

**14. Compliance with Commonwealth Policies**

14.1 When performing its contractual obligations, the Consultant agrees to comply with any of the Commonwealth's policies as notified by the Department in writing, including those listed in Item I of Schedule 1.

14.2 The Consultant must, in its dealings with its employees, have due regard to Commonwealth policies on employment, including the *Workplace Relations Act 1996*, and obligations under relevant occupational health and safety laws.

14.3 The Consultant agrees, when using the Commonwealth's premises or facilities, to comply with all reasonable directions and Departmental procedures relating to occupational health safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

**15. Indemnity**

15.1 The Consultant agrees to at all times indemnify and hold harmless the Commonwealth, its officers, employees and agents (in this clause referred to as "those indemnified") from and against:

- (a) any liability incurred by the Commonwealth;
- (b) any loss of or damage to property of the Commonwealth; or
- (c) any loss or expense incurred by the Commonwealth in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Commonwealth,

arising from:

- (d) any act or omission by the Consultant in connection with this Contract;
  - (e) any breach by the Consultant of its obligations or warranties under this Contract;
  - (f) any act or omission by a subcontractor in connection with, or incidental to, the provision of the Services under this Contract or the subcontract;
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- (g) any act or omission by a subcontractor that results in a breach by the Consultant of any of the Consultant's obligations or warranties under this Contract; or
- (g) any infringement of Intellectual Property by the Consultant in the course of, or incidental to, performing the Services or the use by the Commonwealth of the Contract Material,

where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage or expense.

- 15.2 The Consultant's liability to indemnify the Commonwealth under clause 15.1 is reduced proportionally to the extent that any act or omission of the Commonwealth or its employees or agents contributed to the loss or liability.
- 15.3 The right of the Commonwealth to be indemnified under this clause 15 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.
- 15.4 The indemnity referred to in clause 15.1 survives the expiration or termination of this Contract.

**16. Insurance**

- 16.1 With respect to the performance of the Consultancy Services under this Contract, the Consultant must maintain and must require all of its subcontractors to maintain, the insurances as described in Item F of Schedule 1.
- 16.2 Such insurance must be maintained from the time the Consultancy Services first commence until completion of the Consultancy Services under this Contract. Failure to maintain the insurance will entitle the Commonwealth to terminate this Contract in accordance with clause 21.
- 16.3 Such insurance must not be cancelled except on 30 days' prior written notice to the Commonwealth.
- 16.4 Whenever requested, the Consultant must provide the Commonwealth with a copy of any insurance policy held in accordance with clause 16.1 or a certificate of currency.

**17. Conflict of Interest**

- 17.1 The Consultant warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract by itself or by any of its employees, agents or subcontractors.
  - 17.2 The Consultant undertakes that :
    - (a) subject to the remaining parts of this clause, it will not enter into any arrangement, scheme or contract, however described, which may cause a conflict of interest concerning the Consultant's performance of the Consultancy Services;
    - (b) should it become aware of the possibility of a conflict of interest, it will immediately notify the Project Delegate of the details of such a possible conflict of interest, and will provide details of steps that the Consultant will take to resolve or deal with the conflict; and
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- (c) if the Consultant fails to notify DEWR of the possibility of such conflicts of interest, or is unable or unwilling to resolve or deal with the conflicts as may reasonably be required by DEWR, DEWR may terminate this Contract.
- 17.3 The Consultant must not, and must ensure that any employee, agent, or subcontractor of the Consultant does not, engage in any activity or obtain any interest during the course of this Contract that is likely to conflict with or restrict the Consultant in providing the Consultancy Services to the Commonwealth fairly and independently.

## **18. Access and Audits**

- 18.1 The Consultant must at all reasonable times give to the Project Delegate or to any persons authorised in writing by the Secretary, access to premises occupied by the Consultant where the Consultancy Services are being undertaken and shall permit those persons to inspect the performance of the Consultancy Services and any Commonwealth Material, Contract Material or other Material relevant to the Consultancy Services.
- 18.2 The Consultant must, on receiving reasonable notice, participate promptly and cooperatively in any audits of this Contract at the frequency and in relation to the matters specified by the Commonwealth, (including on an ad hoc basis if requested by the Commonwealth), for the purpose of ensuring that this Contract is being properly performed and administered.
- 18.3 The Commonwealth may appoint an independent person to assist in the audits. Audits may consider all aspects of the Consultant's performance including the following:
- (a) the Consultant's practices and procedures as they relate to this Contract, including security procedures;
  - (b) the Consultant's compliance with all its obligations under this Contract;
  - (c) the compliance of the Consultant's invoices and reports with its obligations under this Contract; and
  - (d) the Consultant's compliance with the confidentiality, privacy, and security provisions of this Contract and all relevant Commonwealth policy obligations under this Contract.
- 18.4 Subject to any express provisions in this Contract to the contrary, each party must bear its own costs of any audits.
- 18.5 The Commonwealth must use reasonable endeavours to ensure that audits performed pursuant to clause 18.2 do not unreasonably delay or disrupt in any material respect the Consultant's performance of its obligations under this Contract.
- 18.6 The Consultant must promptly take, at no additional cost to the Commonwealth, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way the Consultant has under this Contract:
- (a) supplied any goods or services; or
  - (b) calculated fees, or any other amounts or charges billed to the Commonwealth.
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- 18.7 The Project Delegate or any persons authorised in writing by the Secretary, the Auditor-General or the Privacy Commissioner may, at reasonable times:
- (a) access the premises of the Consultant;
  - (b) require the provision by the Consultant, its employees, agents or subcontractors, of records and other information which are related to this Contract; and
  - (c) access, inspect and copy documentation and records or any other matter relevant to the Consultant's obligations or performance of this Contract, however stored, in the custody or under the control of the Consultant, its employees, agents or subcontractors.
- 18.8 The Consultant must ensure that it keeps full and complete records in accordance with all applicable Australian Accounting Standards and that data, information and records relating to this Contract or its performance are maintained in such a form and manner as to facilitate access and inspection under clause 18.2.
- 18.9 The Consultant must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in clauses 18.2, 18.3 and 18.7 with respect to the subcontractor's premises, data, records, accounts, financial material and information and those of its employees, agents or subcontractors.
- 18.10 Clause 18.7 applies for the term of this Contract and for a period of 7 years from the date of its expiration or termination.
- 18.11 Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or the Privacy Commissioner.
- 19. *Negation of Employment, Partnership and Agency***
- 19.1 The Consultant must not represent itself, and must ensure that its employees do not represent themselves, as being an employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.
- 19.2 The Consultant will not by virtue of this Contract be or for any purpose be deemed to be an employee, partner or agent of the Commonwealth, or as having any power or authority to bind or represent the Commonwealth.
- 20. *Termination and Reduction***
- 20.1 The Commonwealth may, at any time by written notice, terminate this Contract, in whole or in part. If this Contract is so terminated, the Commonwealth is liable only for:
- (a) payments under the payment provisions of this Contract for Consultancy Services rendered before the effective date of termination; and
  - (b) subject to clauses 20.3 and 20.4 any reasonable costs incurred by the Consultant and directly attributable to the termination or partial termination of this Contract.
- 20.2 Upon receipt of a notice of termination the Consultant must:
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- (a) stop work as specified in the notice;
  - (b) take all available steps to minimise loss resulting from that termination and to protect Commonwealth Material and Contract Material; and
  - (c) continue work on any part of the Consultancy Services not affected by the notice.
- 20.3 In the event of partial termination the Commonwealth's liability to pay fees under Item CC of Schedule 2 will, in the absence of agreement to the contrary, abate proportionately to the reduction in the Consultancy Services.
- 20.4 The Commonwealth will not be liable to pay compensation in an amount which would, in addition to any amounts paid or due, or becoming due, to the Consultant under this Contract, together exceed the fees set out in Item CC of Schedule 2. The Consultant will not be entitled to compensation for loss of prospective profits.

## **21. Default**

- 21.1 If either party is in default under this Contract on account of the failure to perform or observe any obligation or undertaking to be performed or observed on its part under this Contract, the party not in default may, subject to clause 21.2, by notice in writing to the other party, terminate this Contract in whole or in part without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party.
- 21.2 Where the default is capable of being remedied, a party must not exercise its rights of termination under clause 21.1 unless it has first given to the other party notice in writing specifying the default and requiring the other party to remedy it within the time (being not less than 10 working days) specified in the notice and the default is not remedied within the time allowed.
- 21.3 If the Consultant:
- (a) in the case of a company, comes under any form of external administration, including any of those referred to in Chapter 5 of the *Corporations Act 2001*, or an order, or application, has been made for the purpose of placing the Consultant under external administration; or
  - (b) in the case of an individual, becomes bankrupt or makes any arrangements, assignments, compositions or agreements for the benefit of his or her creditors under the *Bankruptcy Act 1966* (Cwth), or a creditor's petition is filed with an Australian court seeking a sequestration order against his or her estate,

the Commonwealth may, by notice in writing, terminate this Contract without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party.

## **22. Waiver**

- 22.1 A waiver by either party in respect of any breach of a condition or provision of this Contract will not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. The failure of either party to enforce at any time any of the provisions of this Contract will in no way be interpreted as a waiver of such provision.
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**23**     ***Compliance with Law***

23.1    The Consultant must in carrying out this Contract comply with the provisions of any relevant statutes, regulations, by-laws, and requirements of any Commonwealth, State, Territory or local authority, including those listed in Item I of Schedule 1.

**24.**     ***Dispute Resolution***

24.1    Subject to clause 24.4, before resorting to external dispute resolution mechanisms, the parties must attempt to settle by negotiation any dispute in relation to this Contract including by referring the matter to personnel who may have authority to intervene and direct some form of resolution.

24.2    If a dispute is not settled by the parties within 10 working days of one party first sending to the other party written notice that they are in dispute, the dispute may be the subject of court proceedings or may be submitted to some alternative dispute resolution mechanism as may be agreed in writing between the parties.

24.3    Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Contract.

24.4    A party may commence court proceedings relating to any dispute arising from this Contract at any time where that party seeks urgent interlocutory relief.

24.5    This clause survives the expiration or termination of this Contract.

**25.**     ***Assignment and Novation***

25.1    The Consultant must not assign, in whole or in part, its benefits under this Contract without the prior written approval of the Commonwealth.

25.2    The Consultant must not consult with any other person or body for the purposes of entering into an arrangement which will require novation of this Contract without first consulting the Commonwealth.

**26.**     ***Severability***

26.1    Each provision of this Contract and each part thereof is, unless the context otherwise necessarily requires it, to be read and construed as a separate and severable provision or part. If any provision or part thereof is void or otherwise unenforceable for any reason then that provision or part (as the case may be) is severed and the remainder will be read and construed as if the severable provision or part had never existed.

**27.**     ***Applicable Law***

27.1    This Contract is governed by and construed in accordance with the laws of the State or Territory nominated in Item H of Schedule 1 and the parties agree, subject to this Contract that the Courts of that State or Territory have jurisdiction to entertain any action in respect of, or arising out of, this Contract.

**28.**     ***Notices***

28.1    Any notice, request or other communication to be given or served pursuant to this Contract must be in writing and dealt with as follows:

- (a)    if given by the Consultant to the Commonwealth – marked for the attention of the Project Delegate at the address indicated in Item AA of Schedule 2 or as otherwise notified by the Commonwealth; or
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- (b) if given by the Commonwealth to the Consultant – signed by the Project Delegate and marked with the address indicated in Item G of Schedule 1 or as otherwise notified by the Consultant under clause 7.
  - 28.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically, and if it is sent or transmitted electronically a copy is to be sent to the addressee by pre-paid post.
  - 28.3 Any notice, request or other communication will be deemed to be received:
    - (a) if delivered by hand, upon delivery;
    - (b) if sent by pre-paid ordinary post within Australia, upon the expiration of 2 business days after the date on which it was sent; and
    - (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.
  - 29. *Engagement of Illegal Workers Prohibited***
  - 29.1 The Consultant must ensure that all its employees, agents, and any other person engaged to carry out the Services, including those engaged by any subcontractors are at all times:
    - (a) Australian citizens; or
    - (b) in the case of persons who are not Australian citizens, not illegal workers.
  - 29.2 The Consultant must remove or cause to be removed any illegal worker from any involvement in the carrying out of Services and arrange for their replacement at no cost to the Commonwealth immediately it becomes aware of the involvement of the illegal worker. The Consultant must immediately notify the Commonwealth of the involvement of the illegal worker and the removal.
  - 29.3 For avoidance of doubt, compliance with the Consultant’s obligations under this clause 29 will not give rise to an entitlement to claim any delay or otherwise excuse the Consultant from compliance with its obligations under this Contract.
  - 29.4 When requested by the Commonwealth, the Consultant will provide evidence that it has taken all reasonable steps to ensure it has complied and is complying with its obligations under this clause 29, including in relation to any subcontractors.
  - 29.5 The Consultant must provide the Commonwealth with evidence referred to in clause 29.4 within 5 working days of receiving the Commonwealth’s request.
  - 29.6 For the purposes of this clause an illegal worker is a person who:
    - (a) has unlawfully entered and remains in Australia;
    - (b) has lawfully entered Australian, but remains in Australia after his/her visa has expired; or
    - (c) is working in breach of his/her visa conditions.
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## **SCHEDULE 1**

### ***Consultant's Obligations and Work to be Performed***

#### **A. Consultancy Services (see clauses 1 and 2.1)**

The Consultancy Services to be provided are described in Items A1 - A3 of this Schedule 1, as outlined in the proposal from the Consultant to the Department dated 18 July 2005 titled 'Developmental and Tracking Research for the Workplace Relations Reform Communications Campaign prepared for Department of Employment and Workplace Relations' (see Appendix 1). In the event of any inconsistency between these two documents, Schedule 1 prevails.

#### **A1. Research objectives and outcomes**

The research work to be undertaken by the Consultant consists of three tasks:

- (a) Developmental research
- (b) Tracking research
- (c) Creative research

The Consultant will perform tasks over the period specified in Item C.

#### **2 Target audience**

A2.1 The Consultant's research sample must be comprised of employees and employers and must specifically focus on the following target groups:

- (a) employees on minimum wage rates;
- (b) employees covered by state awards;
- (c) employers and employees with formal industrial agreements due to expire between March and June 2006;
- (d) small business owners (i.e. businesses with between five and 20 employees);
- (e) employers with less than 100 employees;
- (f) employers with workers covered by state awards; and
- (g) human resource managers for large businesses (i.e. businesses with over 100 employees).
- (h) people from rural, regional and metropolitan areas.
- (i) Employees from Victoria.

#### **A2..2 Special audiences**

Specific communication strategies will be developed to communicate the reforms to people from non-English speaking backgrounds and Indigenous Australians. In-house information suggests the audiences seeking information from the department are predominantly from the following language groups: Cantonese, Mandarin, Serbian, Croatian, Greek, Italian and Cambodian.

The Consultant's research sample must include people from each of the audience groups. The Consultant must ensure experienced and trained bilingual and Indigenous researchers are in attendance as mediators to facilitate discussion between participants.

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The results for these groups must be aggregated and reported separately to the main sample. Where any relevant issues are identified for particular groups within the NESB sample, these specific results must also be reported.

### **A3 Methodology**

The developmental and tracking research methodologies will be based on the Consultant's original proposal and must also incorporate any subsequent changes to the proposal as specified by the Department.

## **B. Contract Material & Reporting (see clauses 1, 2.1 and 8)**

The Consultant must produce the following reports for the developmental research and the tracking research and supply one hard copy and one electronic copy (Microsoft Word format);

### **B1.1 Developmental Research**

(a) The Consultant must conduct developmental research in the form of 36 focus groups (20 employees and 16 employer groups) and 22 in-depth interviews (18 employees, indigenous/non-English speaking or community interest groups and 4 employers) of a qualitative nature. The Consultant must provide a draft methodology for developmental research, including the following components:

- (i) proposed research instruments (i.e. discussion guides); and
- (ii) timeline for the research activities, including dates for fieldwork; and
- (iii) a summary of fieldwork statistics and weighting specifications.

The Consultant will conduct the research following written approval from the Department of the draft methodology.

(b) The Consultant must comprehensively explore and report on the following issues as part of the developmental research phase:

- (i) awareness, understanding and knowledge of the target audiences in relation to the following topics:
    - o minimum wage setting
    - o awards and agreements
    - o unfair dismissal
    - o the 'no disadvantage test'
    - o the Australian Industrial Relations Commission
    - o a unified national workplace relations system
  - (ii) attitudes to the current workplace relations system and to the proposed changes;
  - (iii) knowledge of the new workplace relations system and how it will affect them;
  - (iv) perceived barriers to the audience groups being aware of and accepting the details of the changes;
  - (v) current behaviours and methods of seeking information on employment related issues, such as wages, awards, agreements;
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- (vi) likely response from audience groups to the messages within the communication campaign, including any potential behaviour changes, negative responses, and attitude formation;
  - (vii) any other significant issues raised in the research that may impact upon the campaign; and
  - (viii) identify which messages have the most impact with each target audience.
- (c) The Consultant will conduct the research in both metropolitan and regional locations, located within the States of New South Wales, Victoria, Queensland and Western Australia.
- (d) The Consultant will prepare a written draft and then final report for the comprehensive findings of the developmental research phase including:
- o a hard copy of research instruments (eg questionnaire, discussion guides);
  - o a summary of the research methodology
  - o dates on which fieldwork was conducted
  - o a summary of fieldwork statistics and weighting specifications;
  - o analysis and interpretation of research results; and
  - o recommendations on how to apply research results to conduct effective information activities.
- (e) The Consultant will prepare a verbal presentation to members of the Department outlining the comprehensive findings of the developmental research; and
- (f) The Consultant will provide any Microsoft PowerPoint or other electronic presentations or speaking notes associated with any presentation to the Department and the Ministerial Committee on Government Communications (MCGC) outlining the findings of the developmental research, as described above.

### **B1.2 Tracking Research**

- (a) Alongside the developmental research, the Consultant will be required to undertake tracking research of a quantitative nature. The consultant will conduct the tracking research Australia-wide.
- (b) Prior to conducting the tracking research, the Consultant will provide the Department with a summary of the methodology identified for the tracking research. Upon approval by the Department, the Consultant will conduct an initial one-week pilot study. Following the pilot study, the research methodology will be refined in consultation with the Department.
- (c) Upon approval by the Department, and the Australian Bureau of Statistics Statistical Clearing House, consequent tracking research will commence for a period of six months. The Consultant will give fortnightly email progress reports summarising verbal presentations to the Department of the findings of the tracking research.
- (d) The Consultant must survey up to 11,700 people over the specified six month period (5200 employers, 5200 employees and 1300 other community groups). The consultant will give monthly reports of the findings of the tracking research.
- (e) The Consultant must provide a final report on the tracking research findings, including components outlined above.
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- (f) The Consultant will provide any Microsoft PowerPoint or other electronic presentations or speaking notes associated with any presentation to the MCGC outlining the findings of the tracking research.
- (g) The Consultant must also provide any report that may be created as a result of the above.

### **B1.3** *Creative Testing Research*

- (a) To support developmental research and tracking research, the Consultant will test creative concepts with up to 48 focus groups of a qualitative nature (36 employees and 12 employer groups). The Consultant will carry out additional creative testing throughout the research period to the value of up to \$300,000, subject to any proposed additional creative testing being agreed to in writing by the Department.
- (b) Research aims to evaluate and improve on creative concepts and key messages. The Consultant must provide a draft methodology for creative testing research, including the following components:
  - (i) proposed research instruments (i.e. discussion guides); and
  - (ii) timeline for the research activities, including dates for fieldwork.The Consultant will conduct the research following written approval from the Department of the draft methodology.
- (c) The Consultant must comprehensively explore and report on the following issues as part of the creative testing research objectives:
  - (i) to increase the level of understanding in the wider community about why the reforms are needed;
  - (ii) to raise awareness of the impact of the proposed changes for workers and employers; and
  - (iii) to address negative attitudes and to identify ways to promote the benefits.
- (d) The Consultant must test the following key messages:
  - (i) Protection and safeguards of employee rights;
  - (ii) More jobs and better jobs for employees;
  - (iii) Retention of the Australian way of life;
  - (iv) Visit [www.workplace.gov.au/ourplan](http://www.workplace.gov.au/ourplan) for more information.
- (e) The Consultant must test reaction to key messages and creative material presented.
- (f) The Consultant must debrief the Department by written reports following each creative testing research, outlining the comprehensive findings of the creative testing research.
- (g) The Consultant must present research outcomes to the Ministerial Committee on Government Communications (MCGC), as described above, by way of Microsoft PowerPoint or other electronic presentations or speaking notes.

**B2.** The Consultant must provide weekly progress reports on the research to the Department's liaison officer via email or phone conversation (as required by the

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Department). These reports should contain details regarding the Consultant's progress on the deliverables as specified in Items B1 , B1.1 and B1.2 of this Schedule 1 and in the proposal from the Consultant to the Department dated 18 July 2005 and titled 'Developmental and Tracking Research for the Workplace Relations Reform Communications Campaign prepared for Department of Employment and Workplace Relations' (see Appendix 1), as well as details on the progress of other deliverables as requested by the Department. Upon execution of the contract, the Consultant and the Department will decide on which day the weekly progress report is to occur.

**B3.** Joan Young, Managing Director of Colmar Brunton Social Research Pty Ltd must be available to attend and present the results of the developmental research and the tracking research to the MCGC on a date specified by the Commonwealth. The Consultant will receive payment for these presentations on an hourly basis at \$242.00 per hour inclusive of GST. The Department will pay for any interstate travel costs incurred for up to two consultants to attend presentations to the MCGC.

Creative testing research will be presented to the Department and the Department will forward onto creative agencies. Creative testing research will be presented to MCGC.

**B4. Consultant's Rights to Contract Material (see clause 8.3)**

There is no contrary stipulation.

**B5. Consultant's Rights to Commonwealth Material (see clause 9.3)**

There is no contrary stipulation.

**B6. Use of Commonwealth Material (see clause 9.5)**

There is no contrary stipulation.

**B7. Material Not to Vest in Commonwealth (see clause 10.2)**

There is no contrary stipulation.

**B8. Existing Material - Moral Rights (see clause 10.5)**

There is no contrary stipulation.

**C. Time-frame (see clause 2.2)**

The timeframe for the research is as follows:

Order	Action	Date
1	Consultant to start work	1 August 2005
2	Consultant to provide draft methodology for the developmental research for approval to Department, as described in Item B1(a) of this Schedule 1	2 August 2005
3	Consultant to provide a summary of the methodology for the tracking research, as described in Item B1.1(b) of this Schedule 1	8 August 2005
4	Consultant to commence creative testing, as described in Item B1.2 of this Schedule 1	10 August 2005

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5	Consultant to conduct pilot study, as described in Item B1.1(b) of this Schedule 1	15 August 2005
6	Following completion of pilot study, consultant to provide revised research methodology, as described in Item B1.1(b) of this Schedule 1	18 August 2005
7	Consultant to commence ongoing tracking research following approval from the Australian Bureau of Statistics Statistical Clearing House, as described in Item B1.1(c) of this Schedule 1	6 September 2005
8	Consultant to provide a summary of the methodology for the creative research, as described in Item B1.2(b) of this Schedule 1	6 September 2005
9	Developmental research complete. Consultant to provide verbal presentation to Department on research findings, as described in Item B1(e) of this Schedule 1	9 September 2005
10	Consultant to provide draft written report to Department as described in Item B1(d) of this Schedule 1	30 September 2005
11	Consultant to provide final written report to Department as described in Item B1(d) of this Schedule 1	31 October 2005
12	Consultant to provide final written report to the Department as described in Item B1.1(e) of this Schedule 1	31 January 2006
13	Any report that may be created as a result of Item B2 of this Schedule 1	Weekly from contract commencement
14	Contract completed	31 January 2006

Any variation to these timeframes will only be accepted if agreed upon between the Consultant and the Department in writing.

**D. Invoice Procedures (see clauses 3.4, 3.5 and 3.6)**

Invoices forwarded by the Consultant must be correctly addressed and must include the following information:

- (a) title of Consultancy Services;
- (b) name of Project Delegate; and
- (c) contract number or purchase order number (if any).

Invoices may be sent by facsimile to the number or email address specified in Item

AA of Schedule 2.

Subject to acceptance of the Consultancy Services by the Commonwealth, the due date for payment will be 30 days after receipt of a correctly rendered invoice to the Commonwealth and following delivery of the Consultancy Services.

**E. Specified Personnel (see clauses 1 and 6)**

Joan Young, Managing Director of Colmar Brunton Social Research Pty Ltd, must present to the MCGC as requested by the Department. Joan Young must be available to attend any such MCGC proceedings in person.

**F. Insurance (see clause 16)**

The Consultant must maintain:

- workers' compensation insurance for an amount required by the relevant State or Territory legislation; and
- commercial general liability insurance covering liability arising from premises, operations, independent contractors, personal injury, products completed operations, and liability assumed under an insured contract on an occurrence basis, with a limit of not less than \$5 million each occurrence and in the aggregate; and
- professional indemnity insurance for an amount of not less than \$5 million.

**G. Liaison & Notices (see clauses 7 and 28)**

Colmar Brunton Social Research Pty Ltd

39 Torrens Street Braddon ACT 2612

[info@canberra.cbr.com.au](mailto:info@canberra.cbr.com.au)

PO Box 2212 Canberra ACT 2601

Telephone: (02) 6249 8566

Fax: (02) 6249 8588

**H. Applicable Law (see clause 27)**

Australian Capital Territory.

**I. Compliance with Commonwealth Policies and Legislation (see clauses 14 and 23)**

The Consultant must comply with the following Commonwealth policies:

- (a) the Australian Government Implementation Guidelines for The National Code of Practice for the Construction Industry ; and
- (b) *Indigenous Procurement*  
([www.workplace.gov.au/indigenousprocurement](http://www.workplace.gov.au/indigenousprocurement)).

The Consultant must comply with the following legislation:

- (a) *Age Discrimination Act 2004* (Cth) and the *Age Discrimination (Consequential Provisions) Act 2004* (Cth);
  - (b) *Crimes Act 1914* (Cth);
  - (c) *Disability Discrimination Act 1975* (Cth);
  - (d) *Equal Opportunity for Women in the Workplace Act 1999* (Cth);
-



- (e) *Occupational Health and Safety (Commonwealth Employment) Act 1991 (Cth);*
  - (f) *Occupational Health and Safety (Commonwealth Employment)(National Standards) Regulations 1994 (Cth);*
  - (g) *Racial Discrimination Act 1975 (Cth);*
  - (h) *Sex Discrimination Act 1984 (Cth);*
  - (i) *Workplace Relations Act 1996 (Cth); and*
  - (j) *Workplace Relations Regulations 1996 (Cth).*
-

## **SCHEDULE 2**

### *Commonwealth Obligations*

#### **AA. Department (see clauses 1 and 28)**

Shannon Kenna  
Workplace Relations Reform Implementation Taskforce  
Department of Employment and Workplace Relations  
Loc 12M51. 12 Mort Street CANBERRA ACT 2600

#### **BB. Project Delegate & Liaison Officer (see clauses 1, 7 and 28)**

The Project Delegate is the person holding, occupying or performing the duties of Group Manager, Workplace Relations Policy Group, 3rd Level, Garema Court, 148-180 City Walk, Canberra City, ACT 2600, and the current occupant is Mr John Kovacic, telephone (02) 6121 7350; facsimile (02) 6276 7570.

The Liaison Officer is the person holding, occupying or performing the duties of Assistant Director, Workplace Relations Reform Implementation Taskforce, 5th Level, 12 Mort Street, Canberra City, ACT 2600 and the current occupant is Shannon Kenna, telephone (02) 6121 6664; facsimile (02) 6276 7011.

#### **CC. Fees (see clauses 3.1 and 3.2)**

The total fee payable for the **developmental research** is \$255,374 including GST. Fees are payable according to the Commonwealth's standard terms outlined in Clause 3.

Pursuant to clause 3.3, the total fee is payable by the following instalments:

- \$76, 612.20 after successful execution of the contract, conditional upon a favourable financial viability report;
- \$102, 149.60 upon completion of the fieldwork for the developmental research ;
- \$76, 612.20 upon delivery of the final report (as described in Schedule 1).

The total fee payable for the **tracking research** is \$794,125 including GST, payable by the following instalments:

- six equal payments of \$132,354.16 to be made monthly in arrears upon execution of the contract.

The total fee payable for the **creative testing research** is \$312,000 including GST, payable by the following instalments:

- \$93,600 after execution of the contract and delivery of the draft methodology
- \$124,800 upon completion of the fieldwork for Creative Testing Research
- \$93,600 upon delivery of the final report.

Where the Department approves, in writing, a proposal for further creative testing research up to the value of \$300,000, such additional amounts will be payable on completion of the further research.

Subject to acceptance by the Commonwealth, the due date for payment will be 30 days after receipt of a correctly rendered invoice to the Commonwealth and following delivery of the Consultancy Services.

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**DD. Allowances (see clause 3.1)**

Nil.

**EE. Assistance (see clause 3.1)**

Nil.

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## SCHEDULE 3

### Confidential Information

**A. COMMONWEALTH'S CONFIDENTIAL INFORMATION**

1. Contract Provisions/Schedules/Attachments

Item	Period of Confidentiality

2. Contract-related material

Item	Period of Confidentiality
All information provided by the Commonwealth to the Consultant under this Contract, whether provided verbally and/or in writing.	7 years from the completion of all work required to be performed under this contract.

**B. CONSULTANT'S CONFIDENTIAL INFORMATION**

1. Contract Provisions/Schedules/Attachments

Item	Period of Confidentiality

2. Contract-related material

Item	Period of Confidentiality

SIGNED for and on behalf of:  
**THE COMMONWEALTH OF AUSTRALIA** as represented by:  
The Department of Employment and Workplace Relations (ABN 40 376 417 416)

.....  
.....  
*(Printed Name)* ..... *(Signature)*

.....  
.....  
*(Title)* ..... *(Date)*

In the presence of:

.....  
.....  
*(Printed Name)* ..... *(Signature)*

.....  
*(Date)*

THE COMMON SEAL OF  
Colmar Brunton Social Research Pty Ltd, trading as Colmar Brunton Social Research  
ABN 63 090 919 378  
was hereunto affixed in accordance with its Constitution

.....  
.....  
*Joan Young* ..... *(Signature)*

.....  
.....  
*Managing Director* ..... *(Date)*

.....  
.....  
*Jenny Rush* ..... *(Signature)*

.....  
.....  
*Founding Director* ..... *(Date)*

---



**Australian Government**  
**Department of Employment and  
Workplace Relations**

**National Office**

GPO Box 9879 CANBERRA ACT 2601

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Michaela Green  
Director Sales & Marketing  
Stellar Call Centres Pty. Ltd.

Dear Michaela

**LETTER OF INTENT**

In order for the Department to meet its requirements for a campaign commencing Sunday 9 October 2005, the department accepts your proposal dated 6 October 2005 entitled *Stellar's support for Department of Employment and Workplace Relations Campaign*.

The Department authorises Stellar to provide all services stated in the proposal for a period of one week from Sunday 9 October 2005 at the quoted rates.

This Letter of Intent shall be subject to and will cease to have any legal effect upon execution of a formal Departmental services contract.

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**Australian Government**  
**Department of Employment and  
Workplace Relations**

**National Office**

GPO Box 9879 CANBERRA ACT 2601

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Randy McDonald  
UCMS Solutions Pty Ltd.  
L6, 15 William Street  
Melbourne 3000

Dear Randy

**LETTER OF INTENT**

In order for the Department to meet its requirements for a campaign commencing Sunday 9 October 2005, the department accepts your proposal dated 6 October 2005 entitled *UCMS update and UCMS pricing*.

The Department authorises UCMS Solutions Pty Ltd. to provide all services stated in the proposal for a period of one week from Sunday 9 October 2005 at the quoted rates.

This Letter of Intent shall be subject to and will cease to have any legal effect upon execution of a formal Departmental services contract.

John Kovacic  
Group Manager  
Workplace Relations Policy Group

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Attachment F

DETAIL	SIZE / DURATION	No. of		OCTOBER																															
		Ads	Total Cost	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31		
				S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	Fr	S	S	M		
				u	n	e	d	u	a	t	n	n	e	d	u	r	i	t	n	n	e	d	u	r	a	t	n	n	e	d	u	r	a	t	n
<b>TELEVISION</b>																																			
National, Metropolitan and Regional	90 Seconds	200									1	5	5																						
	60 Seconds	300									1	1	1																						
	45 Seconds	1400										1	1	2	2	2		1	1	1	1					2									
	15 Seconds	3950									1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2		
											0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
		TELEVISION TOTAL	24,133,952.60																																
<b>NEWSPAPER</b>																																			
National (2 Titles)	4 Page Consecutive	4												1			1								1						1				
Metropolitan (10 Titles)	4 Page Consecutive	4												1			1								1							1			
Primary Regional (10 Titles)	4 Page Consecutive	4												1			1								1						1				
Regional (367 Titles)	4 Page Consecutive	2												1											1										
Suburban (167 Titles)	4 Page Consecutive	2																	1								1								
Rural (9 Titles)	4 Page Consecutive	2																			1								1						







**BRANDMARK CONSULTING GROUP PTY LTD**

**PREPARED BY:** MARK PEARSON

**ON BEHALF OF:** DEWEY HORTON / DEWR

**DATE:** 24/11/05

## **1. DETAILS OF BRANDMARK CONSULTING GROUP P/L**

### **Company address**

- 2/7 Bridge Crescent, Lincoln Cove, SA, 5606.
- Phone: 08.86830060.
- Mobile: 0409.958009.

### **Mailing address**

- P.O. Box 799, Port Lincoln, SA, 5606.

### **Australian Business Number**

- 37091525450.

### **Established**

- Brandmark Consulting Group was established in 1999.

### **Ownership**

- Brandmark Consulting Group Pty Ltd is wholly owned by Brandmark Asia-Pacific Pty Ltd.
- Brandmark Asia-Pacific Pty Ltd is wholly owned by Mark Pearson.

### **Company scope**

- Brand marketing and advertising consultants to both corporate clients and to the advertising industry.
-

## **2. PERSONNEL**

### **Mark Pearson**

Mark Pearson has over 30 years experience working in the Advertising and Marketing industries in both Australia and the USA.

- Voted “Advertising Executive of the Year” in 1993 by Ad-News.
- Successfully led the Advertising team for the Federal Liberal Party in all four Federal elections since 1996.
- Consultant to the Australian Tax Office for the introduction of the New Tax System.
- Worked on many different advertising campaigns for all Australian Government’s since 1974.
  - Whitlam Government.
  - Fraser Government.
  - Hawke Government.
  - Keating Government.
  - Howard Government.
- Principal:
  - Brandmark Consulting Group (1999 - current).
  - Republic Advertising Melbourne (1990 - 1995).
- Managing Director:
  - Ammiratti Puris Lintas Sydney (1996 - 1999).
  - J Walter Thompson Melbourne (1987 - 1990).
- Senior Vice-President:
  - J Walter Thompson Chicago, USA (1986-1987).
- Advertising and Marketing Executive:
  - J Walter Thompson Sydney (1980 – 1986).
  - MasterFoods of Australia (1976 – 1979).
  - George Patterson Sydney (1972 – 1976).

### **Mary Pearson**

Mary Pearson has over 20 years experience working in the Advertising and Graphic Arts industries.

- Consultant:
    - Brandmark Consulting Group (2001 – current).
  - Managing Director:
    - White Door Australia - Creative Recruitment Agency (2000 - 2001).
  - General Manager:
    - Lintas Art Studio (1998 - 2000)
  - Art Director for several Advertising agencies
-

### **3. BRANDMARK CONSULTING GROUP'S INVOLVEMENT AND REMUNERATION AS SUB-CONTRACTOR TO DEWEY & HORTON**

#### **Appointment**

Brandmark Consulting Group was appointed as a sub-contractor to Dewey & Horton on 11 August 2005 to work on the communications programme for the introduction of WorkChoices; following consultation with the Department and the Department of Prime Minister and Cabinet.

#### **Scope & involvement**

Brandmark Consulting Group was appointed to:

- Consult to the advertising team at Dewey & Horton;
  - Subsequently involved in the development, coordination and production of all materials for TV, Radio, Press and Print.
- Consult to the Department and the Government Communications Unit (GCU);
  - Subsequently involved in planning and coordination of all advertising activities with Departmental personnel and with GCU.
- Consult to Ministerial Committee on Government Communications (MCGC);
  - Subsequently involved in all relevant meetings concerning advertising; and helped coordinate and implement decisions taken.
- Coordinate media activities with Universal McCann;
  - Subsequently involved in coordinating all media activities; and recommended various courses of action to Departmental personnel and to MCGC.
- Coordinate research activities with Colmar Brunton Research.
  - Subsequently involved in all relevant research meetings; and recommended various courses of action to Departmental personnel and to MCGC following research findings.

#### **Remuneration**

Brandmark Consulting Group has received \$328,967.95 total remuneration (including GST) from Dewey & Horton; this remuneration includes fees and expenses.

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**DEPARTMENT OF EMPLOYMENT AND WORKPLACE RELATIONS**

**SUMMARY OF PAYMENTS MADE BY DEWEY & HORTON TO PERFORMERS, EXTRAS,  
& LOCATIONS FOR PRODUCTION OF 'WORKCHOICES' TELEVISION COMMERCIALS &  
STILL PHOTOGRAPHY**

17 September 2005

Talent - sourced from casting/talent agencies **\$47,000**

Extras **\$4,500**

Location fees **\$3,363**

Total **\$54,863**

18 September 2005

Talent - sourced from casting/talent agencies **\$94,500**

Extras **\$0**

Location fees **\$3,060**

Total **\$97,560**

19 September 2005

Talent - sourced from casting/talent agencies **\$45,000**

Extras **\$9,600**

Location fees **\$3,317**

Total **\$57,917**

20 September 2005

Talent - sourced from casting/talent agencies **\$62,500**

Extras **\$0**

Location fees **\$1,500**

Total **\$64,000**

2 October 2005

Talent - sourced from casting/talent agencies **\$39,000**

Extras **\$1,000**

Location fees **\$0**

Total **\$40,000**

3 October 2005

Talent - sourced from casting/talent agencies **\$53,500**

Extras **\$12,000**

Location fees **\$9,500**

Total **\$75,000**

**TALENT \$341,500**

**ADDITIONAL TALENT \$27,100**

**LOCATION FEES \$20,740**

**TOTAL \$389,340**

---



**TALENT RELEASE FORM**

I, ..... of.....  
(Name) ..... (Address) .....

(hereinafter called the Artist) hereby agree to render **FLINDERS LANE PRODUCTIONS**  
(hereinafter called the Producer) or its assigns, the undermentioned services upon the conditions  
hereinafter mentioned. Type of service to be rendered by the Artist.....

Client **Australian Federal Government**  
**Department of Employment & Workplace Relations**

Product (Provisionally Entitled) **Workplace Relations**

Date and time of service .....

Place where services are to be rendered .....  
(or such other places as the producer may require)

**CONDITIONS**

- a) The Producer or its assigns may take or use recordings of the performance of the artist in such manner as it may decide
- b) It is understood that such recordings of the Artist's performance will be used throughout Australia
- c) All rights of whatsoever kind in or attaching to the Artist's services and all products thereof or in other products of the Agreement will be owned by the Producer or its assigns
- d) The Producer or its assigns may use in Australia or elsewhere the name, photograph or likeness of the Artist on sales packaging, advertising or promotional material or any other published matter.
- e) The Artist will release and indemnify the Producer against all claims which the Artist may have arising out of the use by the Agency or Client of the products of the Artist's services.

Dated this ..... day of .....

Signed by the Artist .....

On behalf of the above named Producer .....



**SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCE  
COMMITTEE INQUIRY INTO GOVERNMENT ADVERTISING AND  
ACCOUNTABILITY**

**QUESTIONS FOR THE DEPARTMENT OF EMPLOYMENT AND  
WORKPLACE RELATIONS**

**Mail Outs**

**Questions:**

- 1) If there is a mail out planned, to whom will it be targeted and what database will be used to select addresses – the Australian Taxation Office database, the electoral database or other?
- 2) How does the Department propose to distribute the remaining 5.2 million WorkChoices booklets currently being warehoused?
- 3) What company will distribute these booklets, to whom, when, and at what cost?
- 4) Senate Estimates was advised the contract with Salmat to distribute the WorkChoices booklet was valued at \$800,000. On what date was this contractual arrangement reached?
- 5) Is this work in addition to Salmat's overall contract with the Department? If so, was the \$800,000 contract the subject of an open tender process? If not, why not? Please provide documentation relating to any work conducted by Salmat Limited or any of its subsidiary companies for DEWR during 2004-05 and to date in 2005-06.
- 6) Provide any documentation relating to the open tender process referred to by the Prime Minister in question time of 8 November 2005 which led to Salmat or any of its subsidiary companies being awarded the Department's mail distribution contract including but not limited to submissions received by other tenderers for this work.
- 7) Who made the decision to pulp 458,000 WorkChoices booklets and on what date?
- 8) Have any more booklets been pulped? If so, provide details.
- 9) Provide an up-to-date table showing the number of booklets distributed thus far and the source of requests for booklets eg. Incoming calls to hotline via call centres, website, written requests.
- 10) What is the all up cost of the 6 million booklets and the 458,000 booklets that were pulped?
- 11) Why are 5.2 million booklets sitting in warehouses as at 9 November 2005?

**Answers:**

- 1) No mail out is planned at this stage.
- 2) The remaining booklets will be distributed over a number of years primarily as part of educative activities associated with implementation of the Government's workplace relations reforms.
- 3) Salmat retains the contract for mail-house services with the Department until 1 June 2008. Booklets will continue to be distributed on request. The provision

of mail-house services for WorkChoices Information and Education campaign is estimated at \$1,067,000 (GST exclusive).

- 4) As Salmat was contracted to supply mail-house services for the Department for the period encompassing 1 June 2005 to 1 June 2008, it was not necessary to prepare a separate contract for the distribution of the WorkChoices booklet. Salmat's proposal in relation to the distribution of the WorkChoices booklet was approved by the Department on 5 October 2005.
- 5) The Department of Employment and Workplace Relations has a mail-house services contract with Salmat Document Management Solutions Pty Ltd. The selection of Salmat followed an open tender process conducted earlier this year by the department. The contract period is from 1 June 2005 to 1 June 2008. Under the terms of the contract, Salmat have been used to distribute the WorkChoices booklet. Salmat did not conduct any work for the workplace relations reform information campaign in the 2004-2005 financial year. It is estimated that Salmat will receive payment of \$1,067,000 (GST exclusive) for work undertaken as part of the WorkChoices Information and Education campaign during the 2005-2006 financial year.
- 6) See Attachment A for a summary the Salmat contract history.
- 7) Following a Government decision, the Department advised JS McMillan and Salmat to destroy the printed material on 11 October 2005.
- 8) An additional 2000 copies of the original booklet were delivered to Parliament House on 7 October 2005. The handling of this material was left to the Minister's Office.
- 9) See table below for figures relating to the number of orders received and dispatched as at 25 November 2005.

	<b>Website</b>	<b>Hotline</b>	<b>Ad hoc</b>	<b>Total</b>
<b>Orders received</b>	102,604	94,496	22,583	219,683
<b>Orders dispatched</b>	96,172	90,423	22,383	208,978

10) The total cost is \$1,849,551.20 (GST exclusive).

11) The warehoused booklets are for future distribution.

**Attachment A**

Fax sent by :

DEWR RMU

08/11/05 14:28

Pg: 1/1

**A Summary of how SALMAT contract came into existence**

- 1 November 2001 RFT 2001/08 advertised as open tender
- 2 Salmat awarded contract for 2 years commencing 1 May 2002
- 3 Contract included one year option which was taken up
- 4 Extension agreement signed 8 November 2004
- 5 Initial contract including extension expired 29 April 2005
- 6 18 January 2005 DEWR RFT 2005/01 published on Austender
- 7 SALMAT successful. Despite not the cheapest offer, SALMAT represented best value for money to the Department
- 8 New contract for 3 years expires 1 May 2008
- 9 Two one year options to extend available
- 10 At September 2005 DEWR spends \$900,000 approx per annum

Salmat Contract History WIMS 210213

**SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCE  
COMMITTEE INQUIRY INTO GOVERNMENT ADVERTISING AND  
ACCOUNTABILITY**

**QUESTIONS FOR THE DEPARTMENT OF EMPLOYMENT AND  
WORKPLACE RELATIONS**

**Tracking research and assessment**

**Questions:**

On 20 October 2005 the Prime Minister said on the Jon Faine Program (774 ABC Melbourne) with respect to the WorkChoices campaign, "*We have had some tracking research done and we believe that the campaign is doing its job,*" and, "*We believe the campaign is both appropriate and effective.*"

- 1) Has the Department commissioned anyone to do "tracking research" to see how the IR campaign has been received by the public?
- 2) If yes – which company? How much have they been paid so far?
- 3) How much will be paid all up for this work?
- 4) What is the purpose of this research?
- 5) Who requested this research be done?

In the same interview, the Prime Minister suggested the exact form of the IR campaign was something that was reviewed on a "*daily basis*".

- 6) Is this correct?
- 7) If so who reviews it?
- 8) Is any company paid to help with this process? If so, which company or companies and what is the value of this work?

**Answers:**

- 1) Yes.
- 2) Colmar Brunton Social Research Pty Ltd. The Department has to date paid a total of \$264,708.32 (including GST) to Colmar Brunton Social Research in respect of tracking research.
- 3) The total contracted budget for tracking research is \$794,125. The total contracted budget for tactical tracking research is \$167,220.
- 4) The tracking research aims to identify, monitor and report on changes in audience attitudes, awareness, understanding and knowledge of the current system and the proposed changes. Tactical tracking research was also undertaken to monitor and evaluate reaction to the Australian Government's key messages in relation to the WorkChoices advertising campaign.
- 5) The Ministerial Committee on Government Communication (MCGC).
- 6) Yes.
- 7) The Australian Government.

- 8) Yes. Colmar Brunton Social Research, with a contracted budget of \$167,220 for tactical tracking research on a twice weekly basis between 12 and 30 October 2005.

**SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCE  
COMMITTEE INQUIRY INTO GOVERNMENT ADVERTISING AND  
ACCOUNTABILITY**

**QUESTIONS FOR THE DEPARTMENT OF EMPLOYMENT AND  
WORKPLACE RELATIONS**

**Future promotional or campaign activity**

**Questions:**

Minister Andrews is on record as saying the advertising campaign will “go on for possibly a year or so”. [Reported in The Age of 19 July 2005]

- 1) What further advertising, communications or information activities are planned to further advise the community about the industrial relations changes once the legislation is passed?
- 2) Has DEWR entered into discussions with the Government Communications Unit in relation to future advertising, communications or information activities in relation to future promotion of the industrial relations changes? If so, on what date did discussions commence and what have been the nature of these discussions?
- 3) Have negotiations commenced with any (a) creative agency or agencies; and (b) research agency or agencies; (c) mail houses; (d) printers; (e) call centre operators; and, (f) web site designers and/or hosts for any future advertising, communications or information activities in relation to the industrial relations changes?

**Answers:**

- 1) At this stage, the nature, scope and duration of any information and education activities associated with the implementation of the workplace relations reforms is yet to be settled by the Australian Government.
- 2) Yes, on 21 and 22 November 2005 in relation to developing a communication strategy associated with the implementation of the workplace relations reforms.
- 3) No.

**SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCE  
COMMITTEE INQUIRY INTO GOVERNMENT ADVERTISING AND  
ACCOUNTABILITY**

**QUESTIONS FOR THE DEPARTMENT OF EMPLOYMENT AND  
WORKPLACE RELATIONS**

**WorkChoices Hotline/Call Centres**

**Questions:**

- 1) Is the Department aware of the following transcript of a call to the hotline (released by New Matilda on 28 October)?

*Call made to the Workchoices hotline (1800 025 239) with one simple question, verbatim:*

*Operator - Hello, this is [name].*

*Caller (Nick) - Hello, I just wanted to ask a question about the new IR changes, is that ok?*

*Operator - Yep.*

*Caller - My question is, what is the reason for the changes?*

*Operator - It's to make it more simpler and, uh, to give, uh, ok (pause) ok. .. (pause) I'll see what it has here, sorry (yawn) (pause)... (sigh) ... (20 seconds of silence, with sound of pages turning in background) Ok that's a really good question, ok, I'm just searching for the script I have here (pause) ...it doesn't have anything here, I'll just see what it's got here to answer that for you ok (pause) Alright, no I can't find anything and I don't want to waste your time looking for it, sorry.*

*Caller - Ok, thanks very much.*

*Hangs up.*

- 2) Would the Department regard this as an example of the hotline effectively communicating information regarding the WorkChoices package?
- 3) How many calls have now been made to the hotline?
- 4) Provide an up to date table showing daily call rates and a summary of the nature of calls received or made by operators.
- 5) Were different scripts used for outbound calls to employers and employees? If so, why was that?
- 6) Who drafted the scripts? Please provide a copy of all scripts used by call centre operators.
- 7) How many booklets have been distributed as a result of calls to the hotline?

**Answers:**

1. No.
2. Operators working on the WorkChoices hotline were given training and provided with a script to assist them in answering questions. The following is the information operators were provided on why the reforms are being introduced:

*The Government believes that further reform to the workplace relations system will improve Australia's economic performance.*

*The reforms are designed to create jobs as well as improve the standard of living of working Australians and their families.*

*The Government believes that the reforms will create simpler and more flexible workplace arrangements. This will create a modern workplace relations system that improves productivity.*

The Department has been unable to confirm that insufficient advice was provided by operators on this issue. Where the Department becomes aware of issues in relation to the hotline, call centre management is contacted and further clarification or training is provided.

3. As at 27 November 2005 47,686 calls had been made to the hotline.

4.

<b>Date</b>	<b>Total Calls</b>	<b>Date</b>	<b>Total Calls</b>
9-Oct-05	1104	1-Nov-05	190
10-Oct-05	3522	2-Nov-05	358
11-Oct-05	4779	3-Nov-05	322
12-Oct-05	5345	4-Nov-05	255
13-Oct-05	4514	5-Nov-05	35
14-Oct-05	4288	6-Nov-05	17
15-Oct-05	782	7-Nov-05	208
16-Oct-05	993	8-Nov-05	194
17-Oct-05	3096	9-Nov-05	230
18-Oct-05	2394	10-Nov-05	197
19-Oct-05	2178	11-Nov-05	170
20-Oct-05	1986	12-Nov-05	14
21-Oct-05	1797	13-Nov-05	17
22-Oct-05	572	14-Nov-05	150
23-Oct-05	400	15-Nov-05	190
24-Oct-05	1387	16-Nov-05	393
25-Oct-05	1185	17-Nov-05	145
26-Oct-05	1218	18-Nov-05	126
27-Oct-05	939	19-Nov-05	11
28-Oct-05	682	20-Nov-05	12
29-Oct-05	186	21-Nov-05	133
30-Oct-05	124	22-Nov-05	88
31-Oct-05	464	23-Nov-05	119
		24-Nov-05	77
		25-Nov-05	90
		26-Nov-05	6
		27-Nov-05	4
<b>Grand total</b>		<b>47,686</b>	



The primary reason for calls to the WorkChoices hotline is to place orders for WorkChoices information booklets. The total number of calls received to order booklets as at 24 November 2005 is 37 168.

Individuals are also calling the WorkChoices hotline with specific questions relating to the proposed workplace relations changes; asking for information on the new system. Frequently asked questions relate to unfair dismissal laws and employment conditions and entitlements.

In addition, members of the public have called to express either support or disagreement regarding the proposed workplace relations changes.

5. No. Outbound calls were only made when operators were unable to respond to an incoming call and undertook to obtain the necessary information and contact the callers. Callers included both employers and employees.
6. The Department of Employment and Workplace Relations. Please see [Attachment A](#) for a copy of the script
7. As at 25 November 2005, 207,615 booklets have been distributed.

**WR Reform Hotline  
Questions and Answers Script**

## **General reform questions**

I have heard the announcement on WR reforms that was made today/recently, what is this about?

The joint announcement by the PM and Minister Andrews on Sunday 9 October is the first step towards the Government rolling out a range of new workplace relations initiatives. These initiatives will simplify the current system to make it fairer and more flexible for employees and employers.

If you like, I can give you an overview of the key features of the new workplace relations system. Under the new system:

- Agreement making will be simplified through a lodgement only process;
- A genuine safety net of wages and conditions will be legislated – this will be called the Australian Fair Pay and Conditions Standard;
- There will be a national workplace relations system, covering up to 85% of employees;
- minimum and award classification wages will be maintained as will awards;
- conditions, like public holidays; rest breaks (including meal breaks); incentive-based payments and bonuses; annual leave loadings; allowances; penalty rates; and shift /overtime loadings;
- workers will have the right to join and be represented by a union, and the right to take industrial action;
- union and non-union agreements will still be allowed;
- the Australian Industrial Relations Commission will retain an important role in assisting employers and employees to resolve workplace disputes; and
- employees will continue to be protected from unlawful termination.

If you'd like more information about the reforms, please go to the WorkChoices website at [www.workchoices.gov.au](http://www.workchoices.gov.au).

**I would like to get a copy of the WR reform information booklet..**

I can take your order now:

**Note: this is a 16 page publication.**

**If callers ask for a 64 page booklet direct them to the website ([www.workchoices.gov.au](http://www.workchoices.gov.au)) for a PDF that they can download. The 64 page booklet is not available for distribution. It was released to the media only, at the Prime Minister's announcement on 9 October.**

**->Click on the 'Order Forms' Button**

**When will I receive my Workchoices booklet?**

Due to the high demand for booklets at the moment, I'm not able to provide you with a definite delivery date at this stage. However, the Department of Employment and Workplace Relations is endeavouring to dispatch orders as soon as possible.

## **Why are the reforms being introduced?**

### *ANSWER*

- The Government believes that further reform to the workplace relations system will improve Australia's economic performance.
- The reforms are designed to create jobs as well as improve the standard of living of working Australians and their families.
- The Government believes that the reforms will create simpler and more flexible workplace arrangements. This will create a modern workplace relations system that improves productivity.

## **What will the proposed reforms include?**

### *ANSWER*

A detailed summary of the reforms is available on the Australian Workplace Website <[www.workchoices.gov.au](http://www.workchoices.gov.au)>.

But, I can give you an overview of the key features of the new workplace relations system. Under the new system:

- Agreement making will be simplified through a lodgement only process;
- A genuine safety net of wages and conditions will be legislated – this will be called the Australian Fair Pay and Conditions Standard;
- There will be a national workplace relations system, covering up to 85% of employees;
- minimum and award classification wages will be maintained as will awards;
- there will be protected conditions, like public holidays; rest breaks (including meal breaks); incentive-based payments and bonuses; annual leave loadings; allowances; penalty rates; and shift /overtime loadings;
- workers will have the right to join and be represented by a union, and the right to take industrial action;
- union and non-union agreements will still be allowed;
- the Australian Industrial Relations Commission will retain an important role in assisting employers and employees to resolve workplace disputes; and
- employees will continue to be protected from unlawful termination.

## **When will the reforms be put into effect? Are these changes law already?**

### *ANSWER*

- The Government is working towards introducing the legislation into Parliament in October this year. The Government aims to have the reforms in place by the end of March 2006.

## **What will be the overall affect on the Australian economy if the changes are implemented?**

### *ANSWER*

The reforms should increase employment, improve living standards and make Australia more competitive. This will be achieved by:

- introducing a modern workplace relations system with a single set of rules for minimum conditions, awards, and agreements;
- creating a more flexible labour market to maximise economic growth and employment opportunities;
- improving business productivity; and
- providing an entrepreneurial culture to increase Australia's economic prosperity.

### **How will the reforms create more jobs for families?**

#### *ANSWER*

- The proposed reforms aim to encourage job creation and help families find work that best suits their situation..
- By improving flexibility, the reforms will remove barriers that stop employers from taking on more staff. This will help in creating more jobs for families.

### **Things have been progressing nicely without these reforms, why rock the boat? Why change a system that works well?**

#### *ANSWER*

- The Australian economy **is** doing well at the moment, but the Government is aiming to make sure this continues.
- The Government considers that further reforms are needed for Australia to build on it's recent economic progress, and to remain competitive in the global economy.
- The reforms will also help Australia meet future challenges such as the ageing of our population.

### **Can the Government guarantee that no one will be worse off? The Government gave a guarantee last time, why not now?**

#### *ANSWER*

- The Government has indicated that it can't guarantee that the take-home pay of every single individual, among the 10 million workforce in Australia, is not going to change. However, the Government has stated that it is not going to introduce any policy that will cut the take-home pay or living standards of the Australian workforce as a whole.
- The Government is committed to protecting workers with a fair and sustainable safety net of wages and conditions. This is shown by the minimum guarantees that will be set in legislation as part of the Australian Fair Pay and Conditions Standard. This is also shown by the protected award conditions.
- The Australian Fair Pay and Conditions Standard will contain minimum wages. Minimum wages will not fall below the level set by the 2005 safety net wage rises.
- **More information about these protections is available from the Australian Workplace Website <[www.workchoices.gov.au](http://www.workchoices.gov.au)>.**

### **How can I get a copy of the legislation?**

#### *ANSWER*

- The legislation is currently in the drafting stage and so it is not publicly available.
- Once the legislation becomes a Bill, it will be available for public viewing at the Parliament House website <[www.aph.gov.au](http://www.aph.gov.au)>.
- All other information relating to the Government's workplace relations reforms will be posted at <[www.workchoices.gov.au](http://www.workchoices.gov.au)>. The website will be updated with new information as it becomes available.

### **I'm a farmer in a family trust- what happens to me?**

#### **ANSWER**

- The new workplace relations system will be based on the corporations power of the constitution.
- Farming businesses that employ people through a family trust are by nature not Constitutional corporations. This means they will not be part of the federal workplace relations system, (unless the business is located in Victoria, the ACT or the NT).
- The Government will provide a transitional system for all businesses that will not be covered by the new federal system, but are part of the current federal system.
- Businesses that will not be part of the new system will be able to remain in the federal system for up to five years.
- Current agreements and awards that apply to those businesses will continue to apply for that five year period.
- Businesses that are currently part of the federal system, but that won't be part of the new system, can leave the current federal system at any time by negotiating a State agreement.
- If by the end of the five year period the business has not negotiated a State agreement, the business will revert to coverage by the relevant state award.

### **I'm a sub-contractor- what happens to me?**

#### **ANSWER**

- The new workplace relations system will be based on the corporations power of the constitution.
- The Government's workplace relations reforms primarily apply to employees and do not affect contracts for services.
- Independent or sub-contractors are engaged under a contract for services which is different to the normal employer/employee relationship. Contractors are engaged to perform a particular task or produce a certain result and payment is based on the completion of those tasks or results, for example, a tradesperson paid to perform one-off repairs.
- While sub-contractors will not automatically be brought into the new workplace relations system, one of the Government's 2004 election commitments was to introduce Independent Contractors legislation, separate from workplace relations legislation, which will support the right of people to make a choice about their working arrangements as contractors.
- The effect of this legislation will be to prevent restrictions on the freedom to contract, the freedom to operate as a genuine independent contractor, or the freedom to engage work through labour hire arrangements. This will mean more freedom for sub-contractors who will no longer be obliged to meet restrictive provisions in awards and agreements before they can be contracted to work.

## **I'm a sole trader- what happens to me?**

### *ANSWER*

- The new workplace relations system will be based on the corporations power of the constitution.
- By definition, a sole trader is an unincorporated business.
- However some businesses may fall within the federal system because of another constitutional power. An example of this is the territories power (which covers all sole traders in the NT and the ACT). Another example is the Victorian Government's referral of workplace relations powers to the Commonwealth - which covers all sole traders in Victoria. Unless a business falls into one of these categories, then that business will not be part of the new federal workplace relations system.
- A sole trader in this situation may either operate within the State workplace relations system, or alternatively, they can become a Constitutional corporation and remain in the federal system.
- The Government will provide a transitional system for all businesses that will not be covered by the new federal system but are part of the current federal system.
- Businesses that will not be part of the new system will be able to remain in the federal system for up to five years.
- Current agreements and awards that apply to that business will continue to apply for that five year period.
- Businesses that are currently part of the federal system, but that won't be part of the new system, can leave the current federal system at any time by negotiating a State agreement.
- If by the end of the five year period the business has not negotiated a State agreement, the business will revert to coverage by the relevant State award.

## **I'm an employer- do I have a choice about being State or Federal?**

### *ANSWER*

- Businesses who are eligible to be covered by the federal workplace relations system include Constitutional corporations, or businesses operating in Victoria, the ACT or the NT. These businesses will automatically be covered by the federal system.
- Employers that are not Constitutional corporations in NSW, WA, SA, Qld or Tas will be able to access the new federal system if they incorporate.

## **If I'm Federal now, I'll be Federal in the future - won't I?**

### *ANSWER*

- The majority of businesses which are currently within the federal system will be able to remain and benefit from the proposed reforms.
- However, some employers who are currently within the federal workplace relations system may no longer be eligible to remain part of the federal system. These employers will revert to the State workplace relations systems. This will mainly apply to businesses that are not Constitutional corporations in NSW, WA, SA, Qld and Tas,
- More details on this issue will be available when the legislation is brought before Parliament. However, the Government will put in place transitional measures for businesses that will no longer be able to operate within the federal system.

- Businesses that will not be part of the new system will be able to remain in the federal system for up to five years.
- Current agreements and awards that apply to that business will continue to apply for that five year period.
- Businesses that are currently part of the federal system, but that won't be part of the new system, can leave the current federal system at any time by negotiating a State agreement.
- If by the end of the five year period the business has not negotiated a State agreement, the business will revert to coverage by the relevant State award.

**Are the PM and the Minister prepared to negotiate and alter the proposed reforms?**

*ANSWER*

- The Government has indicated that it welcomes further views on the direction of reforms.
- Many of the details of the Government's proposed reforms have yet to be finalised and the Government has stated that it will carefully consider all the views that are put to it.

***National System***

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**Why is the Government pursuing a national workplace relations system?**

*ANSWER*

- Currently there are six different workplace relations systems in Australia with thousands of federal and State awards.
- Both federal and State Governments legislate on workplace relations. As a result, employers can have some employees on federal awards, and some employees on State awards.
- This system creates confusion and costs for all Australian businesses and employees.
- A national system of workplace relations will allow businesses to be more productive and competitive by making workplace relations simpler and improving choice and opportunity.. This should create more jobs and increase the standard of living for Australian workers.
- To create a more streamlined national workplace relations system, the Government will use the corporations power in the Constitution.
- The Corporations power allows laws to be made that regulate the terms and conditions of employment, for employees of Constitutional corporations.

**How will a national workplace relations system reduce complexity for employers?**

*ANSWER*

- All employees covered under the new system will be subject to the same workplace relations laws.



- Employees covered by the federal system will receive the same set of conditions, including the same unfair dismissal and redundancy entitlements. Employees covered under the new system, will follow the same agreement making processes and be subject to the same Australian Fair Pay and Conditions Standard..
- Employees covered by the federal system will also be subject to the same rules that govern access to unions.
- This level of consistency will make the system more efficient to run. This will allow employers to employ more people, and expand their business.

## ***Corporations Power***

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### **How can the Commonwealth use the Corporations head of power to enact the reforms?**

- The Corporations power of the Constitution allows laws to be made that regulate “foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth”. This power can be used to regulate employment conditions for employees of Constitutional corporations.
- The large majority of Constitutional corporations in the private sector will be trading or financial corporations and so will be covered by the federal system. The Corporations power will not cover all employees in Australia, but could cover up to 89% of employees.
- The Government’s legal advice is that this model of centrally set minimum wages and conditions is legal.

### **How will the Government succeed in a High Court appeal if the Corporations head of power is used?**

#### *ANSWER*

- The Government is not in a position to second guess the outcome of a High Court decision. However, the Government’s legal advice is that the corporations power is a valid way to put in place a national workplace relations system.
- The Corporations power of the constitution allows laws to be made that regulate “foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth”. This power can be used to regulate employment conditions for employees of Constitutional corporations.
- The large majority of Constitutional corporations in the private sector will be trading or financial corporations and so will be covered by the federal system. The Corporations power will not cover all employees in Australia, but could cover up to 89% of employees.
- The Government’s legal advice is that a model of centrally set minimum wages and conditions is legal.

### **Are all corporations covered by the Government's reforms?**

#### ANSWER

- The new federal workplace relations system will be based on the corporations power in the Constitution. This power allows laws to be made that regulate “foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth”.,
- The large majority of Constitutional corporations in the private sector will be trading or financial corporations and so will be covered by the federal system. The Corporations power will not cover all employees in Australia, but could cover up to 85% of employees

#### What is a Constitutional Corporation?

#### ANSWER

- A Constitutional corporation is a business which is incorporated and is covered by section 51 (20) of the Constitution.
- Section 51(20) of the Constitution allows the federal Government to make laws for “foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth”.
- At this stage, the extent of coverage of the federal workplace relations system has yet to be finally worked out. The Government expects to cover up to 89% of employees in Australia. However, more details will be available by the time the legislation is tabled in Parliament.

#### *[If the caller wants to know if they/their employer is a Constitutional Corporation]:*

- If you are an employer, and you are unsure whether your business is a Constitutional corporation then you may want to seek independent legal advice on this matter.
- If you are an employee and you are not sure whether your employer is a Constitutional corporation, you should first ask your employer. If your employer is also unsure about whether their business is a Constitutional corporation then they may seek independent legal advice on this matter.

#### How do I know if I’m employed by a Constitutional Corporation?

#### ANSWER

- A Constitutional corporation is a business which is incorporated and is covered by section 51 (20) of the Constitution.
- Section 51(20) of the Constitution allows the federal Government to make laws for “foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth”.
- If you are not sure about whether or not your employer is a Constitutional corporation you should first ask your employer whether they know if their business is a Constitutional corporation. If your employer is also unsure about whether their business is a Constitutional corporation then they may seek independent legal advice on this matter.

- However, it is important to note that the extent of coverage of the federal workplace relations system has yet to be finally worked out. More details will be available by the time the legislation is tabled in Parliament.

## ***AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION***

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**What will be the role of the Australian Industrial Relations Commission in the new WR system?**

*ANSWER*

- The Australian Industrial Relations Commission (or the AIRC) currently works by solving 'disputes' between employers and employees. The Government believes this is not a useful way of dealing with some workplace relations processes.
- The reforms will transfer minimum wage setting to a specialist independent body called the Australian Fair Pay Commission.
- The complex process for certifying agreements will be simplified to a lodgement only system managed by the Office of the Employment Advocate.
- However, the AIRC will continue to play a key role in the workplace relations system.
- For example, the AIRC will be able to provide voluntary dispute settlement assistance to help employers and employees to resolve workplace disputes.
- Also, the AIRC will continue to play an important role regulating industrial action and right of entry.
- The AIRC will be able to conciliate and arbitrate on unfair dismissal claims for employees who have been engaged for at least six months by a businesses with over 100 employees.
- In addition, (and as is currently the case) the AIRC will still be able to conciliate unlawful termination claims.

## ***Australian Fair Pay Commission***

\*

**What is the Australian Fair Pay Commission? How will it operate?**

*ANSWER*

- A new body called the Australian Fair Pay Commission will be established to periodically set and adjust:
  - a single adult minimum wage;
  - wages that were contained in awards (including classifications);
  - minimum junior, training and disability wages;
  - minimum wages for piece workers; and

- casual loadings,
- The Australian Fair Pay Commission will be independent of the Government and its decisions will be guided by directions set in legislation. This will make sure that minimum wages act as a genuine safety net for agreement making.
- The Australian Fair Pay Commission will not be allowed to lower wages below the level set by the 2005 safety net wage rises.
- When working out changes to minimum wages, the Australian Fair Pay Commission will:
  - conduct inquiries;
  - talk to business groups, unions, economists and others with an interest in minimum wages;
  - evaluate and monitor the impact of its decisions on wages, employment, unemployment and agreement making; and
  - publish its decisions.
- The Government believes that this process will help strike a better balance between fair pay and employment.

### **Who will be on the Australian Fair Pay Commission?**

#### *ANSWER*

- Australian Fair Pay Commission members will be appointed under the new legislation.
- The membership and structure of the Australian Fair Pay Commission will be focussed on economically responsible minimum wage decisions, which take into account the needs of the Australian economy as a whole. There will also be a focus on the low paid and unemployed.
- The Chair of the Australian Fair Pay Commission will be required to have high level skills in business or economics. Other Australian Fair Pay Commission members each must have experience in one or more of: business; economics; community organisations; workplace relations.

***If caller seeks more detailed information on AFPC membership – see general answer at Appendix A***

### ***Australian Fair Pay and Conditions Standard***

\*

#### **What is the Australian Fair Pay and Conditions Standard?**

##### *ANSWER*

- Under the reforms, a new safety net of wages and conditions will be introduced, called the Australian Fair Pay and Conditions Standard. The Australian Fair Pay

and Conditions Standard will set out the minimum wages and conditions that apply to all employees in the federal system.

- The Australian Fair Pay and Conditions Standard will include minimum wages as set by the Australian Fair Pay Commission, and the guaranteed minimum conditions of employment, which will be set in legislation.
- The guaranteed conditions in the Australian Fair Pay and Conditions Standard will cover annual leave, personal/carer's leave, parental leave (including maternity leave), maximum ordinary hours of work and minimum wages as set by the Australian Fair Pay Commission.
- The Government considers that the new Australian Fair Pay and Conditions Standard will strike a fair balance between business certainty, and safeguarding employee rights.

***If caller seeks more detailed information on Australian Fair Pay and Conditions Standard – see general answer at Appendix A***

### **What will happen to the No Disadvantage Test (NDT)?**

#### *ANSWER*

- The existing “no disadvantage test” requires that agreements must not reduce the overall award terms and employment conditions.
- The Government believes that the existing test is unclear and confusing, and creates uncertainty for businesses and employees. The Government considers that the existing test also fails to provide a consistent minimum standard which all agreements must meet.
- Under the reforms, a new safety net of wages and conditions will be introduced. This will be called the Australian Fair Pay and Conditions Standard. The Australian Fair Pay and Conditions Standard will set out the minimum wages and conditions that apply to all employees in the federal system.
- The Australian Fair Pay and Conditions Standard will include minimum wages as set by the Australian Fair Pay Commission, and the guaranteed minimum conditions of employment in legislation.
- The guaranteed conditions in the Australian Fair Pay and Conditions Standard will cover annual leave, personal/carer's leave, parental leave (including maternity leave), maximum ordinary hours of work and minimum wages as set by the Australian Fair Pay Commission.
- The Government considers that this approach, and the new Australian Fair Pay and Conditions Standard, will strike a fair balance between business certainty and safeguarding employee rights.

### ***Entitlements***

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#### *Wages and Conditions – general*

#### **Will the reforms remove the safety net of wages and conditions?**

#### *ANSWER*

- The Government is committed to protecting workers with a fair and sustainable safety net of wages and conditions.
- Under the reforms, a new safety net will be introduced, called the Australian Fair Pay and Conditions Standard. The Australian Fair Pay and Conditions Standard will set out the minimum wages and conditions that will apply to all employees in the federal system.
- The Government will introduce a new body, the Australian Fair Pay Commission. The Australian Fair Pay Commission will set a single adult minimum wage. It will also adjust junior, training, disability and award classification wages.
- The Government will be replacing the current method of wage determination, performed by the Australian Industrial Relations Commission. A panel of experts will consider workplace relations and economic factors when determining the minimum wage adjustments.
- Minimum conditions will be set in legislation, to protect Australian workers. These minimum conditions will include annual leave, parental leave, personal leave and maximum ordinary hours of work.
- The combination of minimum wages (as set by the Australian Fair Pay Commission), and the guaranteed minimum conditions of employment (as set in legislation), will form the new Australian Fair Pay and Conditions Standard.
- This Australian Fair Pay and Conditions Standard will be the test for all agreements. It will make it easier for employers and their employees to compare their agreement against the new safety net of fair pay and conditions.

***If caller seeks more information on this issue – see general answer at Appendix A***

### **How will the minimum wage be determined?**

#### **ANSWER**

- The Government will be replacing the current method of wage determination, performed by the Australian Industrial Relations Commission. A panel of experts will consider workplace relations and economic factors when determining the minimum wage adjustments.
- These panel experts will form a new body called the Australian Fair Pay Commission (or the AFPC). This will be established to periodically set and adjust:
  - the adult Federal Minimum Wage;
  - wages for award classification levels;
  - minimum junior, training and disability wages;
  - minimum wages for piece workers; and
  - casual loadings.
- The Australian Fair Pay Commission will be independent of the Government and its decisions will be guided by parameters set in legislation. This will ensure that minimum wages operate as a genuine safety net for agreement making.
- In making decisions about minimum wages, the Australian Fair Pay Commission will:
  - conduct inquiries;

- talk to business groups, unions, economists and others with an interest in minimum wages;
  - evaluate and monitor the impact of its decisions on wages, employment, unemployment and agreement making; and
  - publish its decisions.
- The Government believes that this process will help strike a better balance between fair pay and employment.

***If caller seeks more information on minimum wage determination under the reforms – see general answer at Appendix A***

### **How will the changes affect minimum wages?**

#### *ANSWER*

- The Government is committed to keeping a fair minimum wage with reasonable and sustainable increases.
- The Government will be replacing the current method of wage determination, performed by the Australian Industrial Relations Commission. A panel of experts will consider workplace relations and economic factors when determining the minimum wage adjustments.
- These panel experts will form a new body called the Australian Fair Pay Commission (or the AFPC). This AFPC will be established to set:
  - a single adult federal minimum wage;
  - wages for award classification levels;
  - minimum junior, training and disability wages;
  - minimum wages for piece workers; and
  - casual loadings.
- Minimum and award wages will not fall below the level set by the 2005 Safety Net Review. While wages cannot fall below this level, they will be capable of upwards adjustment by the Australian Fair Pay Commission.

***If caller seeks more information on their current situation - see escalation protocol***

***If caller seeks more information on minimum wage determination under the reforms – see general answer at Appendix A***

### **How often will the minimum wages be increased?**

#### *ANSWER*

- The Australian Fair Pay Commission will set and adjust minimum wages periodically.

**If caller seeks more detailed information on this issue– see general answer at Appendix A**

### **Will wage rates be uniform across all States?**

- The federal adult minimum wage, as set by the Australian Fair Pay Commission, will apply uniformly across all States.
- The Australian Fair Pay Commission will also set and adjust non-adult minimum wages (such as the training wage). The AFPC will adjust minimum wages for award classification levels, casual loadings, and wage rates contained within industrial instruments (such as awards). These will also apply equally to workers within the federal system, regardless of where they live.
- Therefore, all employees, regardless of their location will be guaranteed the protection of a fair minimum wage.
- However, this does not mean that all actual wage rates will be the same, as award and agreement rates may differ between States or workplaces. Reasons for this variation might be due to localised factors, or differences related to the skills, productivity or working preferences of employees in different areas

### **How will the changes affect minimum conditions of employment?**

#### *ANSWER*

- Minimum conditions of employment will be set by the Government through legislation. These include:
  - annual leave;
  - personal/carer's leave;
  - parental leave (including maternity leave) ; and
  - maximum ordinary hours of work.
- These legislated conditions, together with the minimum wages set by the Australian Fair Pay Commission, will form the new Australian Fair Pay and Conditions Standard.
- No worker covered by the federal system can receive less than the Australian Fair Pay and Conditions Standard.
- The Government believes that the new Australian Fair Pay and Conditions Standard will provide genuine protection for all Australian workers.

**If caller seeks more information on their current situation - see escalation protocol**

### **What if I am currently under an award – what will happen to the rest of my conditions?**

#### *Answer*

- Together with the Australian Fair Pay and Conditions Standard, awards will continue to operate as a minimum safety net of terms and conditions of employment for employees covered under an award.



- To protect Australian workers, minimum conditions of employment will be set in legislation as part of the Australian Fair Pay and Conditions Standard,. These conditions will include annual leave, parental leave and personal leave. However, it is possible that an award currently contains more generous provisions of this nature, than what the Australian Fair Pay and Conditions standard might have. If this is the case, the more generous terms in the award will continue to apply to the current and future award-dependent employees.
- Depending on the employee's situation, the reforms will also protect some other award conditions, including long service leave, jury service and superannuation conditions (Super conditions will be preserved until 30 June 2008).
- Depending on the employee's circumstance, the reforms will also protect other award conditions such as public holidays, rest breaks, incentive based payments, annual leave loadings, allowances, penalty rates, shift and overtime loading.

### Conditions - specific

## **Hours of work**

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### **What are 'maximum ordinary hours of work'?**

#### *ANSWER*

- Currently, ordinary hours of work are set out in federal and State awards, and occasionally State legislation.
- Awards currently have a wide range of ordinary hours of work, however the community standard falls within a narrower range.
- Generally, federal awards have maximum ordinary hours per week of between 35 and 40 hours. Thirty-eight hours appears to be the most common. There are some rare exceptions to the standard range.
- State awards may present a more varied arrangement of maximum ordinary hours per week, or they may present a different community standard. For example, NSW law states that ordinary hours fixed by an award may not exceed 40 hours per week, averaged over a 12 week period, or over 52 weeks for seasonal employees.
- The Government considers that 38 hrs per week does appear to be an effective community standard, at least in relation to federal awards.
- The level of maximum ordinary hours under the reforms will reflect community standards. The Government is proposing to legislate for 38 ordinary hours of work per week, which is consistent with current community practice.

**If caller seeks specific information on their current situation - see escalation protocol**

### **How will maximum ordinary hours of work be affected?**

#### **GENERAL ANSWER**

- The level of maximum ordinary hours will reflect community standards. The Government is proposing to legislate for 38 ordinary hours of work per week, which is consistent with current community practice.
- Employees may be required to work more or less than the maximum ordinary hours, but it will be a requirement in law that all employees receive at least the relevant minimum wage for all ordinary hours worked.

### **MORE DETAILED ANSWER**

*Ask caller if they are covered by an award or agreement. If they are unsure, tell them that the answer to this question will depend on which of the two options they are covered by. Then refer them to Wageline (see escalation protocol)*

*If they know what they are covered by, see relevant section below:*

### **AGREEMENTS**

- Employees who are covered by an existing agreement will not be affected by the introduction of the maximum ordinary hours of work, as existing agreements will be allowed to operate until their nominal expiry date. However all new agreements must comply with the terms of the Australian Fair Pay and Conditions Standard, including maximum ordinary hours of work.
- For those employees covered by agreements, penalty and overtime rates can continue to be negotiated at the workplace and individual level to suit the needs of employers and employees.

### **AWARDS**

- Employees who are covered by an award will be entitled to the protection of the legislated 38 hour maximum ordinary hours of work. However, where the employee's award provides more generous terms these will continue to apply to all current and future award reliant employees.
- Award provisions relating to penalty rates and overtime rates will also continue to apply under the new workplace relations system.

***If caller seeks specific information on their current situation - see escalation protocol***

## **Penalty Rates**

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**Will employees lose penalty rates under new arrangements for maximum ordinary hours of work?**

### **ANSWER**

- The Government considers that penalty rates and overtime rates for employees are best negotiated at the workplace and individual level, to suit their own needs.

- The Australian Fair Pay and Conditions Standard will provide fair and balanced minimum conditions for employees negotiating their employment conditions. This includes provisions related to hours of work.
- Penalty rates for shift work and overtime are not being removed from awards. Employees who are employed under awards will keep access to those award provisions.
- In addition, penalty and overtime rates can continue to be negotiated in agreements at the workplace or individual level to suit the needs of employers and employees.

### **Will Part time workers be able to receive Penalty Rates?**

*Ask caller if they are covered by an award or agreement. If they are unsure, tell them that the answer to this question will depend on which of the two options they are covered by. Then refer them to Wageline (see escalation protocol)*

*If they know what they are covered by, see relevant section below:*

#### AWARDS

- Penalty rates for shift work and overtime are not being removed from awards. Employees who are employed under awards will keep access to those award provisions. Whether a part time worker will receive penalty rates depends on the specific terms of that award.

#### AGREEMENTS

- Penalty and overtime rates can continue to be negotiated in agreements at the workplace or individual level to suit the needs of employers and employees. Whether a part time worker will receive penalty rates depends on the specific terms of that agreement.
- However if a part time worker is currently entitled to penalty rates under an agreement, this entitlement will continue for the life of the agreement.
- As long as they meet the Australian Fair Pay and Conditions Standard, employers and employees will be able to tailor wages and conditions (including penalty rates), in a way that best meets their needs. A part time worker can choose a variety of options to tailor their working arrangements, for example:
  - a flat hourly rate which encompasses penalty rates, or
  - averaging his/her salary out over a year, or
  - the relevant minimum hourly rate of pay.

### **Will casual and temporary workers be entitled to receive penalty rates?**

*Answer*

- The Government supports workplace flexibility and does not express a preference for any particular employment type, such as part-time, casual or non-ongoing employment.

- The reforms will apply to temporary and casual staff in much the same way as they will for other employees, but one main difference is in the regulation of casual loadings.
- Under the new system, casual loadings will be set and determined by the new Australian Fair Pay Commission rather than through awards.
- Also, casual loadings will form one part of the set of minimum employment conditions which will be guaranteed by the Government through legislation. This means that all casuals within the federal system will be guaranteed to receive at least the level of loading set by the Australian Fair Pay Commission. This will help to provide certainty for this group of employees.
- It will be prohibited to restrict, in awards and agreements, the number of casual employees employed by a business.

### **Will people still be paid overtime if they work more than 38 hrs per week?**

*Answer*

- The reforms won't affect an employee's current right to be paid overtime, if they work more than the legislated 'ordinary hours', or the ordinary hours contained within an applicable award or agreement.
- So, where an award, an agreement, or a common law contract currently provides for penalty rates for overtime, this will still be the case under the new system. This will be the case unless an employer and employee agree to alternative arrangements.

### **Can employers make Saturday/Sunday part of the 38 hrs, and do they have to pay penalties for it?**

*Answer*

- The proposed reforms will not affect an employee's existing right to be paid penalty rates for weekend work. So, where an award, a workplace agreement, or a common law contract provides for penalty rates for overtime, this will still be the case under the new system. This will be the case unless an employer and employee agree to alternative arrangements.
- The legislative detail for ordinary hours of work is still being drafted. So it is not possible to provide any further information at this stage about exactly when this work must be performed.

*If caller seeks specific information on their current situation - see escalation protocol*

### **How will penalty rates for weekend work be affected?**

- The proposed reforms will not affect an employee's existing right to be paid penalty rates for weekend work.
- So, where an award, a workplace agreement, or a common law contract provides for penalty rates for overtime, this will still be the case under the new system. This will be the case unless an employer and employee agree to alternative arrangements.

## **Leave**

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### **How will leave entitlements be affected?**

#### ANSWER

- To protect Australian workers, minimum conditions of employment will be set in legislation as part of the Australian Fair Pay and Conditions Standard. These conditions will include annual leave, parental leave and personal leave.
- However, if a relevant award provides for more generous leave provisions, the more generous terms will continue to apply to all current and future award dependent employees. In addition, employees and employers can also continue to negotiate more generous leave entitlements at a workplace or individual level as part of a workplace agreement.

#### **Will people be entitled to sick leave, and if so how long?**

- Minimum conditions of employment will be set in legislation as part of the Australian Fair Pay and Conditions Standard. These conditions include annual leave, parental leave and personal leave (i.e. sick leave and carer's leave).
- These minimum standards will form part of what will be known as the Australian Fair Pay and Conditions Standard.
- The legislated Australian Fair Pay and Conditions Standard for personal/carer's leave will consist of ten days of paid personal leave per annum. This amount will be available after 12 months of service (and will be pro-rata for employees who have not completed 12 months service). This leave is cumulative, but only ten days in any given year can be used as carer's leave.
- A further two days of unpaid carer's leave per occasion will be available. This will be available in the event of an unexpected emergency for employees who have exhausted their personal leave entitlement, or are casual.
- The Australian Fair Pay and Conditions Standard will also include two days of paid compassionate leave per occasion. Compassionate leave is leave to visit a seriously ill or dying relative as well as to attend a funeral.
- Federal agreements in the new system must at least provide the same amount of sick leave as will be set out in legislation. This means that it will be possible for employers and employees to agree to more generous provisions for sick leave, but sick leave cannot be less than what will be in the legislated Australian Fair Pay and Conditions Standard.

## **How will the changes affect the standard annual leave?**

### *ANSWER*

- Under the reforms, some conditions of employment will be set in legislation - and this includes annual leave.
- The standard annual leave entitlement will be four weeks. Annual leave cannot be reduced below four weeks.
- In addition, employees may be entitled to more than four weeks leave where their award or agreement contains more generous leave entitlements.
- An employee will be able to choose to cash out up to two weeks worth of their annual leave entitlement. This is a voluntary option, and a request must be presented in writing.
- An employer will not be able to force an employee to cash out part of their annual leave entitlement. Nor will an employer be able to make this a condition of employment. It will be unlawful for an employer to do either of these things. Each employee is entitled to four weeks annual leave and any decision to cash out this entitlement will be at the discretion of the employee.
- Cashing out will benefit employees who have accrued annual leave in excess of their actual need. These employees will be able to exchange their leave for monetary benefit.
- The Government strongly encourages employees to use annual leave to take time away from work, and to achieve an appropriate balance between their work and family lives. Therefore, cashing out will be limited to a maximum of two weeks worth of an employee's yearly annual leave entitlement.

## **Will annual leave loading remain as part of the 5 minimum conditions?**

### *ANSWER*

- No. However, annual leave loading will remain a matter that is allowable in awards.
- Where an award, a workplace agreement, or a common law contract currently provides for annual leave loading, this will still be the case under the new system. This will be the case unless an employer and employee negotiate an alternative arrangement.

## **If an employee has accrued long service leave, will it be reduced or affected under the reforms?**

- The proposed reforms will not affect an employee's current accrued long service leave.
- Long service leave provisions in awards will continue to apply to all current and future award reliant employees. Long service leave may also be negotiated as part of an agreement at a workplace or individual level.

## **Will long service leave entitlements (eg 1 extra yrs payment for people over 45) stay the same?**

- An employee's long service leave entitlements will not change, unless their relevant award or agreement is varied or replaced.
- Long service leave will still be a feature of the new system.

- Long service leave provisions in awards will continue to apply to all current and future award reliant employees.
- Long service leave may also be negotiated as part of an agreement at a workplace or individual level.

#### **Will paid maternity leave still be available?**

- The Workplace Relations Act currently provides a minimum of 12 months unpaid maternity leave. Under the reforms, the right to take unpaid leave will continue to be protected in legislation. This will occur as part of the new Australian Fair Pay and Conditions Standard.
- Under current arrangements, employees can negotiate to include paid maternity leave as part of a collective or individual workplace agreement.
- Under the reforms, employers and employees will be able to negotiate paid maternity leave as part of workplace agreements where that is a priority.
- If an award provides more generous maternity leave provisions than the new Australian Fair Pay and Conditions Standard, the award provisions will continue to apply to all current and future award reliant employees.

**If caller seeks more information on leave entitlements under the reforms – see general answer at Appendix A**

**If caller seeks specific information on their current situation - see escalation protocol**

### **Real wages**

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**The Government claims real wages have increased by 14.8 % - does this figure take CPI into account CPI and has this been factored into the increase?**

*ANSWER*

Yes, the Consumer Price Index (CPI) is taken into account when calculating real wages. The figure is calculated by deflating average (non-farm) earnings from the Australian Bureau of Statistics *National Accounts*

**What were the real wage figures when the Government introduced the last reforms?**

*ANSWER*

The Workplace Relations Act commenced in 1997. Since the Government came to office in March 1996, the Federal Minimum Wage has increased by \$135 or 38.6 per cent. In real terms, wages have increased by 1.5 per cent per annum since 1996.

**What guarantees can the government provide that real wages won't decline?**

*ANSWER*

- Minimum wages cannot fall below the level set by the 2005 safety net wage increase.

- The reforms aim to make it simpler for employers and employees to enter into workplace agreements. The Government believes that this will encourage productivity growth, low inflation, and growth in real wages.
- Real wages have increased by 14.8 per cent since the Government came to office.
- The Government considers that the strong increase in real wages is due to the Government's sound economic management.
- The Government believes that workplace agreement-making encourages employees and employers to negotiate wage increases, in line with productivity improvements.

## ***Unfair Dismissal + Employee protection***

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### **Will there be protection from unfair dismissals?**

#### *ANSWER*

- The Government draws a distinction between unfair dismissal and unlawful termination.
- The Government believes that the burden of defending unfair dismissal cases falls very heavily on small and medium businesses, and prevents these businesses from employing as many people as they could.
- The Government will make it easier for these businesses to employ more Australians by exempting them from the unfair dismissal system.
- The Government will continue to protect **all** employees covered by the federal system by providing a remedy for unlawful termination. This will prohibit dismissal for discriminatory reasons, such as:
  - temporary absence from work because of illness or injury;
  - trade union membership or participation in trade union activities;
  - non-membership of a trade union;
  - representation of other employees;
  - the filing of a complaint, or involvement in proceedings against an employer, involving a breach of the law;
  - race, sex, colour, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
  - refusing to negotiate in connection with, make, sign, extend, vary or terminate an AWA;
  - absence from work during maternity leave or other parental leave; and
  - temporary absence from work because of the carrying out of a voluntary emergency management activity.
- Employees who believe they have been unlawfully terminated will be eligible to receive up to \$4,000 worth of legal advice, based on the merits of their case. They will be eligible if they have a certificate from the Australian Industrial Relations Commission stating that their claim has merit and if they are assessed as having financial need.



**If caller seeks specific information on their current situation - see escalation protocol**

**What are the reasons for the 100 employee threshold, for unfair dismissal ?**

**ANSWER**

- The Government considers that the current unfair dismissal system discourages job creation across businesses. Whether the benchmark is set at 20, 50, 100 or 200 employees – the Government feels that unfair dismissal laws cost jobs. That is why the Government is seeking to change the law to exempt businesses with up to 100 employees from the unfair dismissal system.
- The Government believes that the time and cost of defending an unfair dismissal claim, even one without merit, can be substantial. These costs weigh more heavily on small and medium businesses than on larger businesses.
- The Government believes that these costs discourage employers from putting on more staff, because they fear that they could face an unfair dismissal claim if the employee turns out to be unsuitable or if a downturn in available work makes them redundant.. The Government strongly believes that workplace relations laws should encourage, not inhibit job creation.
- The Government will continue to protect workers from unlawful termination regardless of how many employees a business employs. This means it will continue to be unlawful to dismiss an employee for reasons such as temporary absence from work due to illness or injury, or due to discriminatory grounds - for example, race, colour, sex, age, union membership, whistle-blowing, family responsibilities and pregnancy.

**Does the intended legislation cover multinational companies with small Australian operations of less than 100? If so how?**

**See general answer at Appendix A**

**Are the 100 employees equivalent Full time employees or a mix of full time, part time and casual?**

**See general answer at Appendix A**

**Is it possible to divide large businesses into individual businesses of less than 100 employees in order to unfairly dismiss?**

**See general answer at Appendix A**

**What grounds for unfair dismissal will become legal for small business?**

**ANSWER**

- Unfair dismissal provisions will be removed for small or medium businesses with 100 employees or less.
- This will mean that an employee of a small or medium business would no longer be able to appeal against their termination on the basis of it being harsh, unjust or unreasonable.
- However, the Government will continue to protect workers from unlawful termination. This means it will continue to be unlawful to dismiss an employee for reasons such as temporary absence from work due to illness or injury, or due

to discriminatory grounds - for example, race, colour, sex, age, union membership, whistle-blowing, family responsibilities and pregnancy.

- The Government believes that changes to unfair dismissal laws will encourage job creation for small to medium businesses. The existing laws can be seen to act as a disincentive to increased employment due to the substantial time and cost of defending an unfair dismissal claim.

### **Will unfair dismissal rules apply to people under State awards?**

#### *ANSWER*

- The reforms will only apply to businesses which operate within the Federal workplace relations system.
- The federal system will cover the majority of employees in Australia, including employees employed by Constitutional corporations, employees in Victoria and the Territories, and federal government employees.

***If caller seeks specific information on their current situation, ask them which State they are calling from.***

- ***If they are calling from NSW, ask them if they are covered by a NSW state award.***

***If the caller is covered by a NSW state award, do not refer them to Wageline. Wageline in NSW/ACT cannot answer questions about the NSW State unfair dismissal provisions. If caller is covered by a NSW award, refer them to the NSW state government on 131 628.***

- ***If the caller is covered by any other state award – refer them to Wageline (see escalation protocol)***

- ***If the caller doesn't know whether they're covered by the federal or state system, transfer them to Wageline (see escalation protocol)***

### **How can an employee prove unfair dismissal if no reason is given by the employer?**

#### *ANSWER*

- Unfair dismissal cases look at a range of surrounding factors and circumstances in deciding whether termination was for a valid reason. The reason given by the employer will only be one part of these considerations.
- Where an employer does not give a reason for dismissal, this may provide a better case for proving unfair dismissal has occurred. This is because the employee was given no opportunity to respond, as required by the *Workplace Relations Act 1996*.
- The Government expects employers to treat their employees fairly and reasonably in the event that the employee is terminated. Failure to do so could attract unlawful termination remedies - including if termination is on one of the prohibited grounds, or appropriate notice of termination is not provided.
- If an employee suspects that they were dismissed as a result of unlawful discrimination, then they will be able to lodge a complaint with the Australian Industrial Relations Commission. They will be able to bring evidence to suggest that their dismissal was for a prohibited reason.

**What assistance will be given to workers (in businesses of 100 or less employees) who have been unfairly dismissed?**

*ANSWER*

- Employees of small businesses will still be able to access remedies for unlawful termination, if they feel they have been terminated on grounds such as:
  - temporary absence from work because of illness or injury;
  - being temporarily absent from work to carry out a voluntary emergency management activity, where the absence is reasonable in all the circumstances;
  - trade union membership or participation in trade union activities outside working hours or, with the employer's consent, during working hours;
  - non-membership of a trade union;
  - seeking office as, or acting as, a representative of employees;
  - filing a complaint, or participation in proceedings, against an employer, involving alleged breaches of laws or regulations;
  - race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction, or social origin
  - refusing to negotiate or sign an Australian Workplace Agreement; and
  - being absent from work on maternity leave or other parental leave.
- Employees who believe they have been unlawfully terminated will be eligible to receive up to \$4,000 worth of legal advice, based on the merits of their case .They will be eligible if they have a certificate from the Australian Industrial Relations Commission stating that their claim has merit and if they are assessed as having financial need.

## **How will my entitlements be protected under the reforms?**

### *ANSWER*

Under the proposed reforms:

- awards will remain and be protected;
- workers will still have the right to join a union, and be represented by a union;
- the right to take industrial action will be set in legislation;
- union and non-union agreements will still be allowed;
- federal minimum wages and conditions will remain and they will be protected in law;
- specific award conditions will also be protected in the new system. This includes conditions such as public holidays, rest and meal breaks, incentive based payments and bonuses, annual leave loadings, allowances, and penalty rates. Bargaining can still occur on these protected conditions.
- the Australian Industrial Relations Commission will continue to play a key role; and
- there will be a strong inspection service and protection from unlawful termination.

## **What types of compliance activities will be undertaken by the Government to ensure employees are protected?**

### *ANSWER*

- Compliance and enforcement functions will be mainly carried out by the Office of Workplace Services within the Department of Employment and Workplace Relations.
- The Office of Workplace Services (or OWS) will be responsible for enforcing the penalty provisions within the Act. The OWS will also be responsible for prosecuting cases where necessary.
- The Office of the Employment Advocate (or OEA) will also perform an audit function, to protect employee's rights. The OEA will ensure that workplace agreements meet the requirements of the legislation.
- Employees can also access the Australian Industrial Relations Commission to help resolve disputes about their entitlements.
- Employees who believe they have been unlawfully terminated will be eligible to receive up to \$4,000 worth of legal advice. Employees will be eligible for this on the merits of their case. If an employee has a certificate from the Australian Industrial Relations Commission stating that their claim has merit, and if they are assessed as having financial need then they will be eligible for this legal advice.
- More details about the compliance framework will be available when the legislation is brought before Parliament.

## **The owners and bosses already have most of the power in their organisations, why give them more?**

- The proposed reforms are not meant to favour either employers or employees. The Government believes that the reforms will create a flexible, simple and fair system of workplace relations.
- The Government considers that these reforms will help increase productivity and assist job creation, This should be beneficial for both employees and employers.
- There will also be considerable protection for employees under the new system.
- Specifically, the Government will legislate to protect minimum wages and key minimum conditions for all employees covered by the federal system. This will be done using the Australian Fair Pay and Conditions Standard. This standard will include:
  - the minimum wages (which will be set and adjusted by the Australian Fair Pay Commission);
  - annual leave;
  - parental leave;
  - personal leave; and
  - ordinary time hours of work.
- What this means is that it will be unlawful to employ people on anything less than the Australian Fair Pay and Conditions Standard.
- The Government will also introduce measures to ensure compliance with the legislated minimum standards, and workplace agreements or awards..
  - For example, inspectors engaged by the Office of Workplace Services (or OWS) will be authorised to take legal action on an employee's behalf. This action will enforce the Australian Fair Pay and Conditions Standard, and also enforce AWAs. The OWS will have this ability **in addition** to its current enforcement role for awards and certified agreements.
  - Trade unions can also commence court action on an employee's behalf. Unions can commence this action in relation to an alleged breach of the Australian Fair Pay and Conditions Standard, or a breach of an award or an agreement.

***If caller seeks specific information on their current situation - see escalation protocol***

**How will changes that favour employers help employees? How do you know employers won't abuse the system?**

*ANSWER*

- The Government can't completely remove the risk of bad behaviour by employers. However, the reforms will increase employee protections.
- Specifically, the Government will legislate to protect minimum wages and minimum conditions for all employees covered by the federal system. This will be done using the Australian Fair Pay and Conditions Standard. This standard will include:
  - the minimum wages (which will be set and adjusted by the Australian Fair Pay Commission);
  - annual leave;

- parental leave;
- personal leave; and
- ordinary time hours of work.
- What this means is that it will be unlawful to employ people on anything less than the Australian Fair Pay and Conditions Standard.
- The Government will also introduce measures to ensure compliance with the legislated minimum standards, and workplace agreements or awards..
  - For example, inspectors engaged by the Office of Workplace Services (or OWS) will be authorised to take legal action on an employee's behalf. This action will enforce the Australian Fair Pay and Conditions Standard, and also enforce AWAs. The OWS will have this ability **in addition** to its current enforcement role for awards and certified agreements.
  - Trade unions can also commence court action on an employee's behalf. Unions can commence this action in relation to an alleged breach of the Australian Fair Pay and Conditions Standard, or a breach of an award or an agreement.
- The Government considers that the reforms will help increase productivity and assist job creation. This should benefit both employees and employers.

**What are the allowances for flexibility (eg for cutting back hours to spend time with the family?)**

*ANSWER*

- Helping Australians balance their work and family lives is a key policy priority for the Government.
- Employees with family responsibilities currently have access to a range of working arrangements to help them balance their work and caring responsibilities.
- The workplace relations system ensures a minimum safety net for workers with family responsibilities. The system also encourages employees and employers to negotiate extra family friendly working arrangements, to suit their diverse needs. This can be done through both individual and collective agreement making.

**What will happen to employees covered by the state awards and agreements?**

*ANSWER*

- Transitional arrangements will be put in place for transferring employees who were previously covered by State awards or agreements.
- Until they negotiate new agreements, all employees who are dependant on state agreements will keep their current conditions in a transitional agreement.
- Employees who are dependant on state awards will also have transitional agreements that contain their current working conditions.

- State employees, along with Federal employees, will have the assurance of minimum wages and conditions. These minimum guarantees will be set in legislation, through the Australian Fair Pay and Conditions Standard.
- The Government will also create a national workplace relations system using the corporations power.
- Federal laws, based on the corporations power, will 'cover the field'. This means that employees of constitutional corporations, who were previously covered by State awards and agreements, will be brought into the Federal system.
- Federal coverage could increase to approximately 85 per cent of employees, including 70 per cent of small business employees.
- The reforms will not cut award wages. This includes for employees currently covered by State awards and agreements.

***If caller seeks specific information on their current situation - see escalation protocol***

### **How will the reforms affect employees of foreign companies in Australia?**

*ANSWER*

- The Government is still considering the issue of legislative coverage of foreign corporations.
- Details about the extent of coverage will be available when the legislation is brought before Parliament.

### **Why is it necessary to exempt small business from the obligation to make redundancy payments?**

*ANSWER*

- On 26 March 2004 the Australian Industrial Relations Commission (or the AIRC) made a decision that small businesses would have to make redundancy payments.
- The Government believes that the AIRC has underestimated the impact that this decision would have on the small business sector. Because of this, in April 2004, the Prime Minister announced that the Government would make a law to overturn the AIRC's decision.
- The Government has taken this course of action because it believes that the small business community is a major contributor to employment growth. The Government wants to see small businesses continue to grow and create further job opportunities.
- As part of its pre-election commitments last year, the Government confirmed that it would continue to protect small businesses from redundancy pay obligations.
- A bill is currently being debated in Parliament that will reinstate the exemption for small businesses from redundancy pay obligations.
- The Bill will not prevent small businesses from reaching agreement with their employees to make redundancy payments where they can afford it, and where it is a priority for employees. The Government considers this is preferable to imposing an across the board obligation on small businesses which cannot afford redundancy pay.

### **How is redundancy being addressed under the reforms?**

- The Government's reforms address redundancy pay in two main ways.
- Firstly, redundancy pay will remain an allowable award matter – so it will not be removed from awards.
- Secondly, the reforms will implement the Government's election commitment to exempt small businesses (with fewer than 15 employees), from the obligation to pay redundancy pay.
- This exemption had operated since 1984. However, in March 2004, the Australian Industrial Relations Commission (or the AIRC) made a decision which removed the exemption. The decision meant that small businesses would have to make redundancy payments.
- After the AIRC decision, the Prime Minister announced that the Government would overturn this decision. The Government confirmed this commitment prior to the October 2004 election.
- The Government has taken this course of action because it believes that the AIRC has underestimated the impact that its decision will have on the small business sector. The small business community is a major contributor to employment growth and the Government wants to see small businesses continue to grow and create further job opportunities
- A bill is currently being debated in Parliament that will reinstate the exemption for small businesses from redundancy pay obligations.
- .
- The Bill won't prevent small businesses from reaching agreement with their employees to make redundancy payments, where they can afford it and it is a priority for employees. The Government considers this is preferable to imposing an across the board obligation on small businesses that can't afford redundancy pay.

### **How will the reforms affect Occupational Health and Safety?**

- The Government is committed to promoting more national consistency for occupational health and safety (OHS) and workers compensation arrangements.
- For this reason, the government is establishing the Australian Safety and Compensation Council (ASCC). The ASCC will pursue a national approach to OHS, and build on the achievements of the National Occupational Health and Safety Commission.. The ASCC will provide a national forum for discussion of workers' compensation issues.
- While the Government is trying to improve Australia's OHS arrangements and performance, State and Territory governments will still keep the legislative responsibility for OHS (and workers' compensation). The Government is not looking to control OHS.

### **If an employer refuses to pay above award wages, what can an employee do if they work in a small to medium size business?**

#### *ANSWER*

- Under the current system, employers aren't required to pay wages in above the level prescribed in awards, unless they have agreed to do so in an agreement.



- However, employees and employers can negotiate a workplace agreement which may include provisions for above-award wages.
- This will continue to be the case under the new system.
- However, the proposed changes include specific protections for wages in the context of bargaining.
- This will be achieved through a legislated set of minimum wages which will be made up of:
  - the adult Federal Minimum Wage;
  - wages for award classification levels;
  - minimum junior, training and disability wages;
  - minimum wages for piece workers; and
  - casual loadings;
- If an employee is not being paid according to the rate prescribed by the appropriate award **then they can contact Wageline (see escalation protocol)** for assistance with their wages or conditions of employment.

**Under the reforms, can superannuation contributions be cut to the minimum 9% covered in legislation by the employer?**

- Under federal Superannuation Guarantee legislation, employers must pay a minimum of 9 per cent superannuation contribution, if an employee is entitled to this benefit. This protection will remain under the proposed workplace relations reforms.
- Superannuation entitlements will be preserved in awards until 30 June 2008. From this time the provisions of the Superannuation Law Amendment Act 2004 come into effect. Until that time, employees will receive their current entitlement.
- Alternative superannuation arrangement can be negotiated in agreements, provided those arrangements comply with the law.

**What is the small business mediation pilot programme?**

**ANSWER**

- The small business mediation pilot programme is an Australian Government initiative that provides free mediation services to small businesses and their employees. In this context, small businesses include those who employ less than 20 employees, (not including short-term casuals).
- The service is currently being trialled in Victoria, and runs until December 2005. The service is available for a number of matters related to workplace disputes that involve a small business. For example, disputes about unfair dismissal.
- Mediation of the type being trialled is an informal, non-adversarial and less expensive method for resolving workplace disputes. If the trial programme is successful, this type of mediation service may become a permanent feature of the Federal workplace relations system. **For more information you can contact the Australian Industrial Relations Commission on (03) 8661 7777 or visit [www.workchoices.gov.au](http://www.workchoices.gov.au)**

## ***Agreement making and Awards***

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### **How is agreement making being simplified?**

#### *ANSWER*

- The Government believes that the current process for agreement making is complex and time consuming.
  - There are delays in approving and certifying agreements, and this creates uncertainty and frustration for businesses and their staff.
  - Also, the current 'no disadvantage test' requires a comparison of agreements against complex awards and any relevant legislation. Because of this, employers and employees don't have a clear sense of the minimum standards that agreements need to meet.
- The proposed reforms will address the current process for agreement making by providing a simple, cost-effective lodgement process. This process will be administered by the Office of the Employment Advocate (or the OEA).
- The reforms will also replace the global 'no disadvantage test'. This test will be replaced with a clear and improved set of minimum wages and conditions, called the Australian Fair Pay and Conditions Standard.
- All agreements lodged will have to comply with the Australian Fair Pay and Conditions Standard.
- The Government believes that the changes will make it simpler to bargain at the workplace level, and will drive future improvements in productivity across the workforce.
- All agreements, both collective and individual, will take effect from the date of lodgement rather than the date of certification. This will reduce delays and uncertainty, and ensure that once agreement is reached, the parties have the certainty they need.

***If caller seeks specific information on their current situation - see escalation protocol***

### **What will be the effect of five year agreements?**

#### *ANSWER*

- In relation to the term of workplace agreements, the Government strongly believes that it is important that agreements can run for up to five years. This gives stability and certainty to both employers and employees.
- To ensure that employee entitlements are protected for the duration of an agreement; all agreements must meet the new Australian Fair Pay and Conditions Standard. This standard will set out the minimum wages and conditions that apply to all employees in the federal system.
- By contrast, under the present system, agreements are only required to meet the No Disadvantage Test at the time of certification.
- The new employee safeguards will ensure that employees will have continuous protection of their entitlements.

### **Can people be forced into signing an AWA?**

#### ANSWER

- An existing employee can't be forced into signing an AWA, and an employer is not allowed to apply duress to force an employee to sign an AWA. This means that if an employee is covered by an award or agreement, then the employer can't force the employee to sign an AWA (for example, by threatening to terminate the employee or by injuring the employee).
- Also, an employer is not allowed to terminate an employee on grounds relating to the negotiation or termination of an AWA.
- The Government believes that employers and employees should have the widest possible scope to choose which workplace arrangements best suit their needs.
- To maximise employer and employee choice, the Government has retained some important legislative provisions, to ensure that no pressure can be used in the negotiation of an AWA..

**If caller seeks specific information on their current situation - see escalation protocol**

#### **What if it is a condition of employment that employees sign an AWA?**

##### ANSWER

- An existing employee can't be forced into signing an AWA, and an employer is not allowed to apply duress to force an employee to sign an AWA
- However, a new employee may be offered employment on the basis of accepting an AWA.
- An employee has the freedom to choose if they want to be employed on the grounds that they sign an AWA. Federal Court authority supports the fact that it isn't 'duress' for an employer to require new employees to sign an AWA as a condition of their employment.
- An AWA will continue to be an option for all employees who aren't satisfied with the conditions offered by their collective agreement or award.

#### **What is the source of the claim that AWA employees earn 100% more than people on an award?**

##### ANSWER

- In Parliament on Tuesday 21 June 2005 the Federal Minister for Employment and Workplace Relations, Kevin Andrews, stated that "workers on Australian workplace agreements on average earn 100 per cent more than workers on awards".
- The statement was based on data from the Australian Bureau of Statistics publication, 'Employee Earnings and Hours, Australia, May 2004'.
- This data shows that the average weekly total earnings for non-managerial employees on an award only was \$442.90. For non-managerial employees on registered individual agreements, the weekly total was \$805.10.

#### **What does "encourage a cooperative approach in the workplace" mean, and are there any references to it in any of the information available?**

ANSWER

- The Government encourages a cooperative approach in the workplace through emphasising that decisions should be made at a workplace level. For example, the use of a workplace agreement, either collective or individual, allows employers and employees to tailor their working arrangements to suit their needs.
- The Government strongly believes that agreement making promotes more efficient outcomes for employers and employees, and for the economy as a whole.
- More information about agreement making can be found online at: [www.workchoices.gov.au](http://www.workchoices.gov.au)

**Will existing contracts be changed?**

ANSWER

- Employees won't need to change their existing employment contracts.
- A transitional period will be included in the legislation, to allow existing agreements to reach their nominal expiry date. During this time, the agreements will be treated in line with the rules that existed when they were made.
- By the end of the transition period all agreements will have reached their nominal expiry date, and employers and employees will have made new arrangements.

***If caller seeks specific information on their current situation - see escalation protocol***

**What if a company's contract says ordinary working hours are 40 per week?**

ANSWER

- Currently, there is no consistent legal standard for ordinary working hours.
- Some State systems currently provide for a maximum of 40 ordinary hours of work per week. Generally, existing federal awards have maximum ordinary hours per week of between 35 and 40 hours.
- However, the Government considers that 38 hrs per week does appear to be an effective community standard, at least in relation to federal awards.
- Under the reforms, one of the key minimum entitlements that the Government will protect is 38 ordinary hours of work per week. This will be guaranteed in federal legislation.
- If a company's current agreement specifies that there are 40 ordinary working hours per week, this condition will continue to apply for the life of that agreement. However all new agreements will be required to comply with the Australian Fair Pay and Conditions Standard, including a maximum of 38 ordinary hours.

***If caller seeks specific information on their current situation - see escalation protocol***

**Will I need to pay my employees overtime if they work more than the legislated maximum ordinary hours?**

ANSWER

- For each hour worked, employees must receive at least the relevant minimum hourly wage, as set by the Australian Fair Pay Commission
- Any overtime (i.e. additional payments for hours worked above the 38 hours), will be a matter for awards and agreements.
- If an award or agreement provides for overtime to be paid, this entitlement will continue to apply under the new system.
- Awards and agreements may specify more generous provisions than the legislated Australian Fair Pay and Conditions Standard. In these cases overtime may be payable after a lower threshold of hours worked. For example, if an award or agreement specifies that overtime is payable after 35 hours this will continue to apply.
- Awards and agreements will not be able to specify less generous provisions as these will be overridden by the legislated Australian Fair Pay and Conditions Standard. For example an award or agreement cannot specify that there will be 40 ordinary working hours, or that employees will receive less than the minimum hourly wage for any hour worked.
- However, it is important to note that penalty rates or overtime rates do not automatically come into effect if an employee has worked more than 38 hours. This will only occur where the terms of an award or agreement provide for this overtime. An award or agreement could instead specify that overtime, or additional payments, will commence after a different threshold limit.

***If caller seeks specific information on their current situation - see escalation protocol***

### **How do I find out if a workplace agreement is legal or not?**

#### *ANSWER*

- An agreement will be legally valid if it is made in accordance with the requirements of the Act. At this stage, details of the requirements haven't been finalised, however this information will be included in the legislation when it is brought before parliament.
- However, the Government has already announced that the Office of the Employment Advocate (or the OEA) will provide an advisory service to employers and employees about agreement making.

***If caller seeks specific information on their current situation - see escalation protocol***

### **What will happen to awards?**

#### *ANSWER*

- Alongside the new Australian Fair Pay and Conditions Standard, awards will continue to operate as a minimum safety net of terms and conditions. This means that where employees rely on awards for their terms and conditions of employment, they will continue to be covered by those award entitlements.
- Awards will be simplified under the reforms. This is because the Government considers awards to be too prescriptive and detailed, and difficult for employers and workers to understand.
- Some minimum conditions of employment will be removed from awards, because they will be set out in legislation. Conditions that will be removed include:

- annual leave;
  - personal or carer's leave;
  - parental leave; and
  - ordinary hours of work.
- Together with minimum wages set by the Australian Fair Pay Commission, these minimum conditions will form the Australian Fair Pay and Conditions Standard.
  - On the other hand, some conditions will remain in awards. These provisions include long service leave, jury service and notice of termination. Superannuation, provisions will also remain in awards, but only until 30 June 2008.
  - Some award conditions will be read into agreement making in the new system. These conditions include public holidays; rest and meal breaks; incentive-based payments and bonuses; annual leave loadings; allowances; penalty rates; shift /overtime loadings.
  - These conditions will be read into agreements, unless the agreement expressly excludes or modifies them. Therefore, these conditions will be able to be changed or removed in an agreement, but only where an employee agrees (in the case of an AWA), or where a group of employees agree (in the case of a collective agreement).
  - The protection provided by this legislation will remain and the Government believes that improvements to awards will see them better reflect a true safety net of minimum conditions.
  - To further drive flexibility at the workplace level, existing awards will be reviewed.
  - The process for rationalising the existing awards will be finalised over the coming months.

***If caller seeks specific information on their current situation - see escalation protocol***

### **What will be the impact of the reforms on State Awards?**

- The Government's reforms will only apply to businesses which operate within the Federal workplace relations system. However, the Government will be pursuing a national workplace relations system by relying on the corporations power in the Constitution
- The Corporations power allows laws to be made that regulate the terms and conditions of employment, for employees of Constitutional corporations.
- Federal laws based on the Corporations power will 'cover the field'. This means that employees of constitutional corporations, who were previously covered by State awards will be bought into the Federal system.
- Federal coverage will increase to approximately 85 percent of employees, including 70 per cent of small business employees.
- Transitional arrangements will be put in place for the transfer of employees who are moving to the national system. Employees who were previously covered by State awards or agreements will be covered by a transitional agreement that

protects their current working conditions until they negotiate a new agreement. For the most part, their wages and conditions won't change. However, some content in former state awards and agreements won't be enforceable under the new system (this includes union preference clauses, or those which are currently prohibited in the federal system).

***If caller seeks specific information on their current situation - see escalation protocol***

### **What conditions are award allowable matters, and what are the minimum conditions for enterprise bargaining agreements?**

#### *ANSWER*

- Currently, the Workplace Relations Act provides for 20 allowable award matters. This number of matters is subject to change in order to increase flexibility and choice for employers and employees
- Under the new system, awards will be further simplified to remove conditions that are already contained in legislation.
- Awards will be able to contain provisions dealing with matters such as:
  - ordinary hours of work and the times within which they are performed
  - rest breaks, notice periods and variations to working hours;
  - incentive-based payments and bonuses;
  - annual leave loadings;
  - public holidays;
  - ceremonial leave;
  - allowances;
  - loadings for working overtime or shift work;
  - penalty rates;
  - redundancy pay for employers with 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, plus non-conditions provisions such as chain of contract arrangements, registration of employers, employer record keeping and inspection.
- Together with the Australian Fair Pay and Conditions Standard, awards will continue to operate as a minimum safety net of terms and conditions of employment for employees covered under an award.
- To protect Australian workers, minimum conditions of employment will be set in legislation as part of the Australian Fair Pay and Conditions Standard,. These conditions will include annual leave, parental leave and personal leave.

However, it is possible that an award currently contains more generous provisions of this nature, than what the Australian Fair Pay and Conditions standard might have. If this is the case, the more generous terms in the award will continue to apply to the current and future award-dependent employees.

- Depending on the employee's situation, the reforms will also preserve some other award conditions, including long service leave, jury service and superannuation conditions (Super conditions will be preserved until 30 June 2008).

### What will change in awards?

- Current restrictions on apprenticeships, traineeships, independent contractors and labour hire workers be removed from awards.
- In the legislation, the Government will clarify that union picnic days, trade union training leave, and rallies should not be included in awards.
- Because agreements will be simpler to make under the new system, enterprise flexibility provisions aren't necessary in awards. Skill based career paths will be matters for the Fair Pay Commission.. Skill based career paths will also be considered as part of the review of award classification wage structures.

### Can an employer change my contract to casual or part time work if I am currently full time?

#### ANSWER

- An employer can't change the terms and conditions of an employee's employment without consulting with the employee. The Government's reform plan won't change this.
- If the employer were to change an employee's working arrangement, it may be a breach of the contract of employment, and the employee may be able to recover damages in these circumstances.

***If caller seeks specific information on their current situation - see escalation protocol***

### Is it permissible to use an AWA to exclude the Super Choice legislation?

#### ANSWER

- The Government has recently introduced legislation dealing with choice of Superannuation Funds. From 1 July 2005, in most circumstances, employers are required to give their employees choice of superannuation funds.
- All new employees engaged after 1 July 2005 who are to be offered AWAs should be provided with the standard choice form. These forms are available from the Australian Tax Office.



- Where an AWA is in operation on and from 1 July 2005, and this AWA contains an appropriate superannuation provision, then employers are not required to give the employee choice of superannuation fund. This also applies if employees are covered by a state award or federal collective agreement.
- All existing employees who are currently covered by federal awards, or are award free, should be provided with the standard choice form. It is possible in some circumstances that this may not be necessary.
- The Australian Taxation Office is currently providing advice on this issue, and this advice will be updated when that issue is clarified. Employers and employees should contact the ATO for advice on their particular circumstances. For more information visit the Superchoice website at [www.superchoice.gov.au](http://www.superchoice.gov.au) or telephone 132 864.

## **Unions**

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**Will the Government remove the right to joint a union?**

### **ANSWER**

- The Government is committed to genuine freedom of association – the right to join, or not join a union.
- Freedom of association will continue to be a key feature of the workplace relations system.

***If caller seeks more information on leave entitlements under the reforms – see general answer at Appendix A***

**Will the Government outlaw union agreements?**

### **ANSWER**

- No. Union negotiated collective agreements will continue to be available under the new system.
- Also, employees will keep the right to nominate a bargaining agent to negotiate their agreement (these can be either collective or individual). A bargaining agent can be a trade union representative, a friend, a relative, a solicitor, or any other person whose advice an employee can rely on. That bargaining agent will continue to be able to represent employees in agreement negotiations.

**Will the Government retain a right to strike? Will the legislation impact on a person's right to strike?**

### **ANSWER**

- The right to take protected industrial action will remain under the proposed workplace relations system.

**If caller seeks more information on leave entitlements under the reforms – see general answer at Appendix A**

## **Apprenticeships**

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### **How will the reforms affect apprenticeships?**

#### **ANSWER**

- The Government has announced that the reforms will remove barriers for young Australians entering an apprenticeship.
- Existing barriers are generally more serious in the state industrial relations systems than under the federal system. Most of the state systems provide little coverage for school-based apprenticeships, or for part-time apprentices.
- People are also hindered from entering apprenticeships due to a lack of appropriate wage provisions in awards. There are also restrictions on the range and duration of apprenticeships.
- The Government believes that the reforms will help increase the uptake of school-based and part-time apprenticeships.
- The reforms will create a single workplace relations framework. This single system will remove the complexity of the current multiple WR systems. This will reduce barriers to young Australians entering into skills development.
- The proposed legislation will remove award provisions that limit the range of apprenticeships. The reforms will also remove provisions that control or limit the duration of new Apprenticeships.
- Also, under the reforms, minimum wages for trainees will be set by the Australian Fair Pay Commission. Minimum wages will be set at levels that ensure they are competitive in the labour market. The Australian Fair Pay Commission will also have the ability to establish separate minimum wages for all categories of trainees.
- Until the Australian Fair Pay Commission has been established, the new legislation will include standard minimum wages for school-based traineeships and apprenticeships, that will take effect immediately. These minimum wages will be available for Australian Technical Colleges wherever awards don't already include minimum wages.

## **Communication Campaign**

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### **Why is taxpayer's money being used for the WR reform communication campaign?**

- The Government strongly believes that it has a responsibility to provide the public with clear and correct information regarding government policies.
- The Government considers that advertising in the national media is the most affective way to ensure that all Australians are aware of their rights and responsibilities under the proposed system.
- The Government believes that it is important to provide a factually based information campaign to inform Australians of the benefits of the workplace relations reform. The press and radio advertising aims to address misinformation and misunderstanding about the reforms.
- The Government will continue to explain the benefits and the need for reform to workers and their families.

### **What is the total spending on Communication campaigns?**

- At this stage, the planned scope and form of the information campaign has not been finalised. So, no precise figures are available as to the total amount of money that will be spent on the campaign.

### **What measures are being taken to educate the public on reforms?**

#### **ANSWER**

- A comprehensive communication and education programme will accompany the reforms.
- There will be a particular emphasis on educating Australian workers and their families about the workplace relations changes. The communication campaign will provide the wider community with an understanding of why the reforms are needed, and what the overall outcome will be.
- As part of the programme, the Department of Employment and Workplace Relations (DEWR) and the Office of the Employment Advocate will provide education and assistance to employees and employers. This will ensure that employees are being paid the correct wages and that employers understand their obligations under the new system.
- The communication and education programme will be complemented by enhanced compliance activities by the Office of Workplace Services in DEWR.

### **How is the Union campaign misleading?**

#### **ANSWER**

- At this stage, many of the details of workplace relations reform have yet to be finalised. So the Government considers that the ACTU campaign is premature in it's speculation about the impact of the reforms.
- The Government believes that the advertisements which have been released by the ACTU contain misinformation and the use of scare tactics. The advertisements seem to suggest that an employee could be dismissed because of their family responsibilities, or an existing employee could be pressured or bullied to sign an Australian Workplace Agreement (AWA).

- Both of these scenarios are unlawful. Even under the proposed reforms it would not be legal for an employer to act in this way and penalties would apply.
- Due to the significant nature of these reforms, the Government expected that there would be lively community debate. The Government acknowledges that interested stakeholders are entitled to make their views known.
- However, the Government believes that all debate about the impact of reforms should be based upon the facts and not on misunderstanding or incorrect information.
- The Government will continue to provide accurate information to the public as it becomes available, and to correct any misapprehensions about the future direction of reforms.
- The Government will also be continuously updating the reform website as more information becomes available. You can find updated information on the website - [www.workchoices.gov.au](http://www.workchoices.gov.au)

## ***Media Enquiries***

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In the case of media enquiries, please refer to the following information sources:

### **Speeches**

Address by Prime Minister, John Howard, Canberra, 26 May 2005  
<http://www.workchoices.gov.au>

Announcement Prime Minister, John Howard, Canberra, 9 October, 2005,  
[www.workchoices.gov.au](http://www.workchoices.gov.au)

### **Media releases**

[www.workchoices.gov.au](http://www.workchoices.gov.au)

### **Spokespersons**

Ian Hanke, Media Adviser, Phone: 0409 715 861

## ***Union enquiries***

***In the case of negative reaction or comment from union members, or union representatives, please use the following response:***

Do you have a specific question regarding the WR reforms? This hotline provides information on the reforms, and so if you have a specific question, I will do my best to provide you with an answer.

***If the caller does not have any questions, and is still negative or aggressive, please follow relevant procedures for handling difficult callers.***

**SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCE  
COMMITTEE INQUIRY INTO GOVERNMENT ADVERTISING AND  
ACCOUNTABILITY**

**QUESTIONS FOR THE DEPARTMENT OF EMPLOYMENT AND  
WORKPLACE RELATIONS**

**WorkChoices Information Campaign: Seminars**

**Questions:**

- 1) The Prime Minister and Departmental Officials have referred to the remaining 5.2 million WorkChoice booklets being used for seminars to explain the industrial relations changes. Who decided to conduct a seminar program and based on what advice?
- 2) Did the government's PR firm for this campaign, Jackson Wells Morris, provide strategic advice of any nature on the seminar program? If so, on what date and to whom? Did any other consultancy firm provide advice on the seminar program? If so, who? Provide a copy of any advice of communications plans received by the Department relating to the seminar program.
- 3) When are the seminars scheduled to be held and where? Provide a full timetable including dates, speakers' lists and seating capacities for each venue.
- 4) How will seminar participants be invited to attend these seminars?
- 5) Will the seminars be advertised?
- 6) Provide details of any (a) creative agency or agencies; (b) research agency or agencies; (c) mail houses; (d) printers; or (e) call centre operators involved with the seminar program and the costs associated with each.
- 7) How will seminar participants RSVP to invitations or advertisements promoting seminars?
- 8) How many seminar participants are expected to attend each seminar? What is the expected attendance range?
- 9) Who will be presenting information at each seminar?
- 10) Will ALL local MP's and duty Senators be invited to address each seminar? If not, why not?
- 11) Will ALL local MP's and duty Senators be invited to attend each seminar? If not, why not?
- 12) Will Departmental Officials be expected to address seminars? If so, who are the Departmental Officials charged with this responsibility?
- 13) Will community or business leaders be invited to participate in the government's seminar program? If so, please provide details.
- 14) What is the budget for the conduct of these WorkChoices seminars? Please provide a detailed budget breakdown.
- 15) Please provide any detailed communications strategy or plans setting out the rationale underpinning the seminar program and detailing the timing and nature of its expected execution.

**Answers:**

- 1) – (15) Seminars are likely to be an important element of the information and education activities associated with implementation of the Government's workplace relations reforms. At this stage, the nature, scope and duration of the information and education activities has not yet been settled by the Australian Government. It is therefore not possible at this stage to answer these questions.

**SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCE  
COMMITTEE INQUIRY INTO GOVERNMENT ADVERTISING AND  
ACCOUNTABILITY**

**QUESTIONS FOR THE DEPARTMENT OF EMPLOYMENT AND  
WORKPLACE RELATIONS**

**Creative Thrust**

**Questions:**

- 1) Who is in charge of marketing in the Department? Which branch/section of the Department has responsibility for the marketing function and what was their role throughout the campaign?
- 2) Was that marketing manager or branch head responsible for the overall design and creative thrust of the campaign?
- 3) What relationship does the branch or official responsible for marketing have with (a) the Secretary of the Department; (b) the Minister's office with respect to this campaign?
- 4) At what point did the GCU or MCGC take over responsibility for the creative thrust and execution of the Work Choices campaign? What was the nature of the working relationships between the GCU, MCGC and the Departmental officials responsible for the WorkChoices campaign?
- 5) Did the Department have an internal working group to coordinate the WorkChoices campaign?
- 6) If so, who was on this internal working group?
- 7) What recommendations were put from the Department to the Government Communications Unit?
- 8) Can we have a copy of these please?
- 9) Did the GCU approve the Department's recommendations?
- 10) At what stage of the campaign's development did this take place?
- 11) Minister Andrews told the Liberal Party 200 Club in Melbourne that the full page press ads were "not designed to be read". Was the target of 1% readership referred to by the Minister part of the Department's communications strategy?
- 12) Was that the level of acceptance you were seeking?
- 13) What was your measure of success in terms of audience penetration? Please provide evidence of this target.

**Answers:**

- 1) No one person is in charge of marketing within the Department. For the WorkChoices Advertising Campaign and WorkChoices Information and Education Campaign, a Communication and Education Team was established within the Workplace Relations Reform Implementation Taskforce. The Team was involved in all aspects of the Campaigns.
- 2) The creative design and thrust was developed by the Ministerial Committee on Government Communication (MCGC). The Department provided technical advice.



- 3) (a) The Secretary, Dr Peter Boxall, as Chief Executive Officer is responsible for the overall leadership of the department and shaping its future. Dr Boxall is responsible for determining priorities and appropriate resource allocation throughout the department, for driving organisational performance and leading emerging high priority initiatives.  
  
(b) The Communication and Education Team has a professional working relationship with the Minister's Office in relation to the workplace relations campaign.
- 4) The creative design and thrust was developed by the Ministerial Committee on Government Communication (MCGC). The Department provided technical advice.
- 5) No.
- 6) N/A.
- 7) The GCU provided advice and support at various stages of the development and implementation of the WorkChoices Advertising Campaign and the WorkChoices Information and Education Campaign. The GCU reviewed the campaign briefs and strategies supplied by the Department and provided advice where appropriate.
- 8) N/A.
- 9) N/A.
- 10) N/A.
- 11) No.
- 12) The advertisements were designed to explain the proposed workplace relations reforms and to correct misinformation about the reforms.
- 13) An evaluation of the WorkChoices campaigns is yet to be undertaken.

**SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCE  
COMMITTEE INQUIRY INTO GOVERNMENT ADVERTISING AND  
ACCOUNTABILITY**

**QUESTIONS FOR THE DEPARTMENT OF EMPLOYMENT AND  
WORKPLACE RELATIONS**

**Focus Groups**

**Questions:**

- 1) Has the Department been paying for focus group testing on the IR policy or on the advertising?
- 2) It is one thing to test effective communication and it is quite another to test the substance of a policy, which one have you been doing?
- 3) Who was contracted to undertake focus group questioning?
- 4) How many groups were involved and when was this questioning done?
- 5) Please provide details of the briefings for focus groups.
- 6) Please provide copies of yours or the consultant's evaluation of this focus group work.

**Answers:**

- 1) No, in relation to policy. Yes, in relation to advertising.
- 2) Developmental research of a qualitative nature explored and reported on awareness, understanding, knowledge and attitudes of both the current workplace relations system and the proposed changes. The developmental research was undertaken to assist in the development of the communications strategy. Creative concept testing was undertaken in order to evaluate the extent to which the creative concepts achieve the communication objectives of the campaign.
- 3) Colmar Brunton Social Research Pty Ltd.
- 4) A total of 44 focus groups were conducted as part of developmental research undertaken between August and September 2005. A total of 96 focus groups were conducted as part of creative concept testing undertaken between August and October 2005.
- 5) The focus groups conducted were between 1.5 and 2 hours in duration and consisted of between 6 to 10 participants. Research was undertaken with both employers and employees and participants represented a range of age groups, cultural backgrounds, income levels, industry types and locations.
- 6) An evaluation of the focus group work has not been undertaken.