

Industrial Relations and Employment Alert

March 2006

The NSW Government's Legislative Response To WorkChoices

The Industrial Relations Amendment Bill 2006 (NSW)

Our October and November 2005 *Industrial Relations and Employment Alerts* outlined the new national workplace relations system (WorkChoices). The WorkChoices legislation has now been passed and is anticipated to commence this month. It will have a significant impact on State industrial relations systems and their tribunals.

As expected, the NSW Government has responded in two ways: by commencing a High Court challenge to the legislation's validity, and now, by passing legislation amending the NSW Industrial Relations Act (IR Act) to (in the words of Deputy Premier Watkins), "extend additional options and protections to those who are transferred to the Federal industrial relations system" by WorkChoices.

We highlight the key amendments to the IR Act in this Alert.

NSWIRC as dispute resolution provider

The NSWIRC has been given the power to resolve "disputes" where the parties have agreed in writing for it to do so. "Dispute" is broadly defined to include a dispute about

any conditions of employment or industrial matter (for the purposes of the IR Act) between a union and employer.

The NSWIRC may only exercise the functions that the parties give it, which may include conciliation and arbitration. A decision of the NSWIRC will not be binding, nor is there a right of appeal from it, unless the parties' written agreement so provides.

The amendment clearly attempts to "deal in" the NSWIRC to the scheme of alternative dispute resolution contained in WorkChoices as well as enable the NSWIRC to act as a private dispute resolution provider outside the scope of WorkChoices.

Consent Awards treated as Enterprise Agreements

Where a NSW award is in force, which has been made by consent between a constitutional corporation and union(s), the award is taken to be a NSW Enterprise Agreement. As such, rather than transitioning to the new system as a Notional Agreement Preserving State Awards (NAPSA), the consent award will be a Preserved State Agreement (PSA) under WorkChoices.

Consequently, the consent award (as a PSA) will continue beyond the 3 year transitional period (which applies to a NAPSA), or until replaced by a new WorkChoices workplace agreement or terminated by the AIRC (in limited circumstances).

This Bill has been passed by both houses of Parliament and will commence on assent, which we expect to be given this week.

(The NSW Government introduced simultaneously with this Bill the *Public Sector Employment Legislation Amendment Bill 2006*. This Bill makes certain public sector employees, employees of the NSW Government.)

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