

# Industrial Relations and Employment Alert

March 2006

## Work Choices – Here it comes – ready or NOT

The amendments to the *Workplace Relations Act 1996*, which were passed late last year, will come into effect on Monday, 27 March 2006. The key features of the new national workplace relations system were outlined in our October 2005 and November 2005 [Industrial Relations and Employment Alerts](#) (available at [www.bdw.com](http://www.bdw.com) under Publications).

On 19 March 2006, the Minister for Employment and Workplace Relations, Kevin Andrews, released the *Workplace Relations Regulations 2006*, which will operate in conjunction with the amended *Workplace Relations Act*. The Regulations contain much of the detail associated with the legislative amendments and are central to the Government's reforms.

### Work Choices Regulations

**Q:** What do the Regulations say about the content of post-reform workplace agreements?

**A:** The Regulations specify the prohibited content that cannot be included in any post-reform workplace agreements, whether certified agreements or Australian workplace agreements (AWAs). The Regulations state that prohibited content includes any provisions:

- restricting the use of independent contractors or labour hire workers and imposing requirements relating to the conditions of their engagement;
- allowing industrial action during the term of the agreement;
- encouraging or discouraging union membership;
- dealing with, or facilitating, deductions from pay for union dues;

- dealing with employees receiving leave to attend trade union training or paid leave to attend trade union meetings;
- prescribing the re-negotiation of a workplace agreement or restricting the use of AWAs;
- mandating union involvement in dispute settling procedures;
- giving rights to unions to enter the premises of the employer;
- providing a remedy for unfair dismissal;
- allowing annual leave credited to an employee to be foregone otherwise than in accordance with the *Workplace Relations Act*; and
- allowing information about employees to be provided to a trade union, unless provision of the information is required or authorised by law.

Workplace agreements must also not contain objectionable provisions and matters that do not pertain to the employment relationship.

Parties to workplace agreements face fines for lodging agreements that contain prohibited content.

In relation to pre-reform certified agreements, the amended *Workplace Relations Act* provides that only an anti-AWA term will be taken to be prohibited content. Otherwise, the

permitted content of pre-reform certified agreements has not altered.

**Q: How do the Regulations impact on industrial action?**

**A:** Under the amended *Workplace Relations Act*, protected industrial action is only available after a secret ballot of employees has been conducted. The Regulations outline the manner in which such secret ballots must be conducted. These provisions are highly detailed and impose significant requirements on unions seeking to take protected industrial action.

**Q: What transitional provisions are contained in the Regulations?**

**A:** The transitional provisions in the Regulations deal with a wide range of matters. These include how business transmissions that occurred before the reform commencement are to be dealt with, the effect of the amendments in relation to parental leave applied for or commenced before the reform commencement, and the application of the pre-reform Act to certain pre-reform certified agreements and AWAs, to name just a few.

The Regulations clarify the status of various types of proceedings that may be on foot in State industrial tribunals at the date of commencement.

Significantly, the Regulations detail how decisions and orders of industrial tribunals made before the commencement of the amendments can be appealed. Generally, the

Regulations provide that such appeals may be made pursuant to the law that existed prior to the commencement of the amendments.

**Q: Will the Regulations affect the day-to-day operations of employers?**

**A:** The Regulations impose quite onerous obligations on employers to keep and maintain records for each of their employees (including salaried and executive staff) about, among other things:

- applicable industrial instruments;
- daily start and finish times and total hours worked each day;
- remuneration including details of any incentive-based payments, bonus, penalty rate, etc;
- leave;
- superannuation contributions; and
- termination including how the employment was terminated (by consent, notice or summarily) and the name of the person who terminated the employment.

The Regulations set out stringent requirements in relation to the content and detail of such records and impose significant administrative requirements on all employers covered by the amended legislation.

For a transitional period of 6 months after the reform commencement, employers will not be subject to civil penalties for breach of the

Regulations in so far as they relate to employee records. Thereafter penalties will apply.

**Q: What other areas do the Regulations cover?**

**A:** The Regulations also contain details relating to:

- how decisions of the Australian Fair Pay Commission will affect existing awards linked to minimum wage conditions;
- annual leave entitlements and hours of work;
- the powers and operations of the Australian Industrial Relations Commission, the Australian Industrial Registry and the Employment Advocate; and
- the powers and responsibilities of workplace inspectors.

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