

## **WORKPLACE RELATIONS AMENDMENT (WORK CHOICES) BILL 2005 SECOND READING SPEECH**

Today I am introducing the Workplace Relations Amendment (Work Choices) Bill – a bill that moves Australia towards a flexible, simple and fair system of workplace laws.

Australians have come a long way by improving the way they work. Because of this, we now have one of the strongest economies in the world. We have created over 1.7 million new jobs. Australia's unemployment rate has been markedly reduced, reaching a 30 year low and interest rates are at historically low levels.

But we must not make the mistake of assuming that our future prosperity is assured and inevitable. Now is not the time for self-congratulation or back-slapping. Now is the time to secure the future prosperity of Australian individuals and families.

That is what Work Choices is all about – securing the future prosperity of Australian individuals and families.

Work Choices does this by accommodating the greater demand for choice and flexibility in our workplaces. It continues a process of evolution, begun over a decade ago, towards a system that trusts Australian men and women to make their own decisions in the workplace and to do so in a way that best suits them.

This is economic reform the Australian way – evolutionary and in a manner that advances prosperity and fairness together. As the Prime Minister has said, these are big reforms, but they are fair reforms.

They rest on the simple proposition that the best guarantee of good jobs, high wages and a decent society is a strong and productive economy. No system of industrial regulation can protect jobs and support high wages if our economy is not strong and productive.

That is the central lesson of a hundred years of industrial relations history in Australia. It was the bitter lesson of Labor's recession in the early 1990s. Yet it is a lesson that the Labor Party refuses to learn.

The key to advancing prosperity and fairness together is higher productivity. Australia's economic strength and the living standards of our people depend, ultimately, on the productivity of our workplaces.

When productivity is higher the whole economic pie is bigger. Individuals and families benefit from more jobs, better jobs and higher living standards. Society as a whole has more resources to devote to services like health and education, as well as to a strong social safety net.

A central objective of this Bill is to encourage the further spread of workplace agreements in order to lift productivity and hence the living standards of working Australians. It is no coincidence that those industries with the most workplace flexibility also enjoy the highest productivity growth and the highest wages.

We need more choice and flexibility for both employees and employers, so we can work smarter, reward effort, and find the right balance between work and family life.

At the same time, we need to ensure that a fair and robust safety net of working conditions is protected by law. Work Choices does this. It also provides extra help for employees and employers to understand their rights and obligations under the new system.

Work Choices is not simply about raising the living standards of those Australians in jobs. It is also about getting more Australians into jobs.

A good society is one where those who have the capability to work can work. With a job comes dignity, skills, a steady income and the chance of a better job.

In the end, this is not an economic argument. It is a moral argument. Australia can and should be a country where those who are able to work can find work.

In the last decade, we have made good progress in reducing unemployment to a thirty year low. But we can and should do better.

Today too many Australians are not participating in the labour force. Too many Australians still struggle to find work. And too many Australian children are growing up in households where no parent is working.

These fellow citizens deserve a brighter future. Work Choices will give them a brighter future.

A nation of 20 million people, on the edge of the world's most dynamic region, cannot afford to sleepwalk through the 21<sup>st</sup> century with a workplace relations system mired in the thinking of the 19<sup>th</sup> century.

Australia has more than 130 different pieces of employment-related legislation, more than 4000 awards and six different systems of workplace regulation.

This tangle of regulation creates enormous cost and complexity for employers and employees alike.

When the Commonwealth first proposed our workplace reforms, we requested that State governments refer their powers, in the same way that they have accepted the logic of national systems for taxation law, for corporate law and for financial institutions law.

Because the States have not done so, the Commonwealth will use the corporations power in the Constitution to move towards a national system.

This is the Government that intends to fix the problem and reform the system, notwithstanding opportunistic resistance of those opposite which is contrary to the best interests of the nation.

A unified, national system of workplace relations laws is an idea whose time has come. And the time to turn this idea into law is now.

Let me turn to the key elements of the Bill.

## **Single national system**

We live in an integrated national economy and it makes no sense whatsoever to adopt anything other than a national approach to workplace relations. By using a combination of constitutional heads of power, Work Choices will cover up to 85 per cent of employees across Australia.

While employers and employees covered by Work Choices will not be subject to regulation by state employment laws, state laws will continue to cover such matters as occupational health and safety, workers compensation, trading hours and public holidays.

## **Transitional arrangements**

These are substantial changes and so to provide an orderly change over there will be comprehensive transitional arrangements.

Current state agreements applying to employers entering the new system from the state systems will continue to apply as transitional agreements. State awards applying to employers entering the new system will be preserved as transitional agreements for three years.

Employers currently in the federal system who, for constitutional reasons, cannot be covered by Work Choices in the longer term, will have a transitional period of five years during which current agreements and awards can continue to operate.

Unlike other states, Victoria has referred powers with respect to workplace relations to the Commonwealth. Because of this, employees in Victoria subject to the terms of the referral will continue to be covered under Work Choices.

Other less significant transitional arrangements will be established in regulation along with necessary consequential amendments to Commonwealth legislation. Following its passage the Act will be consecutively numbered for the first time in decades.

## **Australian Fair Pay Commission**

Work Choices will move away from the adversarial and legalistic nature of the current wages setting process. It will establish a new independent wage setting body – the Australian Fair Pay Commission – charged with promoting the economic prosperity of the people of Australia.

The Fair Pay Commission will set and adjust minimum and award classification wages, minimum wages for juniors, trainees, apprentices and employees with disabilities, minimum wages for piece workers, as well as casual loadings.

Minimum and award classification wages will be protected at the level set after the increase from the 2005 Safety Net Review by the Australian Industrial Relations Commission (AIRC). Minimum and award classification wages will not fall below this level.

The Fair Pay Commission will take a wider-ranging, proactive and consultative approach to this issue which will help all those affected to have a say.

## **The Australian Industrial Relations Commission**

The role of the Australian Industrial Relations Commission will change to keep pace with the needs of the modern economy.

The AIRC will focus on its key responsibility – dispute resolution. In addition, the AIRC will have a role to further simplify and rationalise awards, as well as regulating industrial action, right of entry, unfair dismissal and registered organisations.

The AIRC will retain its powers to resolve disputes arising under agreements but only where those functions are expressly conferred on it by the parties.

Under the new system the AIRC will no longer exercise compulsory powers of conciliation and arbitration, but instead will provide voluntary dispute resolution services with limited exceptions (such as terminating a bargaining period where industrial action is threatening life or causing damage to the economy or under new essential services provisions).

It will also retain its role in providing an initial conciliation service for termination claims.

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

For the first time at a federal level the Government will enshrine in law minimum conditions of employment: annual leave, personal leave (including sick leave and carer's leave), parental leave (including maternity leave) and maximum ordinary hours of work.

These conditions, together with the minimum and award classification wages set by the Fair Pay Commission, will make up the Fair Pay and Conditions Standard.

All new agreements will be required to meet the Fair Pay and Conditions Standard throughout the life of the agreement.

Award provisions dealing with annual leave, personal/carer's leave and parental leave which are more generous than the equivalent provisions in the Fair Pay and Conditions Standard will continue to apply for existing and new employees covered by those awards.

## **Workplaces Agreements**

This Government believes in encouraging the further spread of workplace agreements.

With Work Choices, there will be provision for collective agreements negotiated directly between employers and their employees and between employers and unions that represent employees in a workplace. There will also be provision for collective agreements in which persons other than unions can be employee representatives.

Work Choices will provide agreement making options where an employer is establishing or proposing to establish a new business in areas such as the economically important resources and construction sectors. As well as existing greenfields agreements between employers and unions, Work Choices will introduce greenfields agreements that do not require the involvement of a union.

AWAs will be available to employers and employees at all times and will exclude both collective agreements and awards.

Instead of the complex, time consuming and legalistic certification and approval processes Work Choices will introduce a streamlined, lodgement-only system for all agreements with the Office of the Employment Advocate (OEA). All collective agreements and Australian Workplace Agreements (AWAs) will take effect from the date of lodgement.

The process for varying or terminating agreements made under Work Choices will be simplified and will be similar to that for lodging new agreements. Agreements can be extended (up to a maximum of five years), varied or terminated by agreement.

There will be an improved compliance regime with financial penalties for employers who fail to meet the rules for negotiation, lodgement or content of agreements.

The Government is committing an additional \$ 141 million over 4 years to ensure appropriate compliance by employers and assistance to employees.

### **Protection of key award conditions in bargaining**

To help in the process for making agreements Work Choices will protect certain matters currently dealt with in awards when new workplace agreements are negotiated. These conditions will be deemed to be part of an agreement unless it specifically modifies or excludes them.

These matters are public holidays, rest breaks (including meal breaks), incentive-based payments and bonuses, annual leave loadings, allowances, penalty rates and shift/overtime loadings.

To change or remove these conditions in a workplace agreement under Work Choices, the agreement must address these matters. The agreement will need to identify the particular award conditions that are being changed or removed. In this way these conditions will be protected, unless employers and employees agree to vary them.

### **Content of agreements**

All new agreements will need to meet the Fair Pay and Conditions Standard, include a nominal expiry date (up to a maximum of five years) and a dispute settling procedure.

Certain matters such as restricting the use of independent contractors will be prohibited from being included in new agreements. The inclusion of prohibited content may attract financial penalties but will not render the agreement invalid.

### **Awards**

Under Work Choices federal awards will not be abolished. Employees not covered by a workplace agreement will continue to work under their federal awards. However, awards will be simplified to ensure that they provide minimum safety net entitlements. The legislation will set out matters that will no longer be allowable award matters and a number of other matters will be removed from awards because they will be protected by the Fair Pay and Conditions Standard.

A Taskforce has been established to recommend ways of reducing the duplication and complexity of current federal awards. The Taskforce's recommendations will need to be consistent with the Government's commitment that award classification wages and benefits will not be cut.

Under Work Choices, long service leave, superannuation, jury service and notice of termination will not be included in new awards because they are provided for in other existing legislation. However these provisions in current awards will continue to apply to existing and new employees covered by these awards.

### **Transmission of business**

Part and parcel of a modern economy is that businesses are bought and sold. When this happens it is important the entitlements of employees are protected. Where this does occur, and employees accept employment in the new business, the awards, collective agreements and AWAs that covered the employees of the old business will transfer to the new employer for a maximum of twelve months.

However, if no employee accepts employment with the new employer, then the awards or agreements from the old employer will not transfer.

Employees who do transfer must be provided with information in writing about their terms and conditions of employment. The new employer and employees will be able to negotiate agreements to override the transferred agreements and awards.

### **Reforming dismissal laws**

Whatever their intended purpose, unfair dismissal laws have acted as a brake on job creation. They have fostered a culture of complaint and litigation that has developed to the point where some firms will go to any lengths to avoid hiring extra staff.

Work Choices will take the unfair dismissal monkey off the back of Australia's small and medium-sized businesses.

Businesses that employ up to and including 100 employees will be exempt from unfair dismissal laws. For businesses with more than 100 employees, an employee must have been employed for six months before they can pursue an unfair dismissal claim.

In addition, no claims can be brought where the employment has been terminated because the employer genuinely no longer requires the job to be done.

Just like today, only employees of businesses that are constitutional corporations will have access to the unfair dismissal laws. And just like today, employees will continue to enjoy a range of protections against unlawful termination.

It will remain unlawful to dismiss an employee on the grounds of race, colour, sex, age, union membership, pregnancy, family responsibilities, refusing to agree to an Australian Workplace Agreement and a range of other grounds.

The Government will provide financial assistance to eligible employees who have made an unlawful termination application to apply for up to \$4,000 towards independent legal advice on the merits of their claim.

### **Industrial Action**

The Government recognises the need to carefully balance the legal immunity given to industrial action in bargaining for workplace agreements against the needs of the community.

The Government will protect the right to lawful industrial action when negotiating a new collective workplace agreement. However, Work Choices will make a number of improvements to the remedies for unprotected industrial action.

These include requiring the Australian Industrial Relations Commission to provide a remedy for unprotected industrial action within 48 hours and removing impediments to access to common law tort remedies for unprotected industrial action.

A secret ballot will be required before protected industrial action can be taken. This will ensure that protected action is not taken unless the employees involved genuinely wish to take this serious step. Work Choices will also make it clear that industrial action is prohibited during the life of an agreement.

New provisions will be introduced similar to those in state essential services legislation. These new provisions will allow a declaration to be issued by the Minister for Employment and Workplace Relations where protected industrial action threatens life, personal safety, health or welfare of the population or is likely to cause significant damage to the economy.

Finally, under Work Choices third parties directly affected by protected action will be able to seek a suspension of the bargaining period.

### **Freedom of association**

Just as we have done since 1996 this Government will ensure all Australians have the right to join – or not to join – a trade union.

Freedom of association laws will be strengthened to ensure that employees and employers can choose whether or not to join a union or an employer association free from direct or indirect pressure.

Work Choices will cover the field so that right of entry can only be exercised under the new legislation and the circumstances under which it can be exercised will be clarified and the remedies for abuse strengthened.

The right of entry provisions will still allow a union permit holder entry for OHS purposes under state legislation where the union official has a federal right of entry permit and has complied with all requirements of the relevant state OHS legislation.

## **Registered organisations**

Unions and employer organisations provide important services to their members. There will continue to be a legitimate role for unions and employer organisations in the national system.

State registered organisations will be able to apply to the Industrial Registrar for transitional status as a registered federal organisation provided they meet certain minimum requirements. They will then have three years to meet the full requirements of the Workplace Relations Act. The ‘conveniently belong’ rule will not apply to the registration of state registered organisations that are transferred into the federal system.

## **Improved protection**

Work Choices will put in place strong and practical measures to ensure all parties abide by the awards, collective agreements, AWAs as well as the Fair Pay and Conditions Standard, state awards and agreements that are to be brought into the new system

The Office of Workplace Services (OWS) will have increased powers. This includes the power to enforce compliance with the WR Act, awards and agreements, the freedom of association provisions and the rules for agreement making.

The compliance regimes applying to unprotected industrial action, abuse of right of entry laws and contraventions of freedom of association provisions will also be strengthened.

When negotiating individual agreements, young people will be protected by the requirement that an appropriate adult sign the agreement. As well, when setting wages for juniors, the Fair Pay Commission will be obliged by legislation to take into account the need to secure their competitiveness in the labour market.

Work Choices will also increase opportunities for school-based and part-time apprenticeships and traineeships by implementing the Government’s commitment to remove industrial relations barriers by filling current gaps in award coverage for part-time and school-based apprenticeships and traineeships.

## **Work and family issues**

This Government has delivered a decade of rising living standards for Australian families. With Work Choices we will build on this record.

This Bill provides both protection and flexibility to help Australians meet their work and family responsibilities.

Work Choices will protect Australian families by making it unlawful for a workplace agreement to have pay and conditions that are less generous than the Fair Pay and Conditions Standard of up to 52 weeks of unpaid parental leave at the time of the birth or adoption of a child.

The terms of the Australian Fair Pay and Conditions Standard will be protected by law.

Award reliant employees will not lose current entitlements to family-friendly working arrangements and will continue to receive any penalty rates, loadings for overtime or shiftwork, allowances, incentive-based payments and bonuses that they are currently entitled to under their award.

It will remain unlawful for an employer to terminate an employee's employment on certain grounds, including marital status, family responsibilities or pregnancy, or because of absence of work during maternity or other parental leave, regardless of the size of the business they work for.

Nothing is more important to family security than a strong Australian economy. These are reforms which will strengthen our economy and will secure better opportunities for all Australians into the future.

## **Conclusion**

The reforms I have outlined are comprehensive and necessary. They are big but fair changes.

We should never take strong economic growth and prosperity for granted. To secure our future prosperity into the new century, we must work smarter and seize this opportunity to create a new wave of productivity growth.

For a long time, Australia tried to make do with an industrial relations system born of the bitter disputes of the 1890s. This was a system founded on conflict and an 'us' and 'them' mentality. It was a system shot through with pessimism about the capacity of Australian men and women to shape their working lives.

The Liberal and National Parties believe in the capacity of Australians to exercise choice and to work together. We believe that cooperation, not conflict, is the path to prosperity and fairness.

That is why, with Work Choices we are moving to give more Australians the chance of a job.

We are moving to guarantee in law a fair and balanced safety net of conditions for Australian working men and women.

And we are moving to what any modern, competitive nation needs in the 21<sup>st</sup> century – a single set of workplace relations laws.

With Work Choices, Australia is on the move towards a better workplace relations system that allows Australia's employers and employees the freedom and the choice to sit down and work out the arrangements that best suit **them**.

This Bill makes the necessary changes to move away from an outdated and inefficient system that no longer meets the needs of a modern Australian economy.

Work Choices moves to a system that gives employers and employees a tangible stake in what happens at **their** workplaces. Because at the end of the day a fair society relies on a strong economy with productive workplaces.

For it is a strong economy which enables employers to pay their workers more; it is a strong economy which reduces unemployment; and it is a strong economy that delivers, just as it has done over the last decade, more jobs and higher wages for all Australians.

Work Choices is founded on the principle that **the best** arrangements are those developed by employees and employers at the workplace.

This Government recognises that the time to turn this idea into law and move to a better system is **now**.