

April 2006

WORK CHOICES UPDATE

The *Workplace Relations (Work Choices) Act* [the "**Work Choices Act**"] came into effect on 27 March 2006. The *Work Choices Act* involves substantial amendments to the *Workplace Relations Act 1996*, which will in turn result in significant changes to the system of industrial relations in Australia for all Victorian employees as follows:

1. Minimum Standards of Employment

A new body has been created called the Australian Fair Pay Commission [**AFPC**]. The AFPC will periodically set and adjust an overall minimum wage and minimum Award classification wages.

The "Australian Fair Pay and Conditions Standard" [**Standard**] has also been created.

The five minimum conditions of the Standard are:

- (i) Basic rates of pay, with a right to be paid for every hour worked.
- (ii) Maximum ordinary hours of 38 per week. An employee can be required to work "reasonable additional hours".
- (iii) Four weeks paid annual leave per year, accruing every four weeks based on 1/13th of hours worked. Shift workers are entitled to an additional week of annual leave each year. Workplace Agreements may allow for the "cashing out" of up to two weeks' annual leave each year.
- (iv) Paid personal leave of 10 days per year for full time employees – personal leave is cumulative and up to 10 days in any one year may be used as carer's leave. Once an employee has exhausted all personal leave, there is an entitlement to two days' unpaid carer's leave per occasion and two days' paid compassionate leave per occasion.
- (v) Unpaid parental leave of 12 months, subject to a 12 month qualifying period.

2. Workplace Agreements

Employees and employers will have a choice of six types of agreements as follows:

- (i) Australian Workplace Agreements.
- (ii) Employee Collective Agreements.
- (iii) Union Collective Agreements.
- (iv) Union Greenfields Agreements.
- (v) Employer Greenfields Agreements.
- (vi) Multiple Business Agreements.

The "no disadvantage test", under which a proposed agreement was compared with an applicable Award to determine whether the agreement is no less favourable than the Award, has been abolished. Any agreement entered into will need to satisfy the Standard as a minimum requirement.

Workplace Agreements will be deemed to include any Award minima in relation to:

rest breaks, incentive based payments and bonuses, annual leave loading, public holidays, monetary allowances, loadings or overtime and shift work, penalty rates and out worker conditions.

These matters of “deemed content” can be excluded or modified by agreement between the parties, subject to satisfying the five minimum conditions of the Standard.

The *Workplace Relations Regulations 2006* specify matters which are “prohibited content”, including deductions from pay for union membership subscriptions or dues, restrictions on the engagement of independent contractors and labour hire workers, encouraging/discouraging union membership, allowing for industrial action, discriminatory terms and terms preventing the making of an AWA etc..

Employers may be penalised for lodging agreements which contain “prohibited content” and a system similar to the income tax self-assessment scheme will apply.

All agreements will be lodged with the Office of the Employment Advocate [“**OEA**”] and must be accompanied by a declaration stating that the agreement complies with all requirements. The OEA is not required to verify that Workplace Agreements meet with the relevant statutory requirement as to process or content, but is able to rely on the declarations made in lodging each agreement. Penalties will apply for failure to comply with lodgement procedures.

3. Awards

Although Awards will remain as a safety net mechanism, the current 20 allowable Award matters will be reduced to 13 and will include ordinary time hours of work, rest breaks, notice periods and variations to working hours, incentive based payments and bonuses, annual leave loadings, ceremonial leave, public holidays, monetary allowances, loadings for overtime and shift work, penalty rates, redundancy pay, stand down provisions, dispute settling procedures, type of employment (ie. full time, casual, part time, shift work) and out worker conditions.

4. Redundancy

Redundancy pay obligations are restricted to employers of more than 15 employees and any provision in an Award requiring an employer with less than 15 employees to pay redundancy will be unenforceable.

5. Industrial Action

Industrial action during the life of an agreement will remain prohibited and protected industrial action will be restricted under the *Work Choices Act*. After the nominal expiry date of an agreement, industrial action will not be protected action except in response to industrial action by an employer or as authorised by secret ballot.

The AIRC will retain the power to make Orders to prevent or stop unprotected industrial action.

6. Unfair Dismissal

The three new grounds of exclusion from the jurisdiction of the AIRC are as follows:

- (a) termination of employees employed on a “seasonable basis”;
- (b) termination occurring for “operational reasons” (ie. “reasons of an economic, technological, structural or similar nature relating to the employer’s undertaking, establishment, service or business or to a part of the employer’s undertaking, establishment, service or business”); and
- (c) termination by “small business employers” (ie. employers of 100 employees or less).

In Summary

One of the principal objects of Work Choices, as stated in the *Work Choices Act*, is to enable employers and employees to choose the most appropriate form of agreement for their particular circumstances.

The *Work Choices Act* provides an opportunity to negotiate employment agreements which may provide for more flexibility than the current agreements which may be in place (if any).

The above represents a summary only of a huge volume of complex legislation. If you would like to review your current employment arrangements, please contact Cameron Groppi or David Baker on ph: (03) 9614 5866 or at cgroppi@dejones.com.au or dbaker@dejones.com.au.