



## ASU Authorities and Services Victorian Branch

### Newsletter

### *What has happened to WorkChoices?*

May, 2008

The Federal Labor government's Transition to Forward with Fairness Act commenced operation on March 28, 2008. It contains a number of provisions which change the minimum conditions and entitlements which applied under *WorkChoices*. Several key parts of the *WorkChoices* legislation have been preserved and continued under the transitional arrangements.

However, it is likely that the largest steps to dismantle *WorkChoices* will not be taken until towards the end of 2008 and into 2009, when the government's substantive bill is passed. The ASU, with the rest of the union movement, will lobby the Federal Government hard to make very substantial changes to *WorkChoices*. Some of our views on this are below.

The transitional Act replaces the old fairness test with a new no disadvantage test, abolishes the making of new AWAs and introduces ITEAs ("Individual Transitional Employment Agreements").

#### ***AWAs***

Since March 28, 2008, AWAs are no longer allowed to be offered to, or made with employees. However, existing AWAs are allowed to continue and certain employers can also make ITEAs with employees. The ASU would rather have had the Government abolish AWAs retrospectively and bring to members' attention that when the AWA finishes, it does not actually expire unless the employee actively terminates the AWA. Again, we would rather it expired at its expiry date.

#### ***Individual Transitional Employment Agreements (ITEAs)***

ITEAs can be made between any employer who employed people on AWAs at December 1, 2007. An ITEA can be made between an employer and employee, and will have a nominal expiry date of December 31, 2009. After the nominal expiry date has passed, an ITEA will continue to operate until it is terminated by either party.

ITEAs have to pass the new no disadvantage test, and will be measured against a relevant collective agreement or award.

### ***Modern awards***

The AIRC will also conduct a process of award modernisation. Modern awards will not extend coverage to those employers and employees who have traditionally been award free; however they can name specific parties, or apply to a specific class or category.

Along with the National Employment Standards (which replace the old Australian Fair Pay and Conditions Standard) modern awards will streamline the content of awards to deal with the following matters:

- *Minimum wages*
- *Skills-based classification*
- *Incentive-based payments, piece rates and bonuses*
- *Types of employment (i.e. full-time, part-time, casual)*
- *Arrangements for when work is performed (i.e. rostering, rest breaks, variations to standard arrangements)*
- *Overtime rates, penalty rates, industry-specific provision for annualised salaries*
- *Allowances*
- *Leave, leave loading and arrangements for taking leave*
- *Superannuation*
- *Mechanisms for consultation and dispute resolution*
- *Terms about outworkers*
- *Incidental and machinery terms*

### ***Modern awards cannot include:***

- *Anything which is not one of the above items*
- *Anything that breaches freedom of association*
- *Terms about right of entry*
- *Discriminatory terms (with some exceptions)*
- *Terms which discriminate between employees in different States*

### ***The National Employment Standard***

The NES includes the following matters, and replaces the *WorkChoices* AFPCS with minimum conditions and entitlements for:

- *Annual leave*
- *Ordinary hours of work*
- *Flexible working arrangements*
- *Parental leave and the right to request additional leave*
- *Jury and emergency services leave*
- *Personal and carer's leave*
- *Public holidays*
- *Notice and redundancy*
- *Obligation to provide employees with a Fair Work Information Statement*

The ASU is pleased that the new Federal laws allow many more minimum standards than the Howard Government allowed and this is coupled with a new 'no disadvantage' test, which again sets a higher bench mark than the previous one under the Howard Government.

### *Making Agreements under Forward with Fairness*

#### **1. Individual Employment Agreements**

The fairness test which was administered by the Workplace Authority under *WorkChoices* has been replaced by a no disadvantage test for ITEAs and collective agreements.

An ITEA or collective agreement will pass the no disadvantage test if the Workplace Authority Director is satisfied that the ITEA or collective agreement does not result, on balance, in a reduction in overall terms and conditions of employment.

As part of the no disadvantage test, ITEAs are assessed against collective agreements, relevant awards, or awards designated by the Workplace Authority, as well as State Long Service Leave provisions. Most ITEAs and collective agreements only begin operating after they have passed the no disadvantage test.

ITEAs which have passed their nominal expiry dates can be terminated by either party upon 90 days' notice. If an AWA or ITEA is terminated, an employee will be covered by the terms of any collective agreement which applies.

#### **2. Collective agreements**

Collective agreements can no longer be unilaterally terminated with 90 days' notice but collective agreements which have passed their nominal expiry date may be terminated by the AIRC if this is not against the public interest. This returns us to the pre *WorkChoices* position where the employer can no longer unilaterally, with 90 days notice, terminate the existing agreement and put you on very minimal Award standards.

Parties to a workplace agreement are now free to incorporate the terms of awards, collective agreements, deeds and other agreements, as long as these terms do not amount to prohibited content or contravene freedom of association. The ASU welcomes this but will continue to campaign to have the Howard Government's 'prohibited content' allowed back into agreements.

Pre-reform certified agreements (i.e. pre-*WorkChoices* introduction on 27/3/2006) can be varied to extend the nominal expiry date, or to vary the terms of the agreement. The ASU believes this may be of benefit to some members. However, there are various conditions attached to this, for example, not being able to take protected industrial action in support of a proposed variation. It is not clear how, or if, the government will change regulations which deal with prohibited content.

#### **Industrial Action**

Employees on expired (but not terminated) ITEAs and AWAs cannot take part in protected industrial action, even if they have voted on it.

Lawful industrial action can only be taken during a bargaining period for a collective agreement and cannot be taken without a secret ballot. The ASU's position is that we remain opposed to the secret ballot process and that the old and tried method of members voting to take or not to

take industrial action at a general meeting should prevail. Secondary boycotts remain unlawful, as does industrial action taken in pursuit of pattern bargaining. The ASU does not support secondary boycotts or pattern bargaining remaining illegal. This is obviously designed to weaken member and union solidarity across industries and to inhibit us from achieving our objectives within industries, such as Local Government, Water, Energy, SACS, etc.

Right of entry provisions remain largely unchanged. The ASU's position on right of entry is that the minima may be prescribed by legislation but that a right of entry clause should also be allowed to be placed by the parties in the EBA.

The ASU, over the next few months while the substantive bill is being prepared by the Federal Government, will campaign to remove the worst aspects of *WorkChoices* including such things as the provision that if a company has less than 100 employees, there is no jurisdiction for unfair dismissal, which has particularly affected us in the SACS area and the almost unlimited scope of the 'operational reasons' exclusion from unfair dismissal for all employers.

We expect a fair, sensible, workable system of industrial relations for our members and will soon contact members on how they can assist the union in the campaign to wind back *WorkChoices*.

*If you require further information on this newsletter, please contact ASU Assistant Secretary Michael Rizzo on [mrizzo@asuvic.com](mailto:mrizzo@asuvic.com)*

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