

Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008

Commencement:

The Transition to Forward with Fairness Bill is likely to commence on the 31st of March 2008

Effect on AWAs:

New AWAs can not be made once the bill commences. Those AWAs already lodged will be able to run their full course. Employers intending on varying AWAs should be aware that AWAs will only be able to be varied on very limited grounds.

Introduction of ITEAs:

AWAs will be replaced by Individual Transitional Agreements (ITEAs). These can only be made with employers who had AWAs in place prior to 1st December 2007 and will have a nominal expiry date of 31st December 2009. The intention of these agreements is to phase out individual agreements in favour of collective agreements.

The Workplace Authority:

The Workplace Authority will be responsible for conducting the new No Disadvantage Test which will replace the Fairness Test. The No Disadvantage Test will be applied to all ITEAs and Collective Agreements.

An ITEA (for an employee previously on an AWA) or a collective agreement will come into operation 7 days after the Workplace Authority Director has approved the agreement. ITEAs (for new employees) and Greenfield agreements will follow the current system, and come into operation on lodgement with the Workplace Authority.

If an agreement fails the No Disadvantage Test the Workplace Authority Director may still approve the agreement on certain public interest grounds. Either way the Workplace Authority Director will notify and advise parties on whether the agreement has passed or failed the No Disadvantage Test.

Termination of Agreements

AWAs and ITEAs can be unilaterally terminated after 90 days following their nominal expiry date. However, CAs can not be unilaterally terminated after expiry, only by application to the Australian Industrial Relations Commission.

Other Matters That Have Been Repealed:

Provisions preventing an award or previous agreement applying to employees when the current agreement is terminated have been repealed. Restrictions on agreements incorporating terms from other industrial instruments; the requirement of fact sheets; and the concept of protected allowable award matters have all been removed.

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Pre-Reform Certified Agreements and NAPSAs:

The AIRC will be able to vary or extend the nominal expiry date of pre-reform certified agreements, on agreement of the parties and on the condition there has been no industrial action taken.

The expiry date of Notional Agreement Preserving State Awards will be extended from the 27th of March 2009 until 31st December 2009.

Deemed Agreements:

A Court may order that an agreement that can not come into operation on lodgement with the Workplace Authority has effect where it is satisfied that making the order would not reduce any overall terms and conditions of employment. Also a document that is represented to be a workplace agreement but can not come into operation on approval of the Workplace Authority is taken to be a workplace agreement for the purposes of certain provisions.

Awards:

The AIRC will modernise awards to supplement the new National Employment Standard by December 31st 2009. The new National Employment Standard includes: hours of work, parental leave, flexible work for parents, annual leave, personal/carers leave, community service leave, public holidays, information in the workplace, notice of termination of employment and redundancy, and long service leave. The standard is not part of the Bill but has been released for public consideration.

Awards are to cover 10 allowable award matters which include: minimum wages, types of employment, hours of work and rest breaks, overtime rates, penalty rates, annualised wages or salaries, allowances, leave and leave loadings, superannuation, and Dispute Settlement Procedure.

The Bill also prohibits certain terms in awards such as: provisions contravening freedom of association; authorised right of entry; and Long Service Leave.

Modernised Awards will also provide broader coverage for outworkers.

For Further information please contact Ben Wakefield at First IR.