

Employment Update

"WorkChoices: Learning a New Language"

May 2006

For those many employers that are covered by the Federal Government's WorkChoices legislation that commenced on 27 March 2006 (perhaps as many as 85% of all employers) there is a new language to learn.

The legislation uses some new expressions in Australian workplace law, as well as a number of new acronyms. In addition, lawyers and HR personnel are now starting to shorten some of the expressions in the WorkChoices legislation into acronyms. Employers will have to know what these expressions and acronyms mean before getting too deep into the new system, otherwise an inherently complex legislative scheme will become completely befuddling!

So here are some of the most significant expressions and acronyms you have to know to keep yourself attached to the WorkChoices machinery.

"Constitutional Corporation"

The main category of employer covered by the WorkChoices legislation is "Constitutional Corporations". This expression in the WorkChoices legislation is a reference to the type of corporation that the Federal Parliament is able to legislate about. Constitutional Corporations are these:

- (i) Foreign corporations;
- (ii) Trading and financial corporations formed within the limits of the Commonwealth.

Most corporations in Australia that employ staff are trading corporations, although not all of them are so. If you need further advice as to whether you are covered by the WorkChoices legislation, please contact us.

"NAPSA"

This is the acronym in general use already for what used to be a State award applying at your workplace. NAPSA means "Notional Agreement Preserving State Awards". For example, if you employ clerical employees in NSW, they were covered by the Clerical and Administrative Employees (State) Award when WorkChoices started. From when WorkChoices started this Award became a NAPSA in your workplace and continues to apply to your clerical employees (whether employed before or after WorkChoices started) for up to three years, unless replaced by a Workplace Agreement made under WorkChoices.

"PSA"

This is a "Preserved State Agreement". If prior to WorkChoices starting you had a State Enterprise Agreement covering your employees (made with the relevant union(s) or with your employees) it will continue to apply according to its terms (with the exception of removing any "prohibited content" from the Agreement) and will continue to apply until replaced by another Workplace Agreement or rescinded in accordance with the Workplace Relations Act. There is no requirement for a PSA to be compliant with the Fair Pay Commission's Standards.

"Workplace Agreement"

This is the name of the type of agreement that can be made under the WorkChoices legislation to replace previous industrial instruments such as Awards, Certified Agreements or State Enterprise Agreements. There are six different types of Workplace Agreements that can be made but the three main categories are:

- n AWAs;
- n Employee Collective Agreements (an agreement between an employer and its employees as a group);
- n Union Collective Agreements (an agreement between an employer and a union representing employees in a workplace).

"AWA"

An Australian Workplace Agreement is one of the types of workplace agreements prescribed by WorkChoices. The Act prescribes that "An employer may make an agreement (an Australian workplace agreement or AWA) in writing with a person whose employment will be subject to the agreement". The Act also prescribes that "An AWA may be made before commencement of the employment". The Federal Government hopes that in the long term these types of agreements replace awards in most workplaces.

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