

AHRI Special Interest Group Industrial Relations Legislation in 2008

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In the media

- "*I will abolish Workchoices*"

(then Federal Labor Leader Mr Kevin Rudd
Media Statement, 14 October 2007, Mr Kevin Rudd -
<http://www.aip.org.au/media/1007/msloo140.php>)

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Overview

- introduction
- Government policy versus Work Choices - what is different?
- the new Bill - what is new, what is different?
- what may the future hold?
- when will (or could) it change?

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Intro - Work Choices

- 27 March 2006
- national system - covering the field
- s51 (20) - Corporations Power
- transitional provisions
 - . NAPSAs
 - . PSAs

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Intro - Forward with Fairness

- policy - April 2007
- implementation Plan August 2007

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The detail - legislative min. standards

- Work Choices
 - AFPCS (5):
 - basic rates of pay and casual loading
 - maximum ordinary hours of work
 - annual leave
 - personal leave (incl. sick and carer's leave, and compassionate leave)
 - parental leave

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The detail - legislative min. standards

- Government policy
 - Safety net has 2 parts:
 - legislation - 10 National Employment Standards
 - awards - further 10 minimum employment standards

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The detail - legislative min. standards

- Government policy
 - National Employment Standards (10):

• 38 hours of work (reasonable additional)	• community service leave
• parental leave	• public holidays
• flexible work for parents	• information in the workplace
• annual leave	• notice of termination and redundancy
• personal, carer's and compassionate leave	• long service leave

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The detail - legislative min. standards

- Government policy
 - Parental leave
 - parents to have separate right to unpaid leave up to 12 months
 - if one carer - can request further unpaid leave up to 12 months
 - refusal, in writing, on reasonable business grounds
 - Remember - Family Provisions Test Case?
 - reasonable business grounds could include "cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service."

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The detail - legislative min. standards

- Government Policy
 - Productivity Commission to examine paid maternity leave options
 - recommendations for national system

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The detail - legislative min. standards

- Government policy
 - Flexible work for parents
 - parental right to request flexible arrangements
 - eg part-time, start and finish times, working from home, job share
 - limit - only until child reaches school age
 - refusal, in writing, based on reasonable business grounds

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The detail - legislative min. standards

- Government policy
 - Community Service Leave
 - examples include:
 - paid leave for jury service
 - reasonable unpaid leave for emergency services duties
 - what about State legislation entitlements?

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The detail - legislative min. standards

- Government policy
 - Public holidays
 - award penalty rates for working public holidays

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The detail - legislative min. standards

- Government policy
 - Information in the workplace
 - new Fair Work Information Statement
 - information about employee rights and entitlements

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The detail - legislative min. standards

- Government policy
 - Termination of employment and redundancy
 - notice provisions the same
 - mandatory redundancy pay for employers > 15 employee
 - per AIRC 2004 Redundancy Test Case
 - max. 12 weeks pay
 - see: <http://www.e-airc.gov.au/redundancycase/>

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The detail - legislative min. standards

- Government policy
 - Long Service Leave
 - short-term: guarantee as per State legislation, or federal awards or agreements
 - long-term: development of nationally consistent entitlements

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The detail - legislative min. standards

- Discussion paper on ten National Employment Standards
- responses by 4.04.08

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The detail - awards

- Work Choices
 - allowable award matters
 - pay scales removed
 - simplification
 - rationalisation

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The detail - awards

- Government Policy
 - can "build on" and provide "industry detail" on National Employment Standards
 - otherwise, content limited to further 10 minimum employment standards (simplification over 2 years)

• min. wages	• provisions for min. annualised wage or salary arrangements
• type of work performed	• allowances
• arrangements for when work is performed	• leave, leave loading and arrangements for taking leave
• overtime rates	• super
• penalty rates	• consultation, representation and dispute settling procedures

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The detail - awards

- Government policy
 - all awards to contain flexibility clause
 - to "enable arrangements to meet the genuine individual needs of employers and employees"
 - no duress or coercion
 - committed to writing, copy to the employee
 - FWA can check proposed arrangement for compliance (optional)
 - model to be developed by AIRC (industry adaptation permitted)
 - employees > \$100K can contract out of awards

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The detail - unfair dismissal

- Work Choices
 - ≤100 employees exemption
 - "operational reasons" exemption
 - probationary employees exemption
 - deemed 6 mth qualifying period
 - remuneration cap
 - 21 days to lodge claim

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The detail - unfair dismissal

- Government policy
 - intended to "restore balance" and "fair go", but cognisant of small business
 - limited to 3 circumstances:
 - 6 months qualifying period, if employer has 15 or more employees
 - 12 months qualifying period, if employer has fewer than 15 employees
 - if employee is award-free, earning less than \$98,200 (indexed)

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The detail - unfair dismissal

- Government policy
 - FWA to convene a conference:
 - flexibility as to venue
 - informality - no hearing, cross-examination, submissions
 - direct questions from FWA
 - determine outcome and remedy
 - appeal?
 - fast-track claims - must be made in 7 days
 - Fair Dismissal Code to be developed
 - compliance with Code exemption for small business

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The detail - unlawful dismissal

- Work Choices
 - . dismissed for prohibited reasons eg temporary absence, discrimination
 - . conciliation conference by AIRC, but hearing before the Courts
- Government Policy
 - . unlawful dismissal retained
 - . however, FWA will have judicial arm to determine

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The detail - common law contracts

- Work Choices
 - . cannot contract out of AFPCs, industrial instruments
- Government policy
 - . employees \geq \$100k can choose to contract out of awards (in whole or in part)
 - . calculated on "guaranteed ordinary earnings" (indexed)
 - . include - pay for ordinary hours, guaranteed overtime and allowances
 - . 10 National Employment Standards still apply

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The detail - Umpire, independent bodies

- Work Choices
 - . AIRC
 - . Workplace Authority
 - . Workplace Ombudsman
 - . AFPC
 - . ABCC

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The detail - Umpire, independent bodies

- Government Policy
 - . Fair Work Australia - one stop shop
 - . setting, adjusting and publishing awards
 - . responsibility for award simplification and reduction in number of awards
 - . information and advice eg operation of award flexibility clauses
 - . grievance dispute resolution
 - . collective bargaining and bargaining in good faith enforcement

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The detail - Umpire, independent bodies

- Government policy
 - . reviewing and approving collective agreements
 - . inspector to monitor compliance
 - . judicial division
 - . set minimum wages
 - . unfair and unlawful dismissals, freedom of association, minimum entitlements
 - . regulating registered industrial organisations
 - . guidelines on work / family issues

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The detail - Umpire, independent bodies

- The Bill
 - . process for AIRC award modernisation
 - . EM contains terms of proposed request
 - . 2 years or less

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The detail - min. wages

- Work Choices
 - . AFPC - independent body
 - . broad powers of enquiry, includes economists etc
- Government Policy
 - . Fair Work Australia
 - . annual review, to be timely, effective 1 July each year
- The Bill
 - . part of award minimum conditions

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The detail - AWAs

- Work Choices
 - . AWAs can override awards, collective agreements
 - . subject to AFPCS
 - . can be a condition of employment
 - . effective from lodgement with Workplace Authority

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The detail - AWAs

- Government Policy
 - . no new AWAs from commencement
 - . existing AWAs phase out
 - . run until expiry (max. Dec 2012)
 - . existing AWAs terminated as per Work Choices
 - . ie agreement during life, unilaterally on 90 days notice > NED
 - . AWAs not required with modern safety net and common law contracts

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The detail - AWAs

- Bill
 - . confirms no new AWAs from *commencement of Bill*
 - . from 13.02.08 for APS
 - . confirms current AWAs can run their course
 - . confirms
 - . ITEAs only if had AWAs on or before 1.12.07
 - . 31.12.09 NED
 - . if **existing** employee, must also be employed on statutory agreement eg AWA, individual preserved State agreement

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The detail - AWAs

- The Bill
 - . if **new** employee, ITEAA can be made before or within 14 days of commencement
 - . no disadvantage test applies to ITEAs

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The detail - collective bargaining

- Work Choices
 - . union and non-union collective agreements available
 - . employer and union greenfields agreements available
 - . prohibited content
 - . commencement from lodgement
 - . employer cannot be forced to enter into a collective agreement
 - . appointment of bargaining agents

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The detail - collective bargaining

- The Bill

- commencement:

Type of agreement	Commencement
Employer or union greenfields agreement Multiple business greenfields agreement	lodgement
Employee or union collective agreement Multiple business collective agreement	7 days after notice by Workplace Authority Director

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The detail - collective bargaining

- The Bill

- removes fairness test
- replaced by no-disadvantage test
 - does not, on balance, reduce overall terms and conditions
 - for ITEAs - against collective agreement or award and AFPCS
 - for collective - against award and AFPCS
 - retains "exceptional circumstances" test if collective agreement fails NDT
 - apply to variations

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The detail - collective bargaining

- The Bill

- if fail NDT:
 - can vary, otherwise agreement ceases to operate
 - revert to previous industrial instruments
 - compensation?
 - no unilateral undertakings

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The detail - terminating agreements

- Work Choices

- by parties during life
- unilaterally:
 - 90 days notice after NED if agreement is silent
 - 14 days notice after NED if agreement includes mechanism to terminate
- if no replacement agreement:
 - previous award or agreement cannot operate in relation to an employee
 - AFPCS, protected award conditions

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The detail - terminating agreements

- The Bill

- AWAs, ITEAs:
 - by parties during life
 - unilaterally by 90 days notice after NED
- collective agreements:
 - by parties during life
 - by AIRC if not contrary to public interest take into account parties views and circumstances
- employees revert to previous industrial arrangements
 - can include an applicable workplace agreement or award

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Transitional Provisions

- Bill

- pre-reform agreements:
 - NED may be extended (3 years max), or terms varied
 - subject to application to AIRC
 - no industrial action or ballot from 14.02.08
- NAPSAAs
 - extended to 31.12.09
- superannuation as an allowable award matter until 31.12.09

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The Future - leaving aside the crystal ball

- In the short-term...
 - Bill now referred by Senate to inquiry
 - Senate Employment, Workplace Relations and Education committee
 - report back by April 28
 - may be shortened?
 - passage by Easter?

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Close

- Questions

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AHRI HR Specialist Forums and Regional Forums

During 2008 the AHRI Queensland State Council will roll out a new structure of forums and events for members. In the new terminology, an unpaid activity will be a "forum" and a paid activity will be an "event". These new groups will comprise:

- Brisbane Specialist Forums
- Brisbane Specialist Events (formerly "Special Interest Groups" (SIGs))
- Regional HR Forums
- Regional Events

Brisbane Specialist Forums – The new Brisbane Specialist Forums will provide regular informal meetings for members to discuss HR related issues. From March 2008, up to eight forums will be created in Brisbane covering the eight specialist areas of:

- Attraction, recruitment and retention (AR&R)
- Employee relations/industrial relations (ER&IR)
- Human resource management systems (HRMS)
- International human resources management (IHRM)
- Learning and development (L&D)
- Occupational health and safety/risk management (OHS&RM)
- Organisational design and development (OD&D)
- Performance and reward (P&R)

Each forum will have a Convenor and an Organising Committee, and each forum will determine the format of their meetings. Some forums may meet for 4 - 5 times per year and others up to the maximum of 8 times per year. At the first meeting, participants will need to work out the format of meetings – such as meeting other attendees, seeking or sharing information between attendees and case studies on how members addressed HR issues. The forums will be an opportunity to regularly meet other participants and to swap stories. Expert guest speakers will not be used.

Attendance will be at no cost, with online bookings required through the AHRI website. Numbers will be capped at 20 attendees per meeting (meeting room permitting). The participants will need to find their own meeting room and provide their own refreshments. Each of the eight Brisbane Specialist Forums will propose a topic for inclusion in the paid events conducted by the Brisbane Specialist Events.

Brisbane Specialist Events - the Brisbane Specialist Events provide attendees with a formal professional development presentation by expert guest speakers. These are paid events, with refreshments and networking prior to and after the formal presentation. The formal presentations over the year will cover all 8 specialist areas. The existing Brisbane first Wednesday-of-the-month paid event will continue in its existing format. The events are held at the offices of Clayton Utz solicitors on Level 28 of the Riparian Plaza. (Thanks to Clayton Utz for their support.)

There will be 8 presentations in 2008, with no presentations in January, June, September and December. Coming events include:

- 05 Mar – "Industrial Relations Legislation in 2008"
- 02 Apr – "Winning the War for Talent"
- 07 May – "Retaining and Developing Gen X and Gen Y"

Regional HR Forums – the new regional HR Forums will be regular informal meetings of members. Attendance will be at no cost but will need to be booked online through the AHRI website. The number of members attending would be capped at 20. Each regional HR Forum will have a Convenor and an Organising Committee.

The second meeting of the “AHRI Gold Coast HR Forum” was held on 4 March 2008 at the Radisson Resort Gold Coast. It is intended to create both the “AHRI Cairns HR Forum” and the “AHRI Townsville HR Forum” in early 2008. It is expected that members in these regions will be contacted directly by email by AHRI National Office about the inaugural meeting. All meetings will be advertised on the internet site.

Regional Events - Paid events could be scheduled for the Gold Coast, Cairns or Townsville later in 2008. The scheduling of such events will depend on member interest and the expected financial viability of the event. One indicator of member interest will be the attendance at the local Regional HR Forum.

What Can I do if I am Interested?

All forums and events will be advertised in emails from AHRI National Office and on the AHRI website.