

Workchoices and You

MHCC held a Workplace Relations Seminar on 23 March at Balmain Leagues Club to address the Federal Government's new Workplace Relations Amendment (Work Choices) Bill and gain an insight into some of the unforeseen consequences. The seminar was extremely timely given the legislation came into play just days later on 27 March 2006.

Presenters provided a balanced view of the sweeping changes and there was much discussion about what the reform really means for the community sector. We are most appreciative of the presenters who were very flexible in their delivery and open to a wide range of questions particular to those in attendance. Presenters at MHCC Seminar: Leana Street – Leana Street Consulting, Michael Cooper - Employers First; Lurline Comerford – Australian Services Union (ASU).

A recurring point of debate centred around whether individual organisations were a 'constitutional corporation' or not as it is now evident that the WorkChoice reforms will only have effect upon you and your workplace if your workplace is a constitutional corporation.

Corporations power

WorkChoices is largely based on the use of the corporations power which will allow the federal government to directly legislate on matters affecting up to 85 percent of employees across Australia. The corporations power in the Constitution allows laws to be made that control trading or financial corporations. To be considered as such an employer must be incorporated and the employer's trading or financial activities must be 'significant' or 'substantial'.

As there is no clear percentage figure, each organisation is encouraged to clarify their status through independent legal enquiries as to whether they will fall under the new regime. If the organisation has an Australian Corporation Number (ACN), chances are it is a Constitutional Corporation. However, each case is judged on merits and circumstances will vary depending on the legal framework of each constitution.

Employees working within constitutionally incorporated organisations and currently covered by state awards will now fall under the federal system for most matters relevant to employment. However, matters such as Workers' Compensation will continue to be dealt with via State legislation.

SACS Award

In most cases, MHCC members will not fall under the new regime and will remain under the conditions of the amended SACS Award 2006, for at least the next three years. The new award includes the 3.5% wage increase each year from 2006-2008 and now has the capacity for casual workers to become permanent after six months. There is also a Work and Family provision, which by mutual agreement, could extend maternal leave to two years. Organisations and employees are still able to negotiate Workplace Agreements that build upon the conditions of the SACS Award.

So what if you are a Constitutional Corporation?

If an organisation is a Constitutional Corporation and is currently under the SACS

award then they will fall under the federal system and utilise what is known as a 'notional agreement' preserving a state award (NAPSA). The NAPSA will preserve most terms and conditions of the SACS Award for the next 3 years including annual leave, carer's and parental leave, long service leave, notice of termination, superannuation and jury service. However, such an organisation will fall under the new regimes of the federal system including the harsher unfair dismissal laws.

Under the new federal system, both collective agreements and individual Australian Workplace Agreements (AWAs) will be approved by the Office of Employment Advocate (OEA). Employees will retain the right to consult with a bargaining agent (which can be a union representative) when seeking advice and assistance during the negotiation process. It is important to note that when making an Agreement, where the Agreement is silent, some award conditions will continue to apply if not addressed specifically as an inclusion or exclusion, eg. Annual leave loadings, allowances, penalty rates. If an agreement is terminated and is not replaced by another agreement, and there is no other industrial instrument applicable and relevant to the workplace the terms of the Australian Fair Pay and Conditions Standard will apply by default.

Unfair Dismissal Laws

In terms of unfair dismissal laws, the State system is clearly more employee friendly and the Federal system is more employer friendly. An employee still under the State system can take an unfair dismissal complaint to the Industrial Relations Commission but if they fall under the Federal system it is a different matter altogether. The new laws have removed the ability for employees to apply for protection against an unfair dismissal, where their workplace consisted of less than 100 staff. Larger organizations are also finding they are able to sack staff if the reason for the termination is based purely on "operational reasons".

Consider the impacts

At the MHCC Seminar there was also discussion around the impact of WorkChoices on young people who may be more at risk of exploitation. Like all workers, young workers may need to personally negotiate their conditions of work and may not feel confident or have any experience in doing so.

As more organisations are deemed constitutional corporations, forced under the federal system and off the SACs Award, MHCC fears a disempowering effect on a shrinking sector, resulting in a loss of lobbying power.

While MHCC does not currently fall under the federal regime, we remain concerned that this harsh Federal legislation will reduce workers' living standards by taking wage fixing powers away from the Industrial Relations Commission, almost totally eliminating the value of Awards and weakening the ability of workers to bargain with employers to reach reasonable enterprise agreements. The new regulations have removed the old regime and replaced it with a system involving just 5 minimum standards, one of those standards including wages and minimum wages.

Where are the protections for the vulnerable and people with a mental illness under the new structures for minimum wages and harsh unfair dismissal laws and how will WorkChoices impact with the new Welfare to Work legislation?

Most would agree that the new legislation and associated regulations are very complex and the impacts to the sector and the wider community are still unclear; time and the reality of experience will be the true informant.

For more information on WorkChoices and to find out who is covered by the new federal system visit: www.workchoices.gov.au/. To download presentations from the MHCC Seminar visit: www.mhcc.org.au and go to 'Seminar Series'.

Basis of the reforms

1. Australian Fair Pay Commission

- AFPC has the power and authority to review where necessary all matters relating to wages, annual leave, personal leave, LSL and parental leave

2. Australian Fair Pay and Conditions Standards

- A set of standards used by the AFPC to create and preserve benchmarks against which industrial instruments (collective agreements, AWAs) may be measured
- Currently the standards will be taken from already existent award terms and conditions

3. Protected conditions of employment (5 conditions).

These five minimum conditions must be contained in AWAs and collective agreements, as scrutinized by the Office of the Employment Advocate.

- Annual Leave
- Personal/carer's leave (including sick leave)
- Parental leave (including maternity leave)
- Maximum ordinary hours
- Minimum wages set by the Fair Pay Commission.

4. Expansion of the role of the Office of the Employment Advocate – collective agreements and Australian Workplace Agreements

5. Changes to Unfair Dismissal laws

- Access to unlawful dismissal still exists for all employees
- Access to unlawful dismissal, if you fall under the WorkChoices regime, depends on whether you have 100 employees or more.