



24 September 2009, 2009–10

Chronology of Fair Work: background, events and related legislation

Steve O'Neill
Economics Section

Fashioning Fair Work

Many commentators reviewing the genesis of the Fair Work legislation have emphasised the importance of the thorough constitutional break from the conciliation and arbitration power to the corporations power entailed in the Work Choices¹ legislation of 2005; a change placed on the national political agenda by the Hon Peter Reith some years earlier.² The chronology below commences with the Australian Council of Trade Unions' (ACTU) 2006 report of its overseas delegation reviewing international bargaining systems.³ The then ACTU Secretary Greg Combet reflected at the launch of the delegation's report, that a potential endorsement of Work Choices' constitutional basis by the High Court would prompt the national union movement to have an incoming Australian Labor Party (ALP) administration utilise the new constitutional base for its industrial legislation; as he put it:

If the corporations power is available, I want people to be under no misapprehension at all, we are going to support a future Labor government to use it.⁴

With the states' High Court challenge to the Work Choices legislation proving unsuccessful, commentators such as industrial editor Ralph Grayden observed that the Howard Government's workplace legislation had rewritten the relationship between the

1. *Workplace Relations Amendment (Work Choices) Act 2005* which significantly amended the *Workplace Relations Act 1996*. The constitutional issues have been reviewed in the Parliamentary Library's bills digests on both the Work Choices and Fair Work Bills; see respectively [Bills Digest No. 66 2005-06](#) and [Bills Digest No. 81 2008-09](#).
2. P Reith, *Breaking the gridlock, towards a simpler national workplace relations system*, (3 volumes) Department of Employment and Workplace Relations, October 2000.
3. For further information on political party and union workplace/industrial relations policies from 2004, see: S O'Neill and I Kuruppu, *Workplace relations reforms: a chronology of business, community and government responses*, Background note, Parliamentary Library, Canberra, 6 December 2007, viewed 21 September 2009, http://www.aph.gov.au/library/pubs/BN/2007-08/Workplace_Relations_chron.htm
4. Quoted in M Shaw and D Cooke, 'Unions back federal system, wasteful court challenge blasted', *The Age*, 26 October 2006.

Commonwealth and the states. As Grayden put it, the Howard Government reforms put industrial relations 'at the very heart of national debate, and divided a nation in the process'. Nevertheless, with the structural change to the constitutional underpinning of federal labour law upheld, he surmised that a future ALP Government would refashion Work Choices:

What Prime Minister Rudd will attempt to do is to iron out the most draconian and unpalatable aspects of Work Choices while still preserving its underlying assumptions: that industrial relations policy should be used to create a flexible, productive and strike-free workforce ... Perhaps, though, the most important consistency between the Rudd and Howard eras will be the belief that the best place to supervise industrial relations is at the federal level. Although, in 2006, state Labor governments challenged the constitutionality of the federal IR takeover, the new (ALP) government has pledged to keep it the way it is.⁵

Similarly, labour lawyers Peter Punch and Mick Sheils doubted that there would be a reversion to the federal and state systems which had characterised Australian industrial relations for a century or more and that instead Australian employers would benefit from simplification and unification of industrial systems:

The (ALP) government's policy seeks to revert or substantially modify some important aspects of the Work Choices regime, but there is nothing in the policy to suggest that there will be a reversion to the traditional federal and state industrial relations systems that prevailed prior to Work Choices. Importantly, the government intends to build on the 'breakthrough' to a national industrial relations system that forms an essential feature of the Work Choices system ... all employees in the private sector would be embraced by the national system. The establishment of such a structure will require a measure of cooperation from the state governments ... All employers would benefit from a simple structure which is easily understood and applied.⁶

As the first step of bringing such an industrial relations system into place, transitional legislation amending the Workplace Relations Act was introduced to the Parliament in February 2008. It prevented the making of new Australian Workplace Agreements, reintroduced a 'No Disadvantage Test' for the approval of collective workplace agreements and set in train under the auspices of the Australian Industrial Relations Commission, the rationalisation and simplification of federal system awards (including state awards now part of the federal system) under the ALP's prescription for 'award modernisation'. This transitional legislation came into effect on 28 March 2008. The bulk of the Fair Work legislation came into effect between April and July 2009, although critical elements such as the National Employment Standards and modern awards do not come into effect until January 2010.

-
5. R Grayden 'Gone but not forgotten R.I.P. Work Choices 26.3.2006-24.11.2007; A brief but spectacular life', *Australian Industrial Law News*, Issue 11, CCH, 6 December 2007.
 6. P Punch and M Sheils, 'Labor — "junking" or only "massaging" Work Choices?' *Australian Industrial Law News*, Issue 10, CCH, 5 November 2007.

Chronology of Fair Work: background, events and related legislation

Milestones	Details	Source
13 September 2006	ACTU releases its collective bargaining report by a union delegation visiting overseas countries and indicates a broader legislated safety net should the High Court support the 'Work Choices' legislation. Also proposes majority rights for collective bargaining including the right to union representation in any future ALP Government legislation.	ACTU Secretary's address to the Press Club. (<i>Parlinfo</i>)
25 October 2006	ACTU announces its industrial relations policy, targeting Work Choices provisions. It canvasses ending the distinction between union and non-union agreements but agreements and awards will continue to be made under the Constitution's corporations power.	Unions back federal system (<i>The Age</i>)
14 November 2006	High Court determines that the Workplace Relations Act (amended by 'Work Choices') was valid Commonwealth law and a majority (5-2) rejected the states and union case on all points.	High Court's Work Choices decision
4 December 2006	Kevin Rudd MP and Julia Gillard MP replace Kim Beazley MP and Jenny Macklin MP respectively as leader and deputy leader of the federal ALP parliamentary party.	Rudd & Gillard to take Federal Labor forward (<i>Media release</i>)
25 April 2007	The ALP (K. Rudd and J. Gillard) publishes its workplace relations policy, <i>Forward with Fairness</i> ahead of the 2007 federal election. It proposes: a national workplace regulatory system; 10 national standards (4 weeks annual leave 10 days personal leave, paid public holidays and so on) available to all federal system employees; 10 award matters; to facilitate choice and representation at work and to replace a number agencies established under the Work Choices legislation with 'Fair Work Australia' to administer collective bargaining rules and awards.	Forward with Fairness
28 August 2007	ALP modifies its April workplace relations policy in <i>Forward with Fairness, Policy Implementation Plan</i> . The policy exempts employees earning over \$100 000 from the award system; retains current right of entry and pattern bargaining provisions; keeps secondary	Forward with Fairness, Policy Implementation Plan .

Milestones	Details	Source
	boycott laws in the Trade Practices Act; proposes to modernise awards; allows existing Australian Workplace Agreements (AWAs) to run their full five year-terms and allows employers in AWA workplaces to offer Individual Transitional Employment Agreements (ITEAs) to new workers during a transition period but not thereafter; retains building industry regulatory arrangements until 31 Jan 2010 and requires awards and agreements to contain individual flexibility arrangements.	
24 November 2007	ALP wins the 2007 federal election. Kevin Rudd becomes Prime Minister and Julia Gillard becomes Deputy Prime Minister and Minister for Education, Employment and Workplace Relations and Minister for Social Inclusion.	Work Choices weighs in as biggest loser (AFR)
29 November 2007	Brendan Nelson MP and Julie Bishop MP are elected as leader and deputy leader respectively of the Federal Parliamentary Liberal Party, with Ms Bishop assuming role of shadow workplace relations minister.	Turnbull vows full Nelson support (Daily Telegraph)
25 January 2008	NSW IR Minister John Della Bosca releases <i>Working Together: Inquiry into Options for a New National Industrial Relations System</i> by Professor George Williams outlining options for state participation in a national industrial relations system.	Williams Report
7 February 2008	Parliamentary Liberal Party considers support for AWAs in the light of incoming legislation to repeal the making of new AWAs. Business was criticised for not more vigorously supporting Work Choices at the 2007 election.	Coalition split over scrapping of AWAs (The Age)
13 February 2008	Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008 is introduced to the House of Representatives.	Bill as introduced
28 March 2008	<i>Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008</i> comes into effect. It prevents new AWAs being made; enables the Australian Industrial Relations Commission to start modernising awards, reintroduces an award-based ‘No	Text of the first award modernisation request at the Appendix to : Bills Digest 72 2007-2008

Chronology of Fair Work: background, events and related legislation

Milestones	Details	Source
	Disadvantage Test' replacing the 2007 Fairness Test for the approval of workplace agreements and introduces ITEAs. Minister Gillard requests AIRC to modernise awards.	
29 April 2008	AIRC outlines process for modernising awards in four stages.	AIRC Statement
2 June 2008	DEEWR officials report to the Senate Employment Committee that 70-80 staff are engaged in drafting the fair work legislation and it is on track to be introduced to Parliament by the end of the year.	Committee Hansard, p.65
16 June 2008	Minister Gillard varies her award modernisation request to incorporate the National Employment Standards.	Request variation
16 September 2008	Malcolm Turnbull MP assumes leadership of federal Parliamentary Liberal Party. Michael Keenan MP becomes shadow workplace relations minister.	Turnbull takes command, Nelson takes backbench (<i>The Age</i>)
7 November 2008	Tripartite Committee on Industrial Legislation (COIL) meets for 10 days to review the proposed fair work legislation.	Tightrope act hits the road (<i>AFR</i>)
25 November 2008	Fair Work Bill introduced to the House of Representatives. The Bill introduces 10 National Employment Standards, continues award modernisation, introduces rules for collective agreement-making, discontinues the distinction between union and non-union enterprise agreements, reintroduces protection from unfair dismissal and stiffens the recognition of bargaining representatives.	Bill as introduced
18 December 2008	Minister Gillard varies her award modernisation request to require the AIRC to draft a new model award flexibility clause and exempts 'enterprise' NAPSAs from modernisation.	Request variation
19 December 2008	AIRC determines 17 Stage 1 (priority) awards.	Stage 1 awards
27 February 2009	Senate Standing Committee on Education, Employment and Workplace Relations tables report on the Fair Work Bill.	Fair Work Bill 2008 [Provisions]

Chronology of Fair Work: background, events and related legislation

Milestones	Details	Source
19 March 2009	The Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 is introduced to Parliament. Amongst its provisions, the Bill deletes the contents of the Workplace Relations Act but for its schedule dealing with registered organisations and retitles the Act as the Fair Work (Registered Organisations) Act.	Bill as introduced
20 March 2009	Fair Work Bill passed by Parliament.	
3 April 2009	AIRC issues 27 Stage 2 modern awards.	Stage 2 awards
7 April 2009	<i>Fair Work Act 2009</i> receives Royal Assent.	Fair Work Act
2 May 2009	Minister Gillard varies her award modernisation request to clarify: the nature of award exempt employees, the definition of enterprise awards, the definition of equal remuneration and changes regarding the operation of the NES.	Request variation
7 May 2009	Senate Standing Committee on Education, Employment and Workplace Relations tables report on the Fair Work (Transitional Provisions and Consequential Amendments) legislation.	Report on the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009
27 May 2009	The Fair Work (State Referrals of Power and Consequential Amendments to Other Legislation) Bill introduced to Parliament.	Bill as introduced
28 May 2009	Minister Gillard varies her modernisation request to remove the restaurant café and catering sector from the hospitality modern award so as to create a separate instrument for restaurants.	Request variation
10 June 2009	Victorian Parliament passes legislation to refer industrial legislation to the Commonwealth	Fair Work Commonwealth Powers Bill
17 June 2009	Fair Work (Transitional Provisions and Consequential Amendments) Bill and Fair Work (State Referrals and Consequential and Other Legislation) Bill pass Parliament. Building and Construction Industry Improvement	Bill as introduced

Chronology of Fair Work: background, events and related legislation

Milestones	Details	Source
	<p>Amendment (Transition to Fair Work) Bill introduced to Parliament.</p> <p>Minister Gillard issues directions to Australian Building and Construction Commissioner Lloyd concerning the spread of ABCC resources and the conduct of coercion powers and compulsory interviews.</p>	<p>Coercive power direction</p>
<p>25 June 2009</p>	<p><i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> and <i>Fair Work (State Referrals and Consequential and Other Legislation) Act 2009</i> receive Royal Assent. The WR Act is retitled as the <i>Fair Work (Registered Organisations) Act 2009</i>.</p> <p>Senate disallows Minister Gillard's directions regarding the ABC Commissioner.</p>	<p>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</p> <p>Fair Work (State Referrals and Consequential and Other Legislation) Act 2009</p> <p>Fair Work (Registered Organisations) Act 2009</p> <p>Senate Hansard p.4294</p>
<p>26 June 2009</p>	<p>AIRC responds to Minister Gillard's May 2009 variation by asking if the Minister could provide guidance on the setting of hours of work, penalty rates and overtime in a proposed restaurant and catering modern award.</p>	<p>AIRC Statement</p>
<p>1 July 2009</p>	<p>First operational day of Fair Work Australia and the Fair Work Ombudsman, which is noted by FWA President Geoffrey Guidice as being the day which FWA is at the height of its popularity.</p>	<p>Curtin up on a new era of industrial relations (The Australian)</p>
<p>2 July 2009</p>	<p>Minister Gillard varies her award modernisation request to reflect Victoria's reference of power.</p>	<p>Request variation</p>
<p>17 August 2009</p>	<p>Minister Gillard varies her award modernisation request to have awards apply to coastal navigation.</p>	<p>Request variation</p>
<p>27 August 2009</p>	<p>Minister Gillard varies her award modernisation request to allow flexible hours and casuals' piece rates in the horticultural award; to improve the in-house call centre award safety net, and to have part-time penalty</p>	<p>Request variation</p>

Milestones	Details	Source
	rates in the retail and pharmacy sectors reconsidered.	
2 September 2009	AIRC Full Bench issues decision as to how award transitional arrangements (higher costs/lower pay depending on state) will be used to mitigate labour cost increases or pay cuts.	AIRC decision on transitional provisions
4 September 2009	AIRC releases 34 'Stage 3' modern awards. PM Rudd claims that the original commitment regarding higher costs/lower pay from award modernisation was an objective not a guarantee, while the Federal Opposition calls for award modernisation to be suspended.	Stage 3 awards Awards promise not a guarantee; Rudd Overhaul in disarray: Opposition (<i>The Age</i>)
9 September 2009	South Australian Parliament introduces legislation to refer private sector industrial relations to the Commonwealth.	Fair Work (Commonwealth Powers) Bill
10 September 2009	Senate Standing Committee on Education, Employment and Workplace Relations tables report on the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009. AIRC responds to Minister Gillard's request variation regarding the draft horticulture award by inviting award variation/s in 2010.	Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009 [Provisions] AIRC Statement
13 September 2009	Malcolm Turnbull canvasses the possibility of reintroducing individual contracts after the NSW Liberal Party NSW Council and Convention criticised the FWA system as too inflexible.	Turnbull faces row over backflip (<i>AFR</i>)

© Copyright Commonwealth of Australia

This work is copyright. Except to the extent of uses permitted by the *Copyright Act 1968*, no person may reproduce or transmit any part of this work by any process without the prior written consent of the Parliamentary Librarian. This requirement does not apply to members of the Parliament of Australia acting in the course of their official duties.

This work has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

Feedback is welcome and may be provided to: web.library@aph.gov.au. Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library's Central Entry Point for referral.
