

8, 22, 24, 28, 29, 30, 31, 32, 35, 38, 39, 41, 45, 46



**Australian Government**  
**Department of Employment and  
Workplace Relations**

**National Office**

GPO Box 9879 CANBERRA ACT 2601

Ms Pru Goward  
Federal Sex Discrimination Commissioner  
Human Rights and Equal Opportunity Commission  
GPO Box 5218  
SYDNEY NSW 2001

Dear Ms Goward

The Department of Employment and Workplace Relations (the Department) submitted a response to the Human Rights and Equal Opportunity Commission's (HREOC) *Striking the Balance: women, men, work and family* discussion paper on the 7 October 2005. As you know, at that time, only a broad overview of the workplace relations reforms could be provided because the Workplace Relations Amendment (Work Choices) Bill 2005, amending the *Workplace Relations Act 1996*, had not been introduced into the Parliament.

The Work Choices Bill has now been passed by the Parliament and received Royal Assent on 14 December 2005. The Department is pleased to be able to provide further information to HREOC about how Work Choices builds on and enhances the protections and flexibilities already provided to Australian workers with family responsibilities. The following information therefore forms part of the Department's overall submission to the *Striking the Balance* inquiry.

The Government's Work Choices reforms will generate higher levels of economic growth, job creation and workforce participation. The reforms will reduce the barriers to employment and thereby the adverse impacts of unemployment on families and society.

Under Work Choices, workers will be guaranteed a set of minimum conditions through the Australian Fair Pay and Conditions Standard (the Standard). The Standard will comprise wages and casual loadings as set by the Australian Fair Pay Commission, and legislated minimum standards for parental leave, personal/carer's leave, annual leave and maximum ordinary hours of work. The Standard will form the basis for agreement making. It will be unlawful for any employee to have pay and conditions that are less favourable than the Standard, in any respect.

Eligible full-time, part-time and casual employees with at least 12 months' continuous service with their current employer will be entitled to up to 52 weeks of job-protected unpaid leave at the time of the birth of a child or the placement of an adopted child under the age of five years. Employees will also be entitled to take special maternity leave of an amount recommended by a registered medical practitioner if the pregnancy ends other than by the birth of a living child or in the event of a pregnancy related illness.

The Standard for parental leave reflects an established award standard that has been in place for full-time and part-time employees for over fifteen years and for eligible casual employees since 2001. Employees and employers entering into workplace agreements will be able to negotiate to include parental leave provisions that are more favourable than the Standard in their agreement.

The Standard for personal/carer's leave incorporates the new model carer's leave provision from the Family Provisions Case. Employees (excluding casual employees) may take up to ten days of their paid personal/carer's leave entitlement each year to provide care and support for a member of their immediate family or household who is ill or injured.

In addition, award provisions for personal/carer's leave, parental leave or annual leave that are more generous than the Standard will be preserved for both current and new award-reliant employees. Regulations may be made to ensure that entitlements in awards to unique forms of sick leave (war service sick leave, infectious diseases sick leave and other like forms of sick leave) and paid parental leave are retained irrespective of any 'more generous' comparison. Entitlements in the Standard to special maternity leave, compassionate leave, unpaid carer's leave and the right to transfer to a safe job during parental leave will also be able to be quarantined by regulation, and apply to employees independently of the 'more generous' comparison.

Work Choices will simplify agreement-making by introducing a new, streamlined agreement-making process. It will be easier for employees to negotiate with their employers to secure flexible and family friendly entitlements that are over and above the minimum standards and which best suit their particular circumstances. Collective and individual agreements will be lodged with the Office of Employment Advocate (OEA) with a supporting statutory declaration attesting that the agreement was negotiated in compliance with the law.

Under Work Choices, it will remain unlawful for an employer to terminate an employee's employment on certain grounds, including marital status, family responsibility or pregnancy, or because of absence from work during maternity or other parental leave, regardless of the size of the business they work for.

Work Choices will maintain current protections against discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin. Discriminatory provisions will be considered prohibited content in agreements. If an agreement includes prohibited content, that prohibited content will be unenforceable and the OEA will be able to remove such clauses from agreements.

As part of Work Choices, the education and compliance activities undertaken by the Office of Workplace Services (OWS) will be extended. This will improve the protection of employees' rights by ensuring that employees receive their lawful entitlements.

#### Part-time and casual workers

Work Choices will encourage the spread of part-time employment by requiring all awards to include provisions for regular part-time employment and removing award restrictions on part-time employment.

Part-time workers will have a pro-rata entitlement to the same pay and conditions in the Standard as full-time employees with the exception of parental leave in which part-time employees will be entitled to the full 52 weeks of unpaid parental leave.

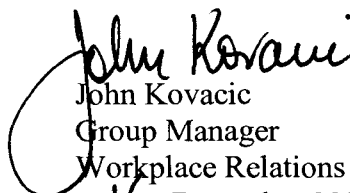
Part-time employees can also negotiate with their employers to secure flexible and family friendly entitlements that are over and above the minimum standards and which best suit their particular circumstances.

Casual employees are generally compensated for lack of leave and other entitlements that accrue to permanent employees by a casual loading. Under Work Choices, casual loadings will be removed from awards and set and adjusted by the Australian Fair Pay Commission as part of the Standard. Casual employees who enter into workplace agreements will be entitled to receive a casual loading of at least 20 per cent on top of their hourly rate of pay. Casual employees will be able to negotiate more favourable leave and loadings with their employer.

Casual employees will not be entitled to paid annual or personal/carer's leave under the Standard but will be entitled to two days of unpaid carer's leave per occasion. Casual employees who have worked with the same employer on a regular and systematic basis for a period of sequence of periods of at least 12 months will have the same entitlement to parental leave as full-time and part-time casualls.

We trust this addendum will assist HREOC in preparing the final report for its Work and Family Inquiry. I have also enclosed a copy of the Work and Family Issues Paper for your information.

Yours sincerely

  
John Kovacic  
Group Manager  
Workplace Relations Policy Group  
16 December 2005