

# *Workplace Relations Act 1996*

## Practical use of Workplace Agreements

*Presenter*

Bruce Shaw

Barrister

# Types of Workplace Agreements

1. Australian Workplace Agreements
  2. Employee Collective Agreements
  3. Union Collective Agreements
  4. Union Greenfields Agreements
  5. Employer Greenfields Agreements
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- A decorative graphic of a teal mountain range is located in the bottom right corner of the slide.

# Australian Workplace Agreements

- ◆ Is made between an employer and a individual employee
- ◆ May be made before the commencement of employment
- ◆ May be made a condition of engagement, but not of continuing employment
- ◆ Over-rides all other agreements and Awards
- ◆ May be subject to protected award conditions but can exclude them
- ◆ Must include a nominal expiry date – up to 5 years from the date lodged with the OEA

# Australian Workplace Agreements

- ◆ Must include a disputes resolution procedure
- ◆ May be varied by agreement between the parties
- ◆ May be terminated by agreement between the parties
- ◆ Is *approved* and *made* on the date it is signed by the employer and the employee
- ◆ Comes into *operation* on the day it is lodged with the OEA
- ◆ Is *binding* only on the parties who *made* it

# Employee Collective Agreements

- ◆ Is made between an employer and its employees
- ◆ May only be made by approval of a majority of employees employed at the time it is made
- ◆ Is a condition of employment, binding on all persons who are employed during its period of operation
- ◆ Overrides all Awards and other agreements except AWA's
- ◆ May be subject to protected award conditions but can exclude them
- ◆ Must include a nominal expiry date – up to 5 years from the date lodged with the OEA

# Employee Collective Agreements

- ◆ Must include a disputes resolution procedure
- ◆ May be varied by agreement between the employer and a majority of employees
- ◆ May be terminated by agreement between the employer and a majority of employees
- ◆ Is *approved* and *made* on the date it is approved by a majority of employees
- ◆ Comes into operation on the day it is lodged with the OEA
- ◆ Operates until it is terminated or replaced

# Union Collective Agreements

- ◆ Is made between an employer and a union
- ◆ Cannot be lodged until approved by a majority of employees employed at the time it is made
- ◆ Is a condition of employment, binding on all persons who are employed during its period of operation
- ◆ Overrides all Awards and other agreements except AWA's
- ◆ May be subject to protected award conditions but can exclude them
- ◆ Must include a nominal expiry date – up to 5 years from the date lodged with the OEA

# Union Collective Agreements

- ◆ Must include a disputes resolution procedure
- ◆ May be varied by agreement between the employer and the union approved by a majority of employees
- ◆ May be terminated by agreement between the employer and the union approved by a majority of employees
- ◆ Is *made* on the date it is agreed by the employer and the union
- ◆ Comes into operation on the day it is lodged with the OEA
- ◆ Operates until it is terminated or replaced


# Union Greenfields Agreement

- ◆ Is made between an employer and a union
- ◆ Must relate to a new business to be established or being established by the employer
- ◆ Must be made before the persons to be covered by it are employed
- ◆ Does not require approval by a majority of employees before lodgement
- ◆ All other requirements of a union collective must be met including majority approval of variations or termination

# Employer Greenfields Agreement

- ◆ Is made by an employer lodging it with the OEA
- ◆ Must relate to a new business to be established or being established by the employer
- ◆ Must be made before the persons to be covered by it are employed
- ◆ Does not require approval by a majority of employees before lodgement
- ◆ Must have a nominal expiry date not later than 1 year from the date of lodgement
- ◆ All other requirements of an employee collective must be met including majority approval of variations or termination

# Choosing the Type of Agreement to Use

- ◆ All Agreements are subject to and overridden by the legislative minimum conditions (AFPCS) except where the agreement conditions are better
  - ◆ All agreements are subject to prohibitions on certain content as prescribed in the Regulations
  - ◆ Protected award conditions apply unless specifically varied or excluded by the terms of the agreement
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# Choosing the Type of Agreement to Use

- ◆ Considerations must include:
  1. Previous regulatory regime such as pre reform (Federal) award, pre reform (Federal) agreement, old state agreement (individual or collective), or NAPSA (old State award)
  2. Employment characteristics such as staff turnover, need for special staff conditions, individual differences such as family commitments for an individual
  3. Intended coverage, such as all employees, trades only, apprentices only, special sites only, maintenance employees, construction employees.
  4. Flexibilities that may be required in general or particular circumstances, whether you want all employees involved in redundancy schemes, insurance, etc, or only some.
  5. Your own administrative capacity (i.e. AWA's require a new lodgement for every employee, can you handle that?)

# Practical use of Workplace Agreements

- ◆ Workplace Agreements are legal documents
- ◆ Binding for what can be long periods of time
- ◆ Regulated by complex legislation and regulations
- ◆ In the building and construction industry this includes the Building and Construction Industry Improvement Act 2005 and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry
- ◆ These involve extra requirements and higher penalties for non compliance

# Practical use of Workplace Agreements

- ◆ The new agreement regime gives greater flexibility but it must be used correctly.
- ◆ There are penalties for lodging agreements with prohibited content, lodging them without proper approval, failing to lodge an approved agreement within 14 days of approval and so on.
- ◆ Advice is available through your employer association and also various Australian Government Agencies. You can also find a lawyer or consultant experienced with the current system.

# Contacts Details

- ◆ Master Plumbers' & Mechanical Services Association of Australia (MPMSAA)
  - [www.plumber.com.au](http://www.plumber.com.au)
- ◆ WorkChoices (DEWR)
  - [www.workchoices.gov.au](http://www.workchoices.gov.au)
- ◆ Office of Workplace Services (OWS)
  - [www.ows.gov.au](http://www.ows.gov.au)
- ◆ Office of the Employment Advocate (OEA)
  - [www.oea.gov.au](http://www.oea.gov.au)
- ◆ Office of the Australian Building & Construction Commissioner (ABCC)
  - [www.abcc.gov.au](http://www.abcc.gov.au)