

# Workplace Relations Legislative Framework

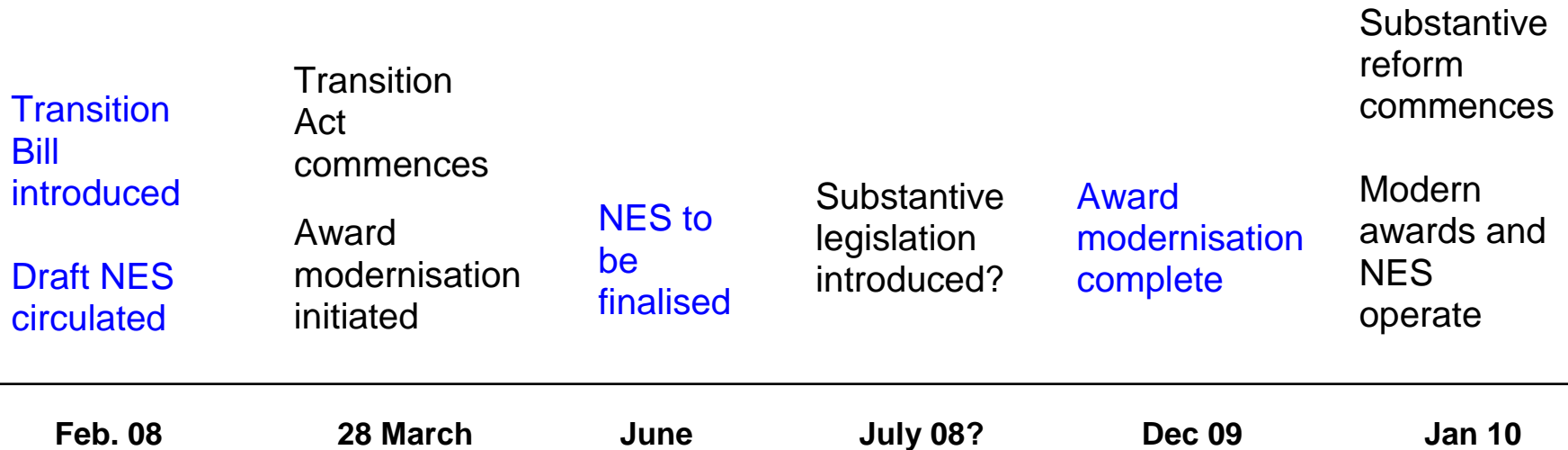


# Overview

- ▶▶ The Government's Reform Timeline
- ▶▶ Key aspects of the Transition Act
- ▶▶ National Employment Standards
- ▶▶ Award Modernisation
- ▶▶ Agreement Making Options Looking Forward



# Timeline of Reform



# Key features of the Transition Act

- ▶ Abolishes AWAs (existing AWAs to continue)
- ▶ Allows ITEAs to be made until 31 December 2009
- ▶ Introduces global No Disadvantage Test for all agreements
- ▶ Starts the award modernisation process
- ▶ Allows pre-WorkChoices Collective Agreements to be extended
- ▶ Removes the obligation to provide the Workplace Relations Fact Sheet



# AWAs

- ▶▶ No new AWAs from 28 March 2008
  
- ▶▶ AWAs (pre-reform and pre-transition)
  - Continue to operate past the nominal expiry date
  - Cannot be varied
  - Can be terminated under the old rules
  - Cannot be overridden by a new collective agreement (must be terminated first) but can be replaced by an ITEA

# ITEAs

- ▶ **Pre-condition** – Employer must have had at least one employee on an AWA as at 1 December 2007
- ▶ An ITEA can be made with new employees (including those previously employed) and existing employees covered by an AWA
- ▶ An ITEA
  - Must pass the NDT
  - Must have a nominal expiry date not later than 31/12/2009 (but will remain in force thereafter)
  - Can be a condition of employment for new employees
- ▶ An ITEA begins operating
  - For new employees: time of lodgment
  - For existing employees: 7 days after notification from workplace authority
- ▶ An ITEA can be unilaterally terminated with 90 days notice after expiry (or by agreement at any time)



# Collective Agreements

- ▶▶ Collective agreement making options continue
- ▶▶ Employees on expired AWA or ITEAs must be included in approval procedures and protected action ballots
- ▶▶ Agreements can 'call up' content
- ▶▶ Restrictions on prohibited content remain
- ▶▶ Must meet the NDT
- ▶▶ CA operates from
  - Greenfields :time of lodgment
  - All other CA's :7 days after notification from Workplace Authority
- ▶▶ CA's can be terminated by AIRC after expiry date if it meets the public interest test

# What do I fall back to if an agreement is terminated?

## ▶▶ Instruments that can apply on termination

- Collective agreement: → Applicable award (in full) and Australian Fair Pay and Conditions Standard
- ITEA/AWA: → Existing collective agreement or award (in full) and Australian Fair Pay and Conditions Standard



## No Disadvantage Test

- ▶▶ Fairness Test replaced by global No Disadvantage Test for all agreements (\$75K threshold removed)
- ▶▶ Must not result in overall reduction of employee's terms and conditions
- ▶▶ Test is against a 'reference instrument'
- ▶▶ The reference instrument will depend on type of agreement
- ▶▶ In essence
  - ITEAs compared against collective agreement and/or award
  - Collective Agreement compared against award



## What if I fail the NDT?

- ▶▶ Failed agreement can be varied by approval of parties (ITEA or Collective) or undertaking (Greenfield) – resigning requirement apply
- ▶▶ Some employees may be entitled to compensation
- ▶▶ A designated award will stick
- ▶▶ A collective agreement can be approved on exceptional circumstances despite disadvantage
  - 2 year nominal term only

# National Employment Standards

- ▶▶ Exposure draft NES was released 14 Feb
- ▶▶ Final NES to be completed 30 June 2008
- ▶▶ AMMA submission on web site
- ▶▶ NES applies from 1 January 2010



# National Employment Standards

- ▶▶ Will include four Workchoices standards (with some modification)
  - Annual leave (flexibility provisions now in modern awards)
  - Maximum working hours (averaging provisions in modern awards)
  - Personal leave
  - Parental leave (now up to 2 yrs)
- ▶▶ Plus others already in the Workplace Relations Act
  - Notice of termination
  - Right not to work public holidays
  - Community Service leave (unpaid)
  - Information Sheet
- ▶▶ New matters?
  - Redundancy Standard
  - Jury Service make up pay
  - Right to request flexible work arrangements



# Award Modernisation

- ▶▶ Award modernisation request contained in Transition Act
- ▶▶ Award content restricted to 10 allowable matters plus wages and provisions relevant to NES
- ▶▶ Timetable – very challenging!
  - 30 June 2008 Select key awards
  - 31 December 2008 complete modern awards for priority industries/occupations
  - 31 December 2009 complete process
  - 1 January 2010 Modern Awards apply



# Award Modernisation

## ▶▶ What is intended to happen?

- Reduce the number of awards (vertical or horizontal?)
- Include a model flexibility clause
- Allow AIRC to build on NES
- Add machinery rules for NES (i.e. cash out annual leave, averaging hours of work over a year)
- Remove state based differences
- Enterprise Awards excluded

## ▶▶ The challenge

- No one loses money
- No one makes money
- Award system not expanded



# The Future?

- ▶▶ Substantive legislation introduced later this year
  
- ▶▶ Will include new common law agreements
  - Outside award system
  - \$100k threshold
  - Employee election required? – new employees?
  
- ▶▶ Will change collective agreement making
  - Introduce good faith bargaining
  - Remove prohibited content restrictions (except union preference and bargaining fees and right of entry)
  
- ▶▶ Greater access to unfair dismissal remedies