



CIRCULAR TO DEPARTMENTS AND AUTHORITIES NO. 7 OF 2006

**WORKPLACE RELATIONS AMENDMENT (WORK CHOICES) ACT 2005 –
OPERATIONAL GUIDELINES FOR PUBLIC SECTOR LABOUR RELATIONS**

Premier's Circular 2006/05 outlines the Government's position in respect of Work Choices and the WA public sector. This Circular provides Guidelines for the conduct of agencies in implementing the Government's policy position for public sector employment while the High Court challenge is determined.

The Government's long-term response for the public sector will be issued after the High Court decision.

The Guidelines are to be read in conjunction with the Premier's Circular and operate within a framework that:

- maintains existing employment arrangements and industrial instruments in the public sector;
- establishes the state industrial tribunal as the jurisdiction for public sector agencies to resolve industrial matters; and
- continues to prohibit offering of individual employment arrangements (eg. Australian workplace agreements) unless approved under the Federal Funding Workplace Change Requirements of the Guidelines.

OPERATION

The Guidelines will continue to operate until withdrawn or replaced.

AGENCY RESPONSIBILITIES

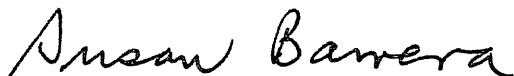
Agencies are required to comply with the Guidelines issued with this Circular and must:

- consistently and genuinely notify and, at the earliest opportunity, involve the Department of Consumer and Employment Protection Labour Relations (DOCEP) in matters which fall within the requirements of Government in its response to Work Choices as specified in the Premier's Circular 2006/05 and the attached Guidelines; and
- inform DOCEP of any claims, disputes or other matters with immediate or potential consequences for Government labour relations policy.

DOCEP will oversee the conduct of agencies to secure compliance with Premier's Circular 2006/05 and DOCEP Circular to Departments and Authorities 7 of 2006.

FURTHER INFORMATION

If you require further information regarding this Circular, its application or your obligations please contact your labour relations adviser.



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A/Executive Director

31 July 2006

GUIDELINES FOR THE CONDUCT OF AGENCIES IN IMPLEMENTING THE GOVERNMENT RESPONSE TO WORK CHOICES

STATE COVERAGE

1. Agencies with existing state awards and agreements:
 - (a) continue to operate in the state system with bargaining outcomes and matters in dispute dealt with in the Western Australian Industrial Relations Commission (WAIRC);
 - (b) may become subject to a Federal Government challenge on the basis of coverage by Work Choices which will be opposed through intervention by the State Government under s30 (1) of the *WA Industrial Relations Act 1979* (WA IR Act);
 - (c) that are the subject of a successful jurisdictional challenge in connection with the registration of an industrial agreement:
 - i) will be removed from multi-respondent state agreements to secure enforceable bargaining outcomes for employees in agencies not being contested; and
 - ii) will remain respondent to expired state agreements that become federal transitional instruments under Work Choices with bargaining outcomes applied administratively.

FEDERAL COVERAGE

2. Agencies with existing federal awards and agreements:
 - (a) are to use the WAIRC for resolution of industrial matters or registration of bargaining outcomes unless in the situation described in 2 (d);
 - (b) that are not constitutional corporations (CCs) within the parameters of 2 (d) will formally return employment arrangements to the state system when the nominal expiry date of an existing certified agreement has passed and bargaining outcomes of replacement agreements are registered in the WAIRC;
 - (c) that have not passed their nominal expiry date, and where the parties seek an early return to the state system, are required to demonstrate a compelling situation exists in order for Government to consider endorsement of early termination of the certified agreement; and
 - (d) that may be found to be a CC in a judicial finding, remain in the federal system on federal transitional instruments with any bargaining outcomes applied administratively.

DUAL COVERAGE

3. Agencies with both state and federal awards and agreements are to apply 1 and 2 above according to coverage.

UNFAIR DISMISSAL

4. Agencies faced with claims of unfair dismissal:
- (a) will not oppose the use of the WAIRC over the AIRC by applicants for unfair dismissal; and
 - (b) are referred to the Agency Responsibilities provisions of this Circular where:
 - i) a pre reform certified agreement exists and excludes the operation of the WA IR Act for unfair dismissal; and/or
 - ii) there is a judicial finding that an agency is a constitutional corporation.

FEDERAL FUNDING WORKPLACE CHANGE REQUIREMENTS

5. The Government prohibits agencies from offering individual employment arrangements such as Australian Workplace Agreements (AWAs) or other workplace change requirements that are linked to the provision of federal funding except where:
- (a) prior approval for the federal funding proposal has been provided by the Expenditure Review Committee (ERC) and/or Cabinet;
 - (b) labour relations implications have been considered by ERC and/or Cabinet on advice from DOCEP; and
 - (c) DOCEP has consulted with the affected parties prior to providing advice to ERC and/or Cabinet.
6. Individual employment arrangements arising out of approvals under clause 5 above:
- (a) must not discriminate against the individual concerned or those in applicable collective agreements;
 - (b) will be assessed for discrimination based on a comparison by DOCEP of each provision and clause contained in the individual arrangement compared to each provision and clause in the applicable collective agreement and not on the content as a whole (not on balance); and
 - (c) must have the endorsement of the portfolio Minister prior to submission to DOCEP for examination and subsequent approval by the Minister for Employment Protection.

UNION RECOGNITION

7. The Government supports the role of unions in the public sector and requires agencies:
- (a) to observe the right of unions to organise and represent their public sector members as provided for:
 - i) in union facilities and right of entry entitlements in awards and agreements (state and federal) as amended from time to time; and/or
 - ii) through established protocols.
 - (b) with respect to right of entry and in the absence of award and/or agreement entitlements or established protocols, to apply the applicable provisions of the WA IR Act.