

Inter-Governmental Agreement for a National Workplace Relations System for the Private Sector

An agreement made between:

The Commonwealth of Australia and

The State of New South Wales

The State of Victoria

The State of Queensland

The State of Western Australia

The State of South Australia

The State of Tasmania

The Australian Capital Territory

The Northern Territory

(together, “the Parties”).

RECITALS

- A. On 5 November 2008, the Workplace Relations Ministers' Council (WRMC) endorsed the Australian Government's substantive workplace relations legislation as providing the foundation for a uniform National Workplace Relations System for the private sector based on *Forward with Fairness*.
- B. This endorsement was the culmination of extensive consultation and cooperation between governments in the development of a modern, fair and flexible workplace relations system for Australia, and ministers acknowledged the spirit of cooperative federalism in which this was achieved.
- C. This Agreement continues that cooperative federalism and outlines each Party's commitment towards achieving and maintaining a uniform National Workplace Relations System.
- D. The Parties enter into this Agreement in recognition of the significant contribution a uniform National Workplace Relations System will make to the future prosperity of the nation.

The Parties Agree as Follows:

Part 1 – Purpose of the Agreement

1.1 The purpose of this Agreement is to outline arrangements for a National Workplace Relations System that provides fairness and certainty for employers and employees about the basis of their rights and obligations at work.

1.2 The Parties acknowledge that the National Workplace Relations System will be built on the following principles, as unanimously endorsed by WRMC on 23 May 2008:

- (a) a strong, simple and enforceable safety net of minimum employment standards;
- (b) genuine rights and responsibilities to ensure fairness, choice and representation at work, including the freedom to choose whether or not to join and be represented by a union or participate in collective activities;
- (c) collective bargaining at the enterprise level with no provision for individual statutory agreements;
- (d) fair and effective remedies available through an independent umpire;
- (e) protection from unfair dismissal;
- (f) seamless service delivery arrangements; and
- (g) cooperation between all governments in the development and implementation of a National Workplace Relations System.

1.3 The Australian Capital Territory and the Northern Territory are within the National Workplace Relations System by reason of the Commonwealth's legislative power in relation to the Territories.

Part 2 – Roles and responsibilities under the National Workplace Relations System

2.1 This Agreement establishes the roles and responsibilities of the Parties under the National Workplace Relations System.

2.2 All Parties agree to give effect to the commitments made under this Agreement.

2.3 In signing this Agreement, the Parties agree to the following roles and responsibilities under the National Workplace Relations System.

The Commonwealth

2.4 The Commonwealth will:

- (a) consult Referring States and the Territories in accordance with clauses 2.11 to 2.20;
- (b) notify Mirroring Jurisdictions in accordance with clauses 2.21 to 2.23; and
- (c) report to Cooperating Jurisdictions in accordance with clauses 2.24 and 2.25.

States

2.5 Referring States proposing to amend or terminate a referral of power to the Commonwealth will give the Commonwealth not less than 6 months' notice in writing of any such proposal.

2.6 Mirroring Jurisdictions will use best endeavours to enact amendments to their Mirror Legislation to ensure consistency with any amendments to the Fair Work legislation within 6 months of amendments to the Fair Work legislation being passed by the Commonwealth Parliament.

2.7 Mirroring Jurisdictions that propose to enact amendments to their Mirror Legislation that are inconsistent with the Fair Work legislation will give the Commonwealth not less than 6 months' notice in writing of any such proposal.

2.8 A Mirroring Jurisdiction that does not comply with clause 2.6, or that enacts amendments to its Mirror Legislation that are inconsistent with the Fair Work legislation, may not meet the definition of 'Mirroring Jurisdiction' under Part 3 of this Agreement. Such a jurisdiction will be considered by the Commonwealth to be a Cooperating Jurisdiction for the purposes of this Agreement.

2.9 Mirroring Jurisdictions proposing to refer power to the Commonwealth will give the Commonwealth not less than 6 months' notice in writing of any such proposal.

2.10 Cooperating Jurisdictions proposing to:

- (a) refer power to the Commonwealth; or
- (b) enact Mirror Legislation;

will give the Commonwealth not less than 6 months' notice in writing of any such proposal. Cooperating Jurisdictions will regularly report to the Commonwealth any measures (in addition to those already taken) to achieve further alignment with the National Workplace Relations System.

Referring States and the Territories

2.11 The following consultation arrangements regarding proposals and amendments to the Fair Work legislation will apply in relation to Referring States and the Territories, in recognition of their significant level of commitment to the achievement of a National Workplace Relations System.

- (a) The Commonwealth will consult Referring States and the Territories on proposals to make amendments to the Fair Work legislation.
- (b) The Commonwealth will consult Referring States and the Territories on draft amendments to the Fair Work legislation.
- (c) Referring States and the Territories will be able to consider such proposals and draft amendments, and will be able to make proposals in response.
- (d) Referring States and the Territories will be able to make proposals to amend the Fair Work legislation to the Commonwealth, for its consideration.
- (e) The Commonwealth will give genuine consideration to any proposals of Referring States and the Territories under subclauses 2.11(c) or (d) and provide reasons for its responses to any such proposals.
- (f) Where Referring States and the Territories make proposals under subclauses 2.11(c) or (d) in writing the Commonwealth will provide reasons for its response in writing.

2.12 Referring States and the Territories will be able to raise issues and make suggestions on service delivery standards, and raise other issues affecting service delivery, with the Commonwealth. The Commonwealth will raise these with Fair Work Australia and the Fair Work Ombudsman for consideration and discussion.

2.13 The Commonwealth will provide Referring States and the Territories not less than three months notice in writing of its intention to commence consultation under subclause 2.11(a) above. In the event that urgent or unforeseen amendments are required; the Commonwealth will notify Referring States and the Territories as soon as possible.

2.14 The Commonwealth, Referring States and the Territories will maintain the confidentiality of proposals to amend, and draft amendments to, the Fair Work legislation.

2.15 The Commonwealth, Referring States and the Territories will also maintain the confidentiality of discussions and proposals in relation to service delivery under a National Workplace Relations System.

2.16 Workplace relations ministers from the Commonwealth, Referring States and the Territories will form the Workplace Relations Ministers' Council – Referring States and the Territories Subcommittee. Nominated workplace relations officials from the Commonwealth, Referring States and the Territories will form the Senior Officials' Group – Referring States and the Territories Subcommittee.

2.17 Consultation in relation to matters under clauses 2.11 and 2.12 will be progressed through the Senior Officials' Group – Referring States and the Territories Subcommittee and the Workplace Relations Ministers' Council – Referring States and the Territories Subcommittee. Such consultation may be conducted in parallel with a consultation process involving the NWRCC Committee on Industrial Legislation.

2.18 If a Commonwealth proposal or amendment is considered by one or more members of the Workplace Relations Ministers' Council – Referring States and the Territories Subcommittee to alter the Fair Work legislation such that it may undermine one or more of the principles at subclauses 1.2(a) to (e) as reflected in the *Fair Work Act 2009*, the proposal or amendment will be referred to that subcommittee for resolution by endorsement of a two-thirds majority.

2.19 If a two-thirds majority of the Workplace Relations Ministers' Council – Referring States and the Territories Subcommittee does not endorse a Commonwealth proposal or amendment in accordance with the process described at clause 2.18, that proposal or amendment will not proceed.

2.20 The Commonwealth may, in relation to this Agreement, enter into bilateral agreements with Referring States to outline jurisdiction-specific arrangements on any matters it sees fit, including in relation to service delivery. Such bilateral agreements will operate in conjunction with this Agreement.

Mirroring Jurisdictions

2.21 The following arrangements will apply in relation to Mirroring Jurisdictions in recognition of their level of commitment to the achievement of a National Workplace Relations System.

- (a) The Commonwealth will notify Mirroring Jurisdictions of proposals to amend the Fair Work legislation after consultation with Referring States and the Territories under clause 2.11.
- (b) The Commonwealth will notify Mirroring Jurisdictions of draft amendments to the Fair Work legislation after consultation with Referring States and the Territories under clause 2.11.

2.22 Mirroring Jurisdictions will maintain the confidentiality of proposals to amend, and draft amendments to, the Fair Work legislation.

2.23 These arrangements will apply in relation to Mirroring Jurisdictions as long as they continue to meet the definition of 'Mirroring Jurisdiction' contained in Part 3 of this Agreement.

Cooperating Jurisdictions

2.24 The Commonwealth will report to Cooperating Jurisdictions on significant amendments made to the Fair Work legislation.

2.25 Clause 2.24 will apply in relation to Cooperating Jurisdictions as long as they continue to meet the definition of 'Cooperating Jurisdiction' contained in Part 3 of this Agreement.

Part 3 – Operation and Interpretation of the Agreement

3.1 Commencement

3.1.1 The provisions of this Agreement will commence for each Party once the Fair Work legislation is fully operational on 1 January 2010.

3.2 Review of the operation of this Agreement

3.2.1 The Parties will review the operation of this Agreement no later than 3 years from the date of commencement, or as otherwise agreed by the Parties.

3.3 Variations of this Agreement

3.3.1 This Agreement may be varied from time to time with the agreement of all of the Parties.

3.3.2 Any proposal to vary the Agreement must be submitted to the Parties.

3.3.3 Any variation of this Agreement will be made in writing and executed by all of the Parties to this Agreement, and will include the date on which the variation will come into force, which will be no earlier than the date on which the Agreement is signed by all of the Parties.

3.4 Dispute Settling Procedures

3.4.1 If a dispute arises in relation to the operation of this Agreement the Parties will use their best endeavours to settle the dispute through direct negotiation, acting in a spirit of cooperation.

3.4.2 If the Parties are unable to resolve the dispute, the Parties shall refer the dispute to the Heads of Government of the Commonwealth and the relevant Participating Jurisdictions or their nominated representatives.

3.5 Withdrawal from/Termination of Agreement

3.5.1 The Parties agree that withdrawal from this Agreement will be a measure of last resort.

3.5.2 A Party that proposes to withdraw from this Agreement will notify all other Parties of its intention to do so by giving not less than 6 months' notice in writing.

3.5.3 In the event of the withdrawal from this Agreement by a Party that is a State or Territory, this Agreement will continue to operate while the Commonwealth and any other Party to this Agreement remain signatory to the Agreement.

3.5.4 This Agreement may be terminated by consent of all the Parties to the Agreement.

3.6 Definitions

In this Agreement:

This Agreement means this document as amended from time to time in accordance with clause 3.3.

Amendment includes the insertion, omission, repeal, substitution, addition or relocation of words or matter and in relation to the Fair Work legislation means express amendment of that legislation by direct amendment of the text of the legislation, but does not include a Commonwealth law that has substantive effect other than as part of the Fair Work legislation.

Cooperating Jurisdiction means a State (other than a Referring State or Mirroring Jurisdiction) which is committed to forms of cooperation and harmonisation other than enacting referrals of power or mirror legislation to achieve a National Workplace Relations System.

Fair Work legislation means the *Fair Work Act 2009*, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009*, the *Fair Work (Registered Organisations) Act 2009*, the Fair Work Regulations 2009 and regulations made under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009*, and the *Fair Work (Registered Organisations) Act 2009* as in force from time to time.

Forms of cooperation and harmonisation means legislative and administrative measures by a State, other than the enactment of a referral of power or mirror legislation, to implement an element or elements of the Fair Work legislation in accordance with that State's commitment to pursue alignment with the National Workplace Relations System in that State.

Forward with Fairness means the workplace relations policy of the Australian Labor Party as announced in 2007 and includes the Forward with Fairness Policy Implementation Plan.

Mirroring Jurisdiction means a State in which the Parliament enacts Mirror Legislation, and amends such legislation from time to time so that it is consistent with any amendments to the Fair Work legislation.

Mirror Legislation means legislation enacted by a State Parliament that is substantially consistent with the Fair Work legislation and that has substantially the same effect as the Fair Work legislation, but only in relation to that State.

National Workplace Relations System means the legislative and administrative framework established by the Fair Work legislation.

NWRCC means the National Workplace Relations Consultative Council.

Participating Jurisdiction means a Referring State, Mirroring Jurisdiction, Cooperating Jurisdiction or a Territory, and which is a Party to this Agreement.

Referring State means a referring State within the meaning of the *Fair Work Act 2009* as in force on 1 January 2010.

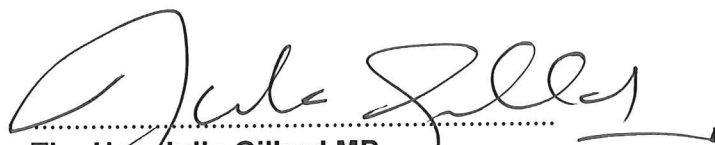
Senior Officials' Group – Referring States and the Territories subcommittee means the group of nominated workplace relations officials from the Commonwealth, Referring States and the Territories as formed under clause 2.16 of this Agreement.

Territory means the Australian Capital Territory or the Northern Territory.

Workplace Relations Ministers' Council – Referring States and the Territories Subcommittee means the council of workplace relations ministers from the Commonwealth, Referring States and the Territories as formed under clause 2.16 of this Agreement.

WRMC means the Workplace Relations Ministers' Council.

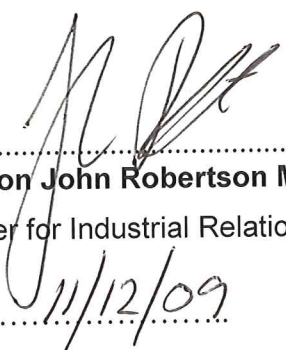
SIGNED FOR AND ON BEHALF OF EACH OF THE PARTIES BY:

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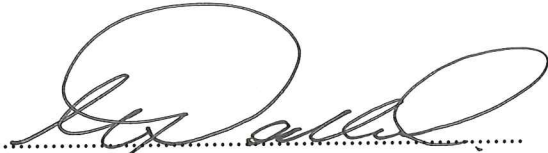
The Hon Julia Gillard MP

Minister for Employment and Workplace Relations (Commonwealth)

Date: 25/9/09



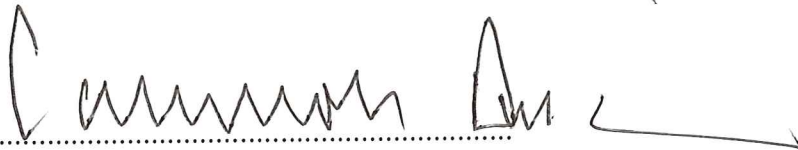
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The Hon John Robertson MLC
Minister for Industrial Relations (New South Wales)
Date:.....11/12/09.....

A handwritten signature in black ink, appearing to read 'Martin Pakula', written over a dotted line.

The Hon Martin Pakula MP

Minister for Industrial Relations (Victoria)

Date: 25.9.09

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The Hon Cameron Dick MP

Minister for Industrial Relations (Queensland)

Date: 11 December 2009

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The Hon Troy Buswell MLA

Minister for Commerce (Western Australia)

Date:.....



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The Hon Paul Caica MP

Minister for Industrial Relations (South Australia)

Date: 25.09.09.....



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The Hon Lisa Singh MP

Minister for Workplace Relations (Tasmania)

Date: 21.9.09.....



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Mr John Hargreaves MLA

Minister for Industrial Relations (Australian Capital Territory)

Date: 22/9/09.....



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The Hon Rob Knight MLA

Minister for Public Employment (Northern Territory)

Date:.....23 SEP 2009.....