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The Journey from Work Choices to Fair Work

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Australian labour lawyers have become accustomed to dealing with change. Since Paul Keating began the process in the early 1990s of transforming the federal industrial relations system, barely a year has gone by without some major reform or proposed reform. The relative stability of the federal regime under the Hawke and Fraser governments, and indeed since the Second World War, is now just a distant memory. At State level too, every system has gone through at least two transformations since the late 1980s, and sometimes more than that. And with each wave of legislative change has come a raft of court decisions and tribunal rulings, as litigants have sought to test out the new provisions.

Yet even by the standards of the last two decades, the amount and pace of change in the past four years has been extraordinary. The Workplace Relations Act 1996 (WR Act) has been substantially amended four times, and is now to be replaced by a new Fair Work Act. A federal election has been fought and won over the issue of workplace reform. For most of the period, industrial relations has rarely been out of the media. Public interest in the topic can scarcely have been higher.

Bookending this period are two distinct, though not entirely dissimilar, visions of labour regulation. The first is represented by the Howard Government's 'Work Choices' legislation. This was a radical set of changes that, while leaving intact many elements of the previous system, sought to remove various constraints on managerial power. Presented as a 'simpler, fairer' approach that would mean higher wages and more jobs, Work Choices was seen by its many critics as undermining workers' entitlements and challenging the concept of a 'fair go' in the workplace. The reforms brought unionists and community groups onto the streets and galvanised opposition from State governments, whose own systems of regulation were substantially overridden by the new federal laws. The outcomes included a series of advertising wars,

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