5

Making the 'BOOT' Fit: Reforms to Agreement-Making from Work Choices to Fair Work

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Since the commencement of the 'Work Choices' legislation in 2006[1] the agreement-making rules have been substantially modified each year, with further reforms due to commence in July 2009 under the Fair Work Bill 2008 (FW Bill). These regular amendments reflect an attempt by the former Coalition Government, and later the Labor Government, to achieve an appropriate balance between flexibility for business (by permitting deviation from the prescriptive provisions of industry-based awards) and fairness for employees (by safeguarding minimum conditions of employment). The Work Choices Act shifted the balance in favour of business flexibility, offering a 'streamlined' approval process for agreements and removing the 'no-disadvantage' test (NDT) which had previously been used to assess agreements against the underpinning award. The Coalition Government anticipated that these changes would increase the take-up rate of statutory agreements and that this, in turn, would increase productivity.[2] However, the previous objective of supporting 'fair and effective agreement-making'[3] was removed from the legislation, suggesting that the protection of employees was of secondary importance in the new system instituted by Work Choices.

At the time that the Work Choices reforms were introduced, it was immediately apparent from the text of the legislation that the reforms

* My thanks go to Richard Mitchell for his useful feedback on earlier drafts of this chapter.

1 Workplace Relations Amendment (Work Choices) Act 2005 (Work Choices Act), amending the Workplace Relations Act 1996 (WR Act).

2 Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 2005, p 39 (John Howard, Prime Minister).

3 Pre-reform WR Act s 3(e).