Changes to legislation and significant case law

Legislation


This Act amends the Higher Education Support Act 2003 (HESA). It was passed in October 2006, with the amendments commencing in full on 1 January 2007. Key amendments include provision for various funding increases, increases in FEE-HELP limits, changes to the existing student cohort provisions and provision for the full fee summer school rules to apply to winter schools.

Education Services for Overseas Students Legislation Amendment (2006 Measures No.1) Act 2006 (Cth)

Education Services for Overseas Students Legislation Amendment (2006 Measures No. 2) Act 2006 (Cth)

These Acts amend the Education Services for Overseas Students Act 2000 (ESOS Act) to strengthen the regulation of education and training services provided to overseas students. The amendments give effect to recommendations of the Federal Government’s Evaluation of the ESOS Act which was released in June 2005.

Workplace Relations Amendment (Work Choices) Act 2005 (Cth)

The key provisions of the Work Choices Act commenced in full on 27 March 2006. This Act substantially amended the Workplace Relations Act 1996 (Cth), and established a new national workplace relations regulatory framework to replace the existing combination of federal and state-based systems. The new laws also resulted in significant changes in the procedures applicable to the making and registration of collective agreements and Australian Workplace Agreements, the industrial award system, industrial action and access to remedies for unfair dismissal.

Independent Contractors Act 2006 (Cth)

Workplace Relations Amendment (Independent Contractors) Act 2006 (Cth)

These Acts were passed in December 2006. The Independent Contractors Act 2006 excludes state laws dealing with workplace relations matters from deeming independent contractors to be employees or conferring or imposing rights or obligations on parties to contracts for services to the extent that they deal with workplace relations matters. The Act also creates a federal regime under which independent contractors may seek the review of unfair contracts and, subject to some limited exceptions, precludes the operation of state “unfair contracts” laws. The Workplace Relations Amendment (Independent Contractors) Act 2006 prohibits “sham” contractor arrangements and also makes a number of technical amendments to the Workplace Relations Act.

Significant case law

New South Wales and Others v Commonwealth of Australia; Western Australia v Commonwealth of Australia [2006] HCA 52 (14 November 2006)

The states of New South Wales, Victoria, Queensland, South Australia and Western Australia, Unions NSW and the Australian Workers Union challenged the validity of the Workplace Relations Amendment (Work Choices) Act 2005 (Cth). The legislation had been enacted largely in reliance upon the Commonwealth’s power to make laws with respect to corporations (section 51(xx) of the Constitution), and the capacity of the Parliament to rely upon that power to underpin the legislation was the principal question at issue in the proceedings.

By a majority of 5:2, the High Court upheld the validity of the legislation.