





## Workplace Relations There and Back Again

**“Forward with Fairness”**  
Fair Work Act 2009



### OVERVIEW FOR TODAY

- History of Workplace Relations Reform
- Implementation of “Forward with Fairness”
- Details of the Fair Work Act 2008,
- Summary

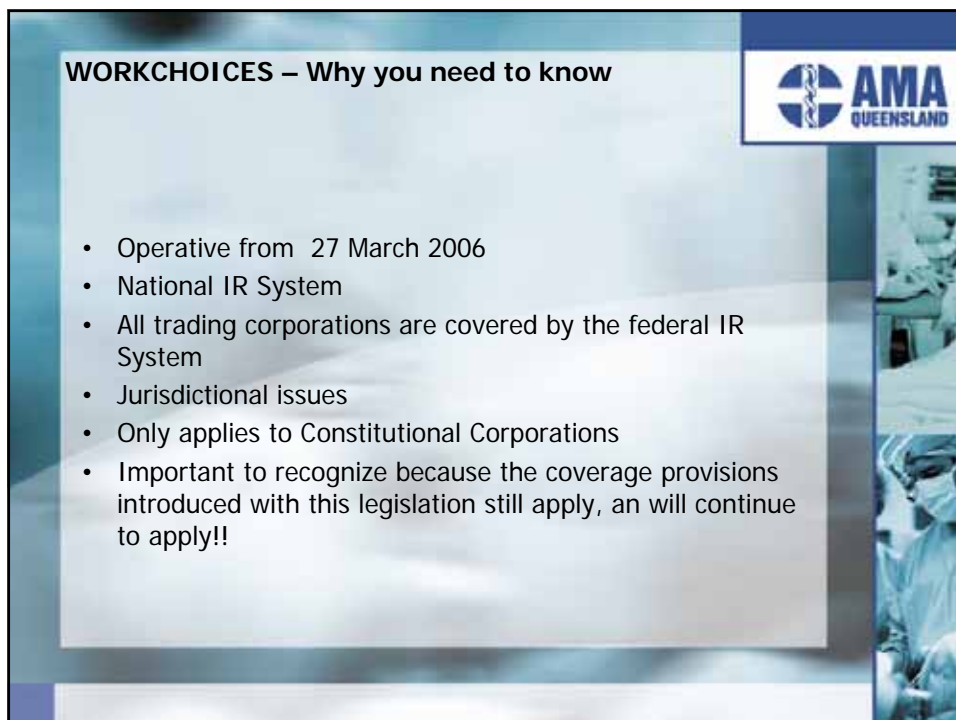




**INTRODUCTION TO THE WORKPLACE RELATIONS SYSTEM**

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- Australia has a unique and complex Industrial Relations System
- Undergone significant reform since 1996,
- WorkChoices 2006,
- "Forward with Fairness" 2008 - 2010





**WORKCHOICES – Why you need to know**

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- Operative from 27 March 2006
- National IR System
- All trading corporations are covered by the federal IR System
- Jurisdictional issues
- Only applies to Constitutional Corporations
- Important to recognize because the coverage provisions introduced with this legislation still apply, and will continue to apply!!

**COVERAGE**



- As an employer, you belong to one system
- As an employer, you are required to know which system applies
- Why?
  - Because each system has it's own obligations, requirements and entitlements
- And.....penalties apply if you don't comply with system requirements.

**WHAT IS A CONSTITUTIONAL CORPORATION?**





- Is an entity incorporated under the *Corporations Act 2001* that engages in substantial trading or financial activities, or
- Is an entity that is established as a body corporate under other legislation that is engaged in substantial trading or financial activities, or
- Is a foreign corporation.

**Company:**

- A company may come into existence by incorporation under the *Corporations Act 2001*.
- Examples: 'Pty Ltd', has an ACN, 'Pty', 'Ltd'
- Federal system applies

**WHAT IS NOT A CONSTITUTIONAL CORPORATION?**





**Partnership:**

- A partnership is formed when two or more persons (who are not members of a corporation) go into business with a view to making a profit
- Generally, WorkChoices does not apply to an employer entity that is a partnership consisting of individual persons.

**Trust and Trustees:**

- A trust essentially involves a person (trustee) that holds property on behalf of another in circumstances imposing conditions upon the trustee.
- Where a constitutional corporation is the trustee, the federal system applies.

**WHAT IS NOT A CONSTITUTIONAL CORPORATION? (cont...)**



**Sole Trader:**



- A sole trader is a person who carries on business in his or her own right as the proprietor whether in his or her own name, or under a business name
- Generally, WorkChoices does not apply to an employer entity that is a sole trader

**WHAT HAS HAPPENED SO FAR AND WHAT IS NEXT?**



- 13 February 2008 introduced the *Workplace Relations Amendments (Transition to Forward with Fairness) Act 2008* Cth (The Transition Act)
- What did it do?
  - abolished AWAs
  - Introduced *Individual Transitional Employment Agreements (ITEAs)*
  - Commenced the Award Modernisation process
  - Stated that NAPSAs (Notional Agreements Preserving a State Award) will remain in operation until 31 December 2009.

**WHAT HAS HAPPENED SO FAR AND WHAT IS NEXT? (cont...)**



- The Fair Work Bill 2008
- Initially tabled into parliament on 25 November 2008
- Passed through both Houses on 20 February 2009
- Received royal assent 7 April 2009
- Now called the Fair Work Act 2009, operative 1 July 2009 except for NES and the Modern Awards



### KEY FEATURES OF FAIR WORK ACT 2009

- Fair Work Australia (one stop shop)
- A strong safety-net of 10 legislated national employment standards
- Award Modernisation
- New Enterprise Bargaining Framework
- Expansion of unfair dismissal laws
- New transfer of business rules
- Retention of industrial action rules



### FAIR WORK AUSTRALIA

- One stop stop
- Full operative as by 1 July 2009.
- Amalgamates the following government agencies which current exist:
  - AIRC
  - Workplace Authority
  - Workplace Ombudsman
  - Australian Fair Pay Commission.
  - Australian Building and Construction Commission
- Perform the following function:
  - Perform Workplace Inspections
  - Set minimum wage
  - Judicial functions





**SAFETY NET,  
NATIONAL EMPLOYMENT STANDARDS (NES)**



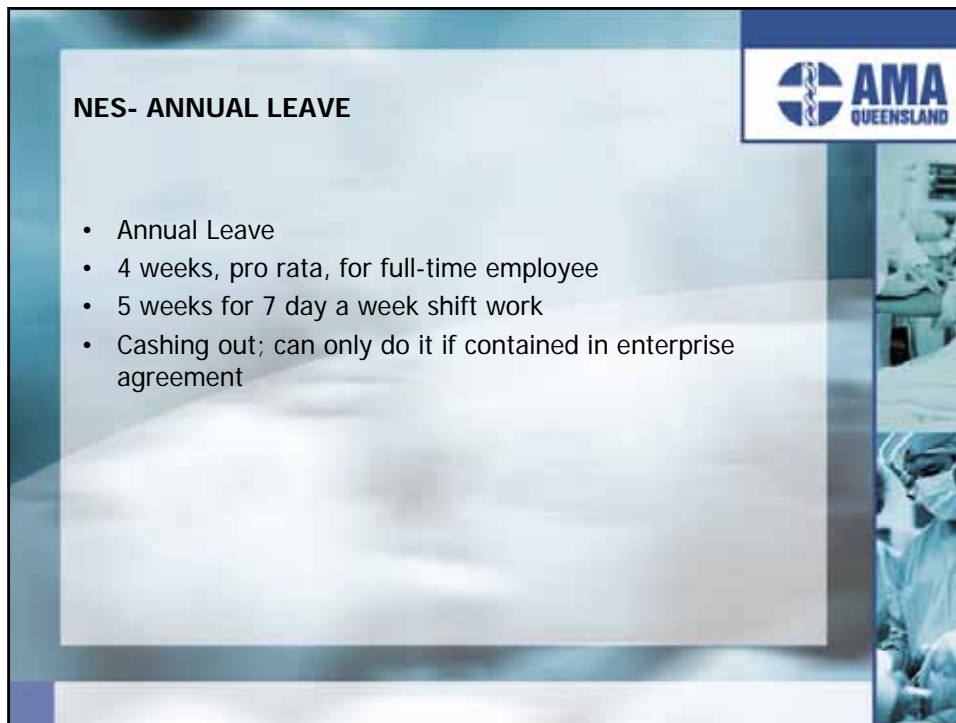
- 10 National Employment Standards
- Commences 1 January 2010
- Applies to all National System Employees
- NES override any instrument that is less favorable

•38 hours per week	•Long Service Leave
•Annual leave	•Right to request flexible working arrangements
•Unpaid Parental Leave	•Public Holidays
•Community Service Leave	•Notice of Termination Pay and Redundancy Pay
•Personal, carer's and compassionate leave	•Fair Work Info Statement

**NES-MAXIMIM WEEKLY HOURS**



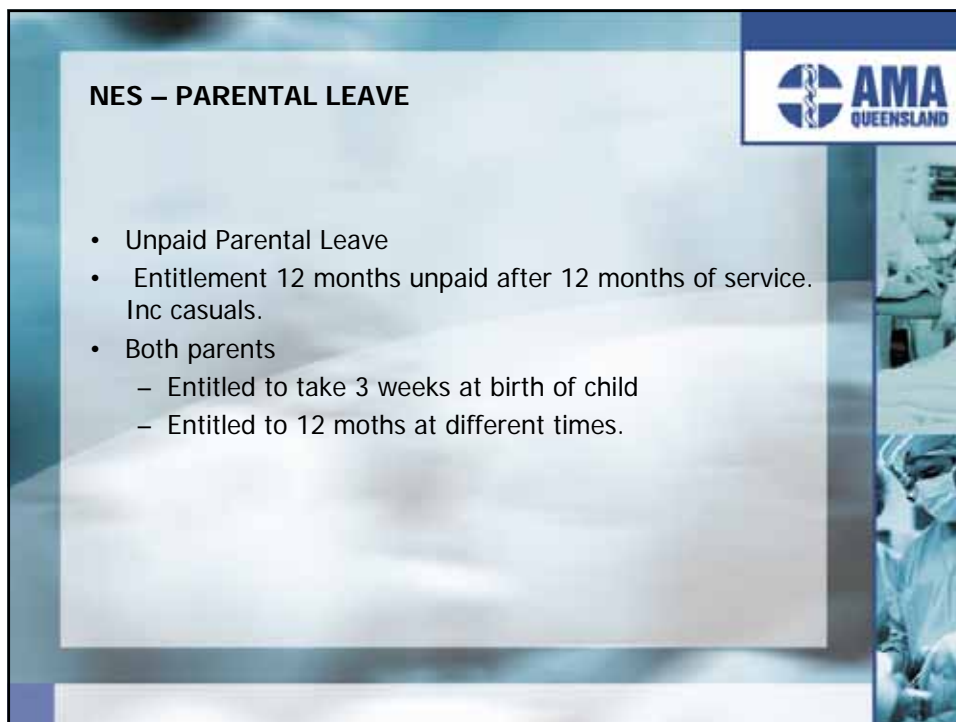
- 38 Hours a week plus reasonable additional hours
- Employee has the right to refuse
- In determining if additional hours are reasonable list of factors which include but are not limited to;
  - Risk to health and safety
  - Employees personal circumstances – family responsibilities



**NES- ANNUAL LEAVE**

- Annual Leave
- 4 weeks, pro rata, for full-time employee
- 5 weeks for 7 day a week shift work
- Cashing out; can only do it if contained in enterprise agreement

The slide features a background image of a medical professional in a clinical setting. The AMA Queensland logo is positioned in the top right corner of the slide area.



**NES - PARENTAL LEAVE**

- Unpaid Parental Leave
- Entitlement 12 months unpaid after 12 months of service. Inc casuals.
- Both parents
  - Entitled to take 3 weeks at birth of child
  - Entitled to 12 months at different times.

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**NES – COMMUNITY SERVICE LEAVE**

- Community Service Leave
- SES
- Volunteer work
- Jury service
- Payment for first 10 days of absence

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The slide features a background image of a person in a white lab coat and mask, likely a healthcare professional, working in a clinical setting. The AMA Queensland logo is positioned in the top right corner.

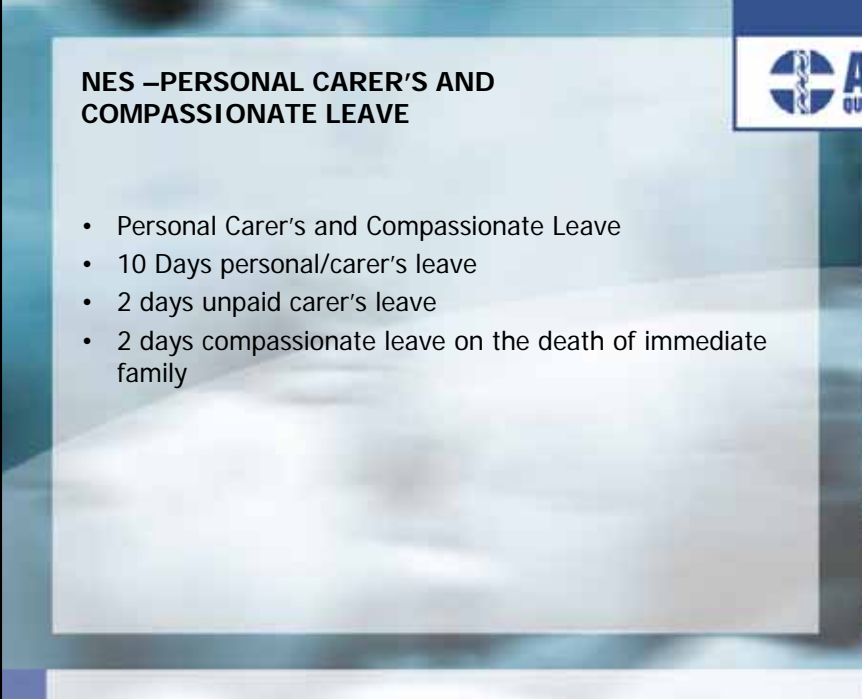



**NES – LONG SERVICE LEAVE**

- Long Service Leave
- State coverage

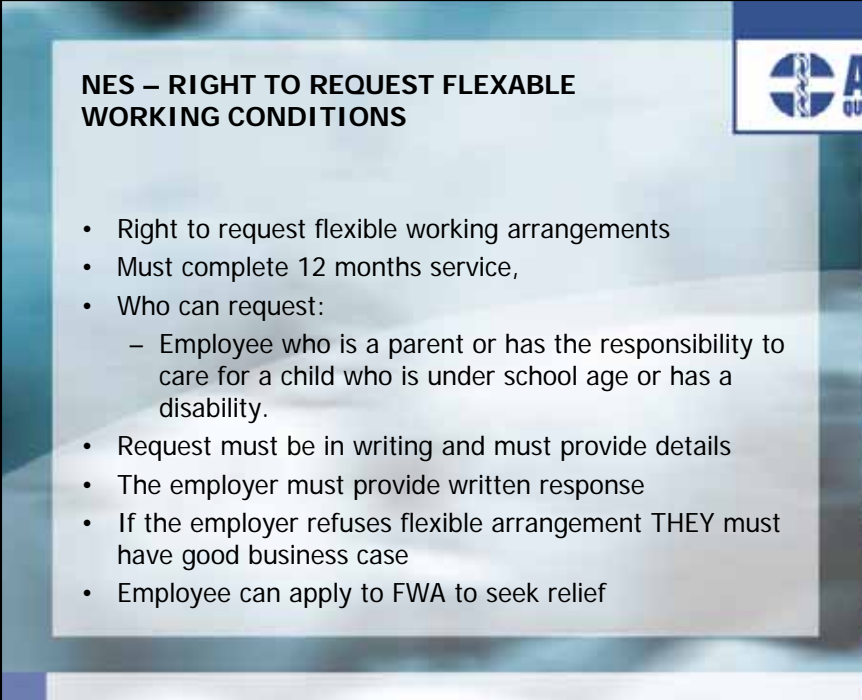

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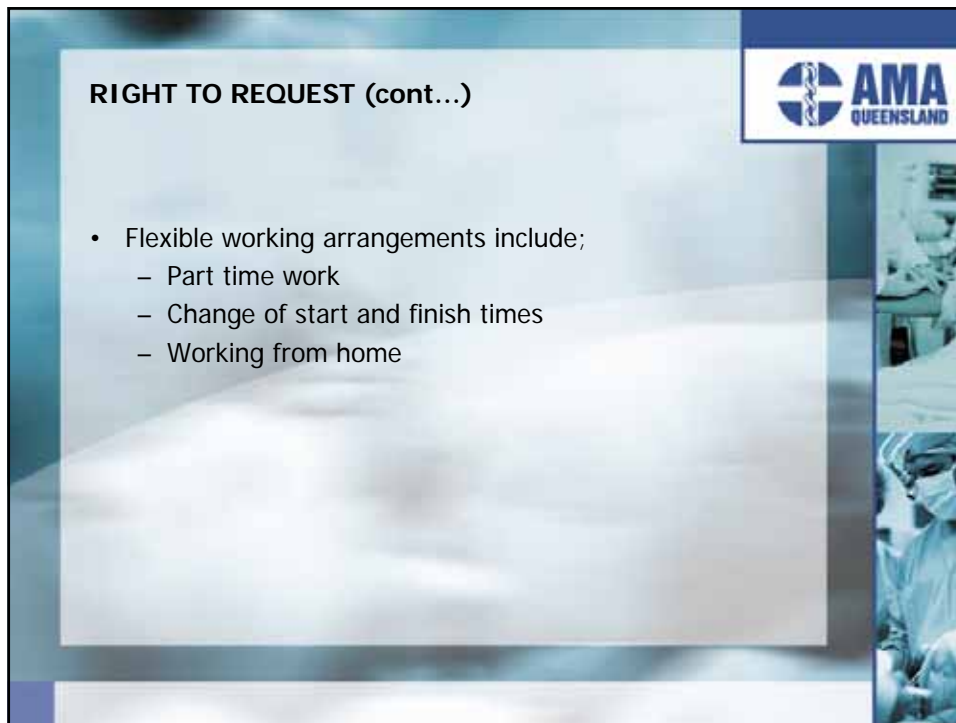
### NES –PERSONAL CARER'S AND COMPASSIONATE LEAVE

- Personal Carer's and Compassionate Leave
- 10 Days personal/carer's leave
- 2 days unpaid carer's leave
- 2 days compassionate leave on the death of immediate family



### NES – RIGHT TO REQUEST FLEXIBLE WORKING CONDITIONS

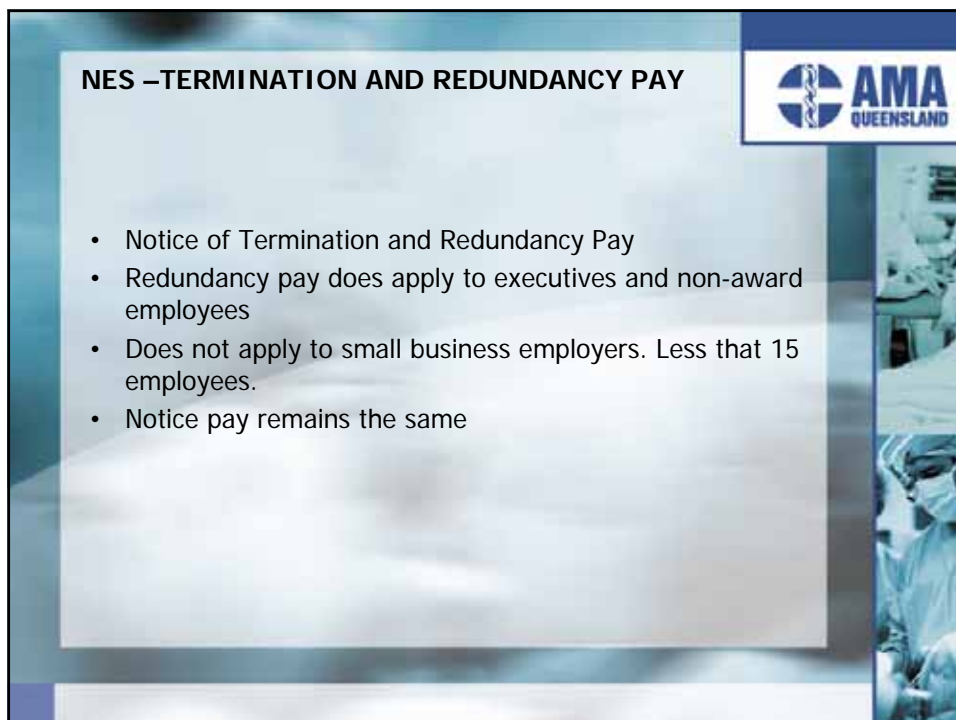
- Right to request flexible working arrangements
- Must complete 12 months service,
- Who can request:
  - Employee who is a parent or has the responsibility to care for a child who is under school age or has a disability.
- Request must be in writing and must provide details
- The employer must provide written response
- If the employer refuses flexible arrangement THEY must have good business case
- Employee can apply to FWA to seek relief



**RIGHT TO REQUEST (cont...)**

- Flexible working arrangements include;
  - Part time work
  - Change of start and finish times
  - Working from home

The slide features a background image of a hospital bed with white linens. In the top right corner, there is a logo for AMA QUEENSLAND, which consists of a blue circle with a white caduceus symbol and the text 'AMA QUEENSLAND' to its right. A vertical strip on the right side of the slide shows a person in a white surgical gown and mask.



**NES –TERMINATION AND REDUNDANCY PAY**

- Notice of Termination and Redundancy Pay
- Redundancy pay does apply to executives and non-award employees
- Does not apply to small business employers. Less that 15 employees.
- Notice pay remains the same

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**NES – FAIR WORK INFORMATION STATEMENT**


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- Fair work Information Sheet will be developed by the Fair work ombudsman
- The employer must give to all new employees as soon as practical after they commence

**AWARD MODERNISATION**



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- Completely New awards
- Single system – removed state differences
- Based on NES
- Reviewed every 4 years
- Collective agreements will override Awards




### AWARD FLEXABILITY

- Built into each award is an “Award Flexability Clause” which entitles you to come to an arrangement with an employee that is more favorable than the Award on:
  - Arrangements on when work is performed
  - Overtime rates
  - Penalty rates
  - Allowances
  - Leave loading



### CASUAL LOADING

**25%**



**AWARD MODERNISATION - COVERAGE**




- Excludes traditionally award free employees (managers)
- Excludes employees who earn over \$100,000.
- There must be a written undertaking to guarantee annual earnings of \$100,000 and:

**AWARDS THAT APPLY TO MEDICAL PRACTICES**




- Clerks Private Sector Award 2010
- Nurses Awards 2010
- Medical Practitioners Award 2010
- Health Professionals and Support Services Award 2010




### TERMS INCLUDED IN MODERN AWARDS


- Superannuation
- Minimum wage
- Overtime rates
- Penalty rates
- Agreement for when work is performed
- Procedures for dispute resolution
- Employment status
- Allowances
- Leave and leave arrangements
- Annualised wage arrangements



### UNFAIR DISMISSAL



- If termination was “harsh unjust or unreasonable”,
- 6 month minimum employment period for business with over 15 employees (*probation period*);
- Less than 15 employees a 12 months minimum employment period applies (*probation period*) and must comply with the Small Business Fair Dismissal Code (Checklist).
- Exemption:
  - Genuine redundancy, but not if employee could have been reasonable redeployed; or
  - Breach of consultation requirements in instrument.
- Other Exemption- expiry of contract for specified period.
- Employee has 14 days to lodge a claim
- FWA to hold informal conference conciliation






## WORKPLACE RIGHTS AND ADVERSE ACTION PROTECTION


- Adverse Action – (expansion and new term for unlawful termination)
- Includes Discriminatory reasons
- Applies in pre-employment
- Dismissal for temporary absence
- Sham contracting



## TRANSFER OF BUSINESS



- Applies to outsourcing and insourcing
- Applies where an employee changes employer and;
  - The work the employee does is the same or substantially similar
  - There is a particular connection between the old and new employer
- Old employers instruments will continue to apply indefinitely.
- Service will be honoured for the purposes of parental leave, carer's leave and the right to request flexible work arrangements.
- Annual leave and redundancy provisions, the new employer can choose whether to recognise service.






### WHERE ARE WE NOW? SUMMARY

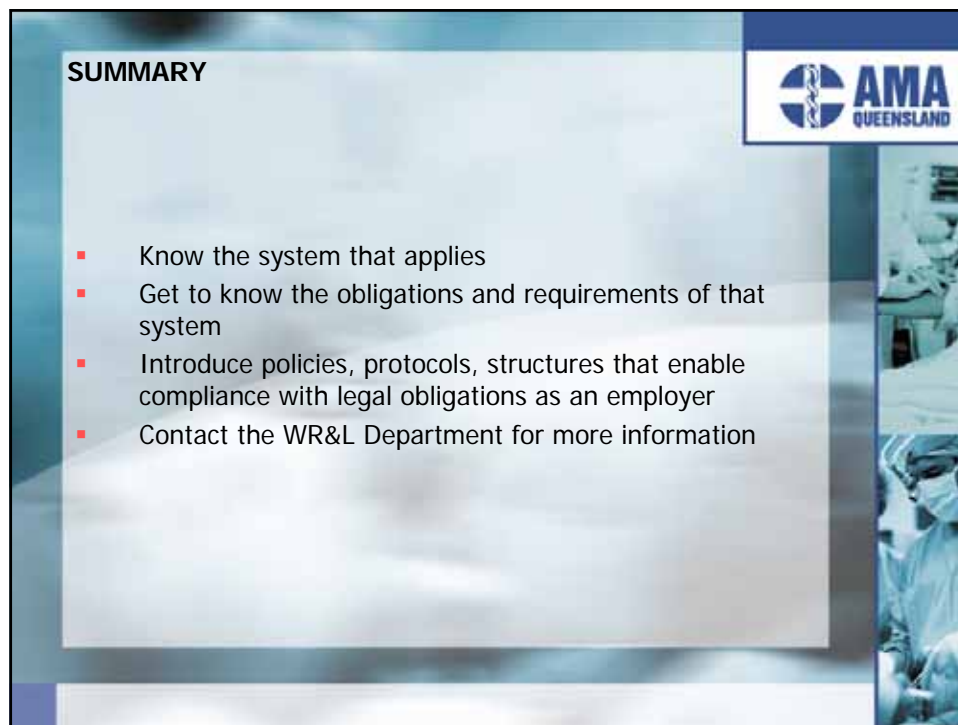
- Still largely under “WorkChoices”
- That will change on 1 July 2009
- No AWA’s, but ITEA’s,
  - NAPSAs (Notional Agreements Preserving a State Award) will remain in operation until 31 December 2009 or a later date prescribed by regulation.



### WHAT THE FUTURE HOLDS

- Labor seeks to expand the current system to include unincorporated employers, sole traders and partnerships
- For this to occur, State Government would have to hand over powers.
- However the State public sector will continue to govern their employees under the State industrial relations system?
- Possible ramifications for salaried doctors employed by Queensland Health (relevant to VMO’s).





**SUMMARY**

- Know the system that applies
- Get to know the obligations and requirements of that system
- Introduce policies, protocols, structures that enable compliance with legal obligations as an employer
- Contact the WR&L Department for more information