

[[Previous](#)] [[Major News - Federal Politics - Workplace Issues](#)] [[Next](#)]

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Workplace changes may spark legal backlash

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The federal government is under fire because its **workplace** changes effectively freeze hundreds of unfair contract cases being heard in state **industrial** tribunals in NSW and Queensland.

The government has been warned that freezing the cases could spark compensation claims by thwarted litigants and that trying to fix the problems by issuing regulations could be legally flawed and subject to challenges in the courts.

But a spokesman for **Workplace** Relations Minister **Kevin Andrews** said the government would address the concerns in regulations accompanying the Work Choices Act, which will be released early next year.

The fate of "part-heard cases is something that is under consideration", the spokesman said.

The problems flow from the government relying on the constitution's power over corporations to "cover the field" and thereby override state **industrial** laws.

Sydney barrister Shane Prince has argued that the Work Choices Act probably would invalidate sections of laws in some states which allow state **industrial** tribunals to void or vary contracts if they were unfair.

Mr Prince said the legislation probably would preclude state **industrial** tribunals from exercising any power in such cases, effectively freezing hundreds of unfair contract cases in NSW and many more cases involving alleged underpayment of wages and statutory entitlements.

"Potentially, people who have been underpaid under state awards for many years will have no right of action to cover to seek redress," he said.

Mr Prince argued in a submission to the Senate inquiry into the Work Choice legislation that stopping such cases from continuing would be a

"serious injustice".

"This means that people in the middle of lengthy and costly litigation will immediately have their rights removed without any recourse," Mr Prince said.

"The practical effects will be devastating on individuals and leave them with devastating legal costs." Australian Democrats **industrial** relations spokesman **Andrew Murray** picked up Mr Prince's arguments and unsuccessfully tried to amend the Work Choices legislation to allow existing cases to be concluded.

Senator Murray argued that the legislation would otherwise rob people already before state tribunals of their existing legal rights.

"That is an extremely sensitive and important issue and I really do believe that we need to be very careful if that is the effect of the legislation," he told the Senate.

Both Mr Prince and Senator Murray doubt that the problem can be resolved through the use of regulations, arguing that the courts consider the intent of the legislation as approved by the parliament rather than regulations which are produced by the executive at a later date.

The NSW government has directed the state **industrial** commission to be available to hear cases in January. The new federal laws will mostly come into effect from March.

The government also wants to prevent trade unions running wage cases in state **industrial** tribunals. It is setting up a new body, the Fair Pay Commission, to set minimum pay and conditions and argues that it is undesirable for other tribunals to take the lead in such cases.

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Section: News

[[Previous](#)] [[Major News - Federal Politics - Workplace Issues](#)] [[Next](#)]

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