

Workplace Relations Act 1996

**A summary of the key changes as at 27
March 2006**

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PARTNERS IN EMPLOYEE RELATIONS

ACN 102 970 169

- Coverage
- Transitional Arrangements
- Workplace Agreements
- Right of Entry
- Industrial Action
- Termination of Employment
- Where to from here?

Coverage

- Employer
 - must be incorporated; and
 - trading or financial activities must be 'significant' or 'substantiated'
- Company under the Corporations Act
- Incorporated Association
- State Public Service, sole traders, partnerships etc not covered
- Local government bodies, charities, clubs, educational institutions etc may need clarification

State Legislation

- Superannuation
- Workers' Compensation
- Workplace Health & Safety
- Long Service Leave

Transitional Arrangements

Transitional Arrangements

Transition Period

- 5 years transitional period for non-constitutional corporations currently under the Federal system
- 3 years for constitutional corporations transferring from the State to Federal system

Transitional Arrangements

Australian Fair Pay and Conditions Standard (AFPCS)

1. Basic rate of pay and casual loading (20%)

- \$12.75 per hour FMW standard
- adjusted by AFPC
- 20% default

2. Annual leave

- 20 days per annum
- cash-out up to 2 weeks
- extra week for shift workers

3. Parental leave

- 12 months unpaid

Transitional Arrangements

Australian Fair Pay and Conditions Standard (AFPCS)

4. Personal/Carer's Leave

- 10 days paid per annum
- 2 days unpaid leave for emergencies +
- 2 days paid compassionate leave

5. Maximum 38 ordinary hours per week

- averaged over 12 months

Transitional Arrangements

Awards

- Awards are to undergo a rationalisation and simplification by 'ART'
- Not Allowable Award Matters will be void/unenforceable
- Only Allowable Matters and Preserved Award will apply

Transitional Arrangements

Allowable Award Matters

- Awards may only include terms about the following:
 - ordinary hours of work
 - incentive based payments and bonuses
 - annual leave loadings
 - ceremonial leave
 - leave to seek alternative employment after notice
 - state public holidays
 - monetary allowances for:
 - expenses
 - additional responsibilities
 - disabilities association with particular work

Transitional Arrangements

Allowable Award Matters

- overtime and shift work
- penalties
- redundancy pay (employers employing over 15 employees only)
- stand-down provisions
- dispute settling procedures (model only)
- type of employment

Transitional Arrangements

Preserved Award Terms:

- annual leave
 - personal/carer's leave
 - parental leave
 - long service leave
 - notice of termination
 - jury service
 - superannuation (until 30.06.08)
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- Preserved term continues to apply if bound by the award immediately before commencement.
 - Can be negotiated away by express term in agreement

Transitional Arrangements

Not Allowable Award Matters

- Automatic union rights of representation in disputes
- Conversion from casual to permanent employment
- Ratios
- Prohibitions on employing employees in a particular type of employment
- Maximum or minimum hours for part-time
- Restrictions on training arrangements
- Restrictions on use of independent contractors or labour hire workers
- Union picnic days
- Dispute resolution training leave
- Trade union training leave

Transitional Arrangements

Agreements

- Current agreement with any Prohibited Content unenforceable
- AFPCS does not apply
- Ceases at expiry or when replaced

Workplace Agreements

Workplace Agreements

Six types

- 1) Australian Workplace Agreements (AWA)
- 2) Employee Collective Agreements
- 3) Union Collective Agreements
- 4) Union Greenfield Agreements
- 5) Employer Greenfield Agreements
- 6) Multiple Business Agreements

Workplace Agreements

Bargaining Agents

- Employee can request Bargaining Agent to represent them in meeting and conferring with the employer
- Employer must give Bargaining Agent reasonable opportunity to meet and confer
 - only 7 days before agreement is approved
- Appointment must be in writing
- Must not refuse to recognise the Bargaining Agent

Workplace Agreements

Awards and Agreements

- An Award has no effect in relation to an employee while a workplace agreement operates

Content

- Required content
 - terms that meet the AFPCS
 - protected Award Conditions
 - nominal expiry date (5 years)
 - dispute settlement procedures
- Prohibited Content

Workplace Agreements

Content

Protected Award Conditions

- rest breaks
- incentive based payments and bonuses
- annual leave loadings
- public holidays
- monetary allowances for:
 - expenses
 - responsibilities or skills not taken into account in rates of pay
 - disabilities associated with tasks at particular locations or etc
- overtime or shift work loadings
- penalty rates
- outworkers
- any other matter specified in regulations

Workplace Agreements

Prohibited Content

- payroll deductions for union fees
- trade union training leave
- paid union meetings
- renegotiation of workplace agreements
- rights of a union or employer representative to participate in a dispute procedures
- right of entry
- restrictions on engagement of independent contractors/labour hire workers
- foregoing of annual leave

Workplace Agreements

Prohibited Content

- provision of employee information to a union unless required by law
- terms that encourage or discourage union membership
- term allowing for industrial action
- term providing a remedy for unfair dismissal
- term that prohibits disclosing terms of a workplace agreement
- term restricting an AWA
- discriminatory terms
- matters that do **not** pertain to the employment relationship

Workplace Agreements

Prohibited Content

- Employer should not recklessly lodge a workplace agreement containing prohibited content
- Personal cannot recklessly seek to include prohibited content during negotiations for a workplace agreement
- Prohibited content is void and unenforceable

Workplace Agreements

Pre-lodgement

- 1) Employees must have ready access to agreement 7 days before approval (previously 14 days).
- 2) Employees may waive the 7 day access in writing. Waiver must be signed by **all** employees.
- 3) Must provide an Information Statement at least 7 days before approval.

Workplace Agreements

Approval

- AWA
 - approved when signed, dated and witnessed by employer and employee
- Collective agreement
 - approved when majority of employees who vote approve it; or
 - a majority of employees decide that they want to approve it.

Workplace Agreements

Lodgement

- No more Commission certification hearings
- Now only **lodged** at Office of Employment Advocate (OEA)
- Must be lodged within 14 days of approval
- Employer responsible for lodging documentation - simple declaration and annexed to the agreement
- OEA not required to determine whether or not agreement meets requirements of the Act
- OEA will issue receipt and employer must provide copy to employees

Workplace Agreements

Operation

- Agreement comes into operation on day it is lodged
- If an agreement has been terminated or replaced by another agreement it can never apply to that employee again
- Only 1 agreement can have affect at any particular time to a particular employee
- A collective agreement has no effect while an AWA operates

Workplace Agreements

Termination

- Unilateral termination of an agreement
- at least 90 days after expiry the:
 - employer;
 - majority of employees;
 - bargaining agent; or
 - union
- may terminate the workplace agreement.

Right of Entry

Rights of Union Official

- Right of entry occurs in 3 circumstances
 1. To investigate a suspected breach
 2. Workplace Health & Safety Issues
 3. To hold discussions with union members/potential union members
- Must obtain a permit from the Industrial Registrar
- Must pass the 'fit and proper' person test

1) To Investigate Breach

- Breach must relate to work being carried out
- Suspicion must be on reasonable grounds
- Can interview members, or those eligible to be members and/or inspect machinery etc.
- Employer to provide access to records relevant to suspected breach
- Work hours only
- Must provide written entry notice at least 24 hours but not more than 14 days before entry

2) Workplace Health & Safety Issues

- Must provide 24 hours written notice to inspect records
- Must provide permit and adhere to workplace health & safety requests

3) To Hold Discussions

- Can enter to hold discussions with members/those eligible to be members
- Employees must wish to participate
- Must be covered by a relevant award or **collective** agreement
- May only enter during work hours and hold discussions during meal or other breaks
- Same limitations and notice requirements as breach

Limitations

- Union official not entitled to remain on premises if:
 - fails to produce their permit
 - fails to comply with reasonable workplace health & safety request
 - the official is asked to conduct interviews in a particular room or area and/or to take a particular route to that room and the official refuses to comply

Industrial Action

- **Bargaining Period:**
 - notice issued in writing by any party with 7 days notice
 - requirement for parties to genuinely try to reach agreement
 - AIRC will suspend bargaining period if action threatens significant harm to a third party:
 - ongoing viability of the business
 - supply of goods and services
 - contractual obligations
 - economic loss

Protected Industrial Action

- Only in bargaining period AND after expiry of agreement
- Union must make application to AIRC (2 days)
- Then must conduct a Secret Ballot:
 - must run for 2 days at least
 - members only
 - conducted by authorised ballot agent
- Written notice of 3 days to take the action
- Unlawful to pay employees or for employees to seek pay for taking protected industrial action

Time and Wages Records

Time and Wages Records

Time and Wages Records

Detailed and uniform records including:

- relevant industrial instrument
- hourly rate of pay, allowances, penalties and pay period
- normal hours and any additional hours required or requested to work
- accrual and balances for all leave
- details of superannuation contributions
- details of 'how and who' of terminations of employment

Must issue detailed written payslip within 1 day of pay day

Must retain records for 7 years

No prosecutions until after 26 September 2006

Termination of Employment

**Mother
sacked
by
child
care
centre**

**Bullying the new
battlefield**

**Abattoir
workers have
bone to pick
with employer**

*Romance at risk under new
IR reforms*

Termination of Employment

- Exemption from harsh, unjust or unreasonable termination if:
 - qualifying period of 6 months has not been served;
 - the termination was for 'genuine operational reasons' (ie economic, structural or technical).
- Unfair jurisdiction no longer exists for employer's with 100 or less employees
- If application made on one of those grounds motion to dismiss can be made before the conciliation
- Unlawful termination still applies
- Severance payments for employers will less than 15 employees do not apply

Termination of Employment

- Usual exclusions
 - within 3 month probationary period
 - short-term casual
 - contract for specific period or task
 - non-award and earning more than \$94,900 etc

Where to from here?

Where to from here?

- Audit existing arrangements:
 - industrial instruments
 - employment contracts
 - policies and procedures
 - personnel and time/wages records/payslips
 - unwritten practice and procedures
 - unregistered agreements
- Supervisor/Manager Education
- Staff Communication
- Consider ER Strategy for future arrangements and agreements

QUESTIONS?