

Workplace Relations in 2008

Presented by

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Industrial Relations Society of Queensland
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Changes to Federal Laws

- *Workplace Relations (Transition to Forward with Fairness) Act 2008* (Cth) commenced 28 March 2008

Workplace Relations (Transition to Forward with Fairness) Act 2008 (Cth)

- AWAs
 - Employers and employees can no longer make or vary AWAs
 - AWAs made prior to commencement of the Transition Act will continue in force after their nominal expiry date until they are terminated or replaced with a new agreement

Workplace Relations (Transition to Forward with Fairness) Act 2008 (Cth)

- Individual Transitory Employment Agreements ("ITEAs")
 - Can be made until December 2009
 - Can be offered only by employers who had at least one employee employed under an AWA
 - Can be offered only to:
 - New employees
 - Existing employees already covered by AWAs
 - Nominal expiry date must be no later than 31 December 2009

Workplace Relations (Transition to Forward with Fairness) Act 2008 (Cth)

- No-Disadvantage Test (“NDT”)
 - Replaced the Fairness Test
 - Will be used to assess all workplace agreements made or varied after commencement of Transition Act
 - Requires agreements to be assessed against the whole of the applicable or designated award

National Employment Standards

- 10 minimum NES released
- To be included in substantive legislation to be introduced later this year
- Expected NES will take effect on 1 January 2010
- Will apply to all employees in the Federal system

National Employment Standards

- Maximum weekly hours
- Flexible working arrangements
- Parental leave
- Annual leave
- Personal/carer's leave & compassionate leave
- Community service leave
- Long service leave
- Public holidays
- Notice of termination & redundancy pay
- Fair Work Information Statement

Federal Award Modernisation

- AIRC conducting award modernisation process pursuant to request from Minister
- Priority industries and occupations have been determined
- Submissions and drafts of modern awards and other proposals received
- Further consultation following release of an exposure draft modern award for each priority industry and occupation

New Federal Minimum Wage

- AFPC increased the Federal Minimum Wage and all ACPS by \$21.66 per week (\$0.57 per hour)
- New Federal Minimum Wage: \$543.78 per week
- To take effect from first pay period from 1 October 2008
- Will affect all employers and employees within the Federal system

Federal Dismissal Update

- From 1 July 2008:
 - Salary cap for purposes of s. 638(6)(b) and (7)(b) WRA exclusion from dismissal laws is \$106,400 per annum (previously \$101,300)
 - Limit on compensation in lieu of reinstatement of non-award employees is \$53,200 (previously \$50,700)

Federal Case Law

- Shire Council not a “trading or financial corporation”: unable to lodge a workplace agreement under the *Workplace Relations Act 1996*
 - *The Australian Workers’ Union of Employees, Queensland v Etheridge Shire Council* [2008] FCA 1268

Federal Case Law

- Multiple fines for breaches of WRA by employer including duress re AWAs
 - *Mornington Inn Pty Ltd v Jordan* [2008] FCAFC 70
- Interlocutory injunctions for breach of Freedom of Association provisions
 - *Police Federation of Australia & Anor v Nixon & State of Victoria* [2008] FCA 467
- Breach of right of entry provisions where unreasonable request
 - *CFMEU v BGC (Australia) Pty Ltd* [2008] AIRC 279
- Prosecution by Workplace Ombudsman of pre-WorkChoices breaches
 - *Smith v Zinifex Australia* [2008] FCA 532

Queensland State Workplace Relations

- *State Wage Case 2008 – 7 August 2008*
 - QIRC increased the Qld Minimum Wage by \$23.60 per week
 - New Qld Minimum Wage: \$552.00 per week
 - To take effect from first pay period from 1 September 2008

Amendments to Queensland Legislation and Rules

- *Local Government Act 1993*
- *Industrial Relations Act 1999*
- *Industrial Relations Amendment Regulation (No.1) 2007*
- *Industrial Relations (Tribunals) Amendment Rule (No.1) 2007*

Queensland Case Law

- Declaration can be sought under s.274A *Industrial Relations Act 1999* in relation to a claim for outstanding wages notwithstanding that claim for wages can only be brought in the Industrial Magistrates Court
 - *Robert James Cunningham and ors trading as, or who have traded as, Flower & Hart (A Firm) and William Hamilton Hart, Industrial Court of Queensland, 1 August 2008*
- The Industrial Court of Queensland had no power to entertain an Application for Prerogative Relief in relation to a constitutional corporation
 - *Blemrose Pty Ltd and Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees and Stateguard Group Pty Ltd and Queensland Industrial Relations Commission and Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees, Industrial Court of Queensland, 31 July 2008*

Common law

- Damages for breach of implied duty of mutual trust and confidence and duty to provide a safe system of work
 - *McDonald v State of South Australia*
[2008] SASC 134

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