WorkChoices: The Facts

WAGE SETTING NO LONGER HAS REGARD TO FAIRNESS

The Australian Industrial Relations Commission will have no role in setting wages. It will be replaced by a 'Fair Pay Commission' whose major focus will only be ensuring the economy is competitive, rather than meeting the dual needs of a strong economy and wage fairness.

The Fair Pay Commission (FPC) will set and adjust minimum rates of pay, including casual loadings. It will also set classification wages in awards.

Unlike the AIRC, the FPC won't have to maintain a fair safety net of minimum wages and conditions, having regard to living standards in the community. While it will set the safety net for low paid workers, it wont have to have regard to the needs of the low paid. The economic criteria it must consider excludes building productive workplaces and focuses only on competitiveness.

There will be a focus on ensuring junior workers, trainees and workers with disabilities are competitive in the labour market. This is a euphemism substituting welfare payments with low wages.

Unlike the AIRC, Fair Pay Commission members will be fixed term appointments, who can be removed it the government disagrees with their determinations.

AWARDS TO BE CUT BACK, AND FROZEN IN TIME

Federal awards will become industry wide, common rule awards. State awards are effectively abolished as awards.

Awards will be further stripped. Matters to be excluded are ♦♦skill based career paths, ♦♦ restrictions of trainees/apprentices, ♦♦enterprise flexibility provisions, ♦♦independent contractors, ♦♦labour hire workers, ♦♦union picnic days, ♦♦tallies and ♦♦trade union training leave.

Annual leave, personal leave, parental leave and ordinary time hours of work will be removed from awards, unless the award contains superior provisions, in which case the superior provisions apply and are retained.

Other matters will be pared back ♦♦All award conditions must be basic minimum entitlements ♦♦Allowances must relate to actual expenses ♦♦ Part time provisions must be in all awards ♦♦ Facilitative provisions that require majority agreement are unallowable ♦♦ Only public holidays declared by a State or Territory government, not industry holidays/union picnic days ♦♦Redundancy pay is only allowable in the event of genuine redundancy, which presumably means changes to redundancy will exclude redundancy where alternative employment (even at lower pay) is offered ♦♦outworkers conditions retained, but pay to be removed from awards and set by FPC.

Jury Service, long service leave, notice and superannuation are not allowable, and no new awards can contain them. They will remain in awards for current and new employees (superannuation only until 2008). Existing and new employees who are award-reliant will continue to have access to these provisions,

and the award review task force will ensure rationalised industry awards retain these for relevant employers.

Classification rates, piecework rates and casual loadings will be rationalised and there will be fewer rates.

NEW MINIMUM CONDITIONS GUARNATEE IS A CROCK

Agreements will exclude awards, so that awards no longer underpin agreement making.

The only guaranteed minimum conditions that must be in all agreements are annual leave, personal leave, parental leave and ordinary hours. These replace the no disadvantage test.

Annual leave: ♦♦4 weeks, option, exercisable at the initiative of the employee, to cash out 2 weeks ♦♦ 1 additional week for certain shift workers.

Parental leave: ♦♦12 months unpaid leave between the parents.

Personal/carers leave: ♦♦10 days paid leave per year, accumulating for personal sickness, capped at 10 days per annum for caring purposes. ♦♦ Unpaid leave for casuals and those who have exhausted all caring leave. Compassionate leave 2 days paid per occasion of death or serious illness.

Ordinary time: ♦♦38 hour ordinary time, that can be averaged over 12 months ♦♦ Any additional payment for any hours worked in excess of 38 hours will be a matter for awards and agreements ♦♦ The government promises you wont have to work unreasonable additional hours, but workers wont know that they are working extra hours until they have met the annual limit.

The so-called cap on ordinary hours is pure nonsense, because there is no difference between an ordinary hour and an hour that isn't ordinary.

The government is trying to con workers into believing it has added public holidays, rest and meal breaks, incentive based loadings, annual leave loading, penalty rates and overtime rates to the minimum conditions.

These only continue to apply unless if they are not expressly excluded from an agreement. Where they are excluded there is no obligation to otherwise compensate the employee.

BOSS HOLDS ALL THE ACES IN AGREEMENT MAKING

AWAs can be offered at any time, even if a collective agreement is in force. However collective agreements cannot override an AWA.

Bargaining to support unions in the workplace will be banned. The government will be able to stop unions from bargaining around issues it doesn't agree with. Unions that do can be fined up to $33,000.

It will be illegal to bargain for ♦♦trade union training leave ♦♦ paid union meetings ♦♦ a compulsory role for the union in disputes procedures ♦♦ that the next agreement will be a collective agreement ♦♦ that there will be no AWAs offered, to limit the use of contractors ♦♦ to keep unfair dismissal protection.

The Minister can regulate to include more items in the list of banned bargaining matters.

Protected industrial action will require a secret ballot of either the union members or the employees at the workplace. Unions have to pay 20 per cent of the cost of the ballot.

In addition to the existing grounds, action will become unprotected if it is deemed to be **pattern bargaining.**

The AIRC must either suspend or terminate bargaining if any of the grounds are made out. However power to arbitrate is removed unless the bargaining is terminated due to the impact of the act on the safety of the population or the economy.

The Minister can override the role of the AIRC, and declare action is having a detrimental impact on the public safety or the economy. He can issue orders to return to work and cease action, as well as remove protection from industrial action.

Third parties can seek to suspend a bargaining period, as well as seeking cooling off when action remains protected.

Orders to cease unprotected action must be issued within 48 hours of the application being made, and employers can go **straight to court for** injunctions and damages without obtaining a certificate that action is unprotected.

Industrial action is re-defined, and employees ceasing work where there is an imminent safety risk will need evidence to show the fear of risk was genuine.

Employers can opt out of agreements simply by corporate restructuring. New transmission of business rules mean that awards and agreement only bind new employer in respect of transferred employees, and only for 12 months. After 12 months, the workers are covered by the agreement that covers the remainder of the employees, or, if there is no agreement, the five minimum conditions**.**

Couple this with the capacity of the employer, before they employ any workers, to enter into an **employer greenfields agreement** with him or herself, and the recipe for unfairness is complete.

UNIONS EXCLUDED FROM WORKPLACES

Limits on Union Right of entry. In workplaces covered only by AWAs there is no right of entry.

The right to inspect documents limited to union members only, and permit holders must give written particulars of the suspected breach.

Permit holders have to meet a 'fit and proper person' test. The processes for revocation or suspension of permits is easier. In the face of extreme breaches of the permit by an individual, the AIRC can revoke every permit held by the union.

Holders of permit under state OHS laws will have to also hold a federal permit to enter the workplace.

And it's illegal to bargain for a guaranteed role for unions in disputes under collective agreements.

Changes to freedom of association laws will, amongst other things, outlaw discriminating against an employer on the basis of the type of agreements they have with their workforce.

INDEPENDENT UMPIRE A LAME DUCK

The AIRC is effectively stripped of all powers except the power to stop unions taking protected industrial action. It can only arbitrate to settle a dispute if everyone agrees before hand to agree to the decision. Award disputes procedures will be replaced with a new procedure, which does not include arbitration.

The Commission's role will be limited to dealing with issues around industrial action, like issuing orders to lift bans or suspending the bargaining period to remove protection from industrial action.

It will not be able to make orders in the process of negotiating agreements unless all the parties agree to accept the order.

Federal Awards will be effectively frozen, with the AIRC only able to arbitrate to remove ambiguity, discrimination or change the names of the parties

In the few special instances where it can arbitrate, (such as when a bargaining period has been terminated due to the impact of the industrial action on public safety or economy) it must have regard to the Fair Pay Commission's determinations.

UNFAIR DISMISSAL LAWS ARE EVEN LESS FAIR

Unfair dismissal laws are removed from all employees in workplaces employing less than 100 employees at the time of the dismissal. To be counted in the 100, the employee must be permanent or a long term, regular casual.

This means that permanent employees in companies with more than 100 employees can lose their protection too.

No seasonal worker will be able to make a claim, no matter how big his or her employer.

Employees who are dismissed on grounds of redundancy will not be able to claim, no matter what size their employer. This means you wont be able to challenge the dismissal by arguing the redundancy is bogus, or by arguing that the employer was unfair in selecting who should be made redundant.

A UNITARY SYSTEM

State systems are overridden for corporations, but the transitional rules will create confusion for employees and employers. All constitutional corporations covered by state awards and agreements will automatically be covered by the federal system.

State agreements and state awards will become and be treated as transitional federal agreements. The rules relating to federal agreements will be applied, i.e. they can only contain matters that pertain to the employment relationship, and cannot contain banned matters.

Non-constitutional corporations in the federal system can remain covered by federal awards and agreements for up to five years, with their awards and agreements continuing. After than time they will revert to the state systems.

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