

## Stage 4 modern awards published

**The Australian Industrial Relations Commission has completed the monumental task of creating modern awards to regulate minimum terms and conditions of employment for Australia's workforce. The 122 modern awards will complement the National Employment Standards ("NES") of the Fair Work Act.**

The modern awards replace approximately 1560 federal and state awards on 1 January 2010.

The modern awards made on 4 December are as follows:

- Aboriginal Community Controlled Health Services Award 2010
- Ambulance and Patient Transport Industry Award 2010
- Animal Care and Veterinary Services Award 2010
- Aquaculture Industry Award 2010
- Car Parking Award 2010
- Children's Services Award 2010
- Corrections and Detention (Private Sector) Award 2010
- Dry Cleaning and Laundry Industry Award 2010
- Educational Services (Teachers) Award 2010 – variation only
- Fire Fighting Industry Award 2010
- Fitness Industry Award 2010
- Funeral Industry Award 2010
- Gardening and Landscaping Services Award 2010
- Labour Market Assistance Industry Award 2010
- Legal Services Award 2010
- Local Government Industry Award 2010
- Mannequins and Models Award 2010
- Miscellaneous Award 2010
- Pest Control Industry Award 2010

- Professional Diving Industry (Industrial) Award 2010
- Professional Diving Industry (Recreational) Award 2010
- Real Estate Industry Award 2010
- Restaurant Industry Award 2010
- Salt Industry Award 2010
- Seagoing Industry Award 2010
- Social, Community, Home Care and Disability Services Industry Award 2010
- State Government Agencies Administration Award 2010
- Supported Employment Services Award 2010
- Travelling Shows Award 2010
- Water Industry Award 2010
- National Training Wage Schedule

As reported in the October edition, the modern awards and the NES constitute the final act to dismantle *Work Choices*. Although individual and collective workplace agreements made over the last few years will continue in force, the minimum standards underpinning all employment arrangements will be the NES and the rates of pay in modern awards.

## National minimum conditions

The modern awards prescribe minimum conditions of employment applicable on an industry or occupational basis. Employers must carefully read the coverage clause of an award to determine its application. Note that occupational awards such as the Clerks – Private Sector Award will only apply to employers where an industry award does not provide a clerical job classification.

## Transitional provisions

Not all of the terms of the modern awards commence on 1 January 2010. Where there is a difference (either higher or lower) from current terms in the minimum wages, casual and part-time loadings, evening, weekend and public holiday penalties, industry and shift allowances, then those conditions affecting pay will be phased in over five (5) years commencing 1 July 2010.

This means that employers should continue to apply the minimum rates, loadings, allowance and penalties that they currently use until 1 July next year.

## Interaction between NES and modern awards and enterprise agreements

The NES prevails over the terms of a modern award or enterprise agreement.

A modern award or enterprise agreement must not exclude the NES. A modern award will contain terms that are ancillary or incidental to the operation of an NES entitlement. In such circumstances, for example, in the application of annual leave, the modern award and NES must be read together.

Under the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 ("the Transitional Act") if a collective agreement, pre-reform certified agreement, AWA, ITEA, or Preserved State Agreement is operating on 30 June 2009 it continues to apply as an "*agreement-based transitional instrument*". These instruments will continue in force until terminated or replaced by an enterprise agreement made under the Fair Work Act.

Employees employed under an agreement-based transitional instrument will also be entitled to the minimum rate prescribed under an applicable modern award. Further, a term of an agreement-based transitional instrument has no effect to the extent that it is detrimental to an employee when compared to an entitlement of the employee under the NES.

The interaction with pre-Fair Work agreements is quite complex and it will be necessary to seek advice on each and every particular agreement based transitional instrument to assess whether there is detriment or not.

A modern award does not apply to an employee when an enterprise agreement applies to them in their particular employment.

### Award flexibility agreements

Modern awards contain an '*Award flexibility*' clause that allows individual employers and employees to agree to vary particular parts of the award to meet the genuine needs of the employer and an individual employee.

The award terms which may be varied in a flexibility clause are limited to:

- Arrangements for when work is performed;

- Overtime rates;
- Penalty rates;
- Allowances; and
- Annual leave loading.

A contract containing a flexibility clause may not be offered as a condition of employment i.e. the offer of employment cannot be made contingent upon the acceptance of a flexibility agreement. Such agreements must also be in writing, ensure the employee is better off overall as compared to the award and may be terminated with four weeks' notice.

## Getting ready

I simply reiterate the advice provided in the October edition of Employee Relations MONTHLY. The changes commencing 1 January 2010 place an enormous burden on employers to adjust the way they manage employment relationships. There is insufficient space to explain every action that employers should undertake prior to 1 January 2010. However, the following are a good start:

- Read the NES thoroughly. It will underpin every employment relationship.
- Identify the [modern award\(s\)](#) that will apply to your employees. These, together with the NES are the key statutory instruments regulating minimum employment conditions.
- Review all of your employment letters, contracts, policies and procedures to assess where they need to be amended to comply with the General Protections, Fair dismissal system, modern award or NES (See the July and August editions of Employee Relations MONTHLY for information on the General Protections and the Fair dismissal system). Create new policies if you don't have any in place e.g. Award flexibility.
- Quantify the impact of the modern award minimum rates on your business. Remember the current rates continue to apply until July 2010.
- Inform employees of the new policies and procedures, the NES and the application of the modern award or awards.
- Download and retain a copy of the [Fair Work Information Statement](#).
- Get assistance from [Maguire Consulting](#) wherever you are unsure or would prefer us to guide you.

## **AROUND THE STATES - What's making news in state jurisdictions?**

### **New South Wales**

#### **Referral of powers**

In an historic move, the NSW Government has decided that all NSW employers currently covered by the NSW industrial relations system (mainly sole traders and partnerships) will move into the national scheme from 1 January 2010.

### **Victoria**

#### **Driving and use of mobile devices**

Employees or contractors who use mobile phones or GPS devices in their vehicles, must comply with new road safety rules on using these devices while driving. Under the new rules, drivers will be prohibited from using a mobile phone or GPS while driving, unless the device is in a commercially designed holder fixed to the vehicle. The new rules commenced on Monday 9 November.

[\[More\]](#)

### **Queensland**

#### **Referral of powers**

The Queensland Government has introduced legislation which will refer to the Commonwealth the state's industrial relations powers for the private sector. These changes will operate as from 1 January 2010 and will mean that all employers and employees in Queensland with the exception of state and local government will be covered under a national industrial relations system administered by the Commonwealth Government.

[\[More\]](#)

### **Western Australia**

#### **Wage inflation**

WA's wage price index increased by 4.1% in the year to September 2009, the second highest rate of wage inflation behind Tasmania (4.2%). Nationally, the wage price index increased by 3.4%. Wage inflation in the WA private sector increased by 3.4%, whereas in the WA public sector it increased by 6.2%.

### **Referral of powers**

The Western Australian government has decided not refer its industrial relations powers to the Commonwealth. It will continue to operate the two tier system.

### **Tasmania**

#### **Referral of powers**

The Tasmanian Industrial Relations (Commonwealth powers) Bill 2009 is currently being debated by the Tasmanian Parliament. This Bill will put in place the referral of industrial relation powers necessary for a single national system for the private sector. The Bill will also allow for the referral of industrial relations powers for the Local Government sector and the Community Sector but not the Public Sector which will continue under the aegis of the Tasmanian Industrial Commission.

### **South Australia**

#### **Referral of powers**

The South Australian Parliament has passed the Fair Work (Commonwealth Powers) Act 2009. It received the Governors assent on 1 December 2009. The Act enables the entire SA private sector to participate in the national system commencing on 1 January 2010.

## **Merry Christmas and Happy New Year**

This is the final edition of Employee Relations MONTHLY for 2009.

Thank you to each and every one of you for your interest and support over the past twelve months. I trust that Employee Relations MONTHLY has been a valuable resource to your business. I look forward to working with you in 2010.



We will be closed from 24<sup>th</sup> December and re-open Monday 4<sup>th</sup> January 2010. Merry Christmas and happy New Year.