

Australian Building and Construction Commission to continue until end of 2010

The Australian Government has announced that the Australian Building and Construction Commission will be retained until 31 January 2010. After which it will be replaced with a specialist building and construction division of the inspectorate of Fair Work Australia.

The Hon Murray Wilcox QC (a former Federal Court judge) has been appointed by the Government to consult interested stakeholders surrounding the creation of and transition to the Specialist Division for building and construction within Fair Work Australia.

His terms of reference are to consult and report on matters related to the creation of the Specialist Division with particular reference to:

- The operational structure of the Specialist Division and its relationship with other parts of Fair Work Australia;
- The independence and accountability of the Specialist Division;
- The need, if any, for external monitoring, review or oversight of the Specialist Division;
- The scope of investigations and compliance activities to be undertaken by the Specialist Division;
- The powers required by the Specialist Division and its inspectors for the purpose of conducting investigations and compliance activities;
- The rights of persons who are subject to the investigations and compliance activities of the Specialist Division;
- The responsibilities of the officers of the Specialist Division;
- The reporting requirements of the Specialist Division;
- The resolution of disputes and complaints about the activities of the Specialist Division;
- The use of information collected by the Specialist Division in its investigations;
- The commencement of proceedings by the Specialist Division;
- The interaction of the Specialist Division with other federal enforcement agencies such as the Australian Securities and Investments Commission, the Australian Taxation Office, the Australian Competition and Consumer Commission and with relevant State enforcement agencies;
- The likely resources to be required by the Specialist Division and the ways of ensuring those resources are efficiently and effectively allocated;
- The best ways of ensuring high quality personnel are recruited to and retained by the Specialist Division and are properly trained and supervised; and
- The best manner of ensuring an orderly transition between the ABCC and the Specialist Division.

His Honour Justice Wilcox has released a Discussion Paper inviting written submissions by **5 December 2008**.

[\[More\]](#)

Wage growth continues above 4%

The Australian Government has announced the

The trend in total rates of pay excluding bonuses over the year to June 2008 for all employee jobs in Australia was 4.1%.

Mining and construction lead the way in wages with the mining industry recording the highest increase recorded of 6.7%. The rates of pay increased by 2.2% in the last quarter.

However, there are significant differences across industries. The lowest quarterly change was recorded in the communication services industry (0.1%), with accommodation, cafes and restaurants recording the lowest through the year change (2.2%).

[\[More\]](#)

Job vacancies falling

The Department of Employment and Workplace Relations (DEWR) Leading Indicator of Employment has fallen for the ninth consecutive month in October.

This monthly Indicator anticipates movements in the growth cycle of employment.

[\[More\]](#)

Award modernisation – exposure draft of awards

The Australian Industrial Relations Commission will be conducting public hearings on its *exposure drafts of modern awards* over the next month. There are 14 drafts released for comment covering the industries and occupations that were considered to be of the highest priority.

The following exposure drafts provide the first glimpse of what awards will look like on 1 January 2010.

- Clerks—Private Sector Award 2010
- Coal Mining Industry Award 2010
- Higher Education Industry—Academic Staff—Award 2010
- Higher Education Industry—General Staff—Award 2010
- Horse and Greyhound Training Award 2010
- Hospitality Industry (General) Award 2010
- Manufacturing and Associated Industries and Occupations Award 2010
- Mining Industry Award 2010
- Racing Clubs Events Award 2010
- Racing Industry Ground Maintenance Award 2010
- Rail Industry Award 2010
- Retail Industry Award 2010
- Security Services Industry Award 2010
- Textile, Clothing, Footwear and Associated Industries Award 2010

[\[More\]](#)

Fair Pay Commission Monitoring Report 2008

The Australian Fair Pay Commission has released its second Economic and Social Indicators – Monitoring Report for the period January - June 2008. The half-yearly report monitors the impact of the Commission's wage-setting decisions.

Professor Harper says the report shows that

“Relative to all industries, some of the more Pay Scale reliant industries have experienced higher than average employment growth over the past year, while others have experienced lower than average growth. He also reports

“Trends in employment for population groups containing many low-skilled workers have been similar to those of the general population, and there have been no significant changes in employment rates for these workers closely following the Commission's first and second wage-setting decisions.”

[\[More\]](#)

TIP OF THE MONTH: Forward with fairness – collective bargaining in low pay industries

In the September edition of *Employee Relations MONTHLY* I advised readers of an address to the National Press Club on 17 September 2008, by the Deputy Prime Minister, the Hon Julia Gillard MP. In that speech she outlined further details of the Government's workplace relations reforms scheduled to commence in 2009 and 2010.

Last month we discussed the new model of enterprise bargaining. This month we address the second tier enterprise bargaining allowable under Forward with fairness – ‘collective bargaining for the low paid.’

Assisting the low paid and those without access to collective bargaining

According to the fact sheets published on the subject Fair Work Australia (which will take over control from several agencies including the Workplace Authority) will be able to facilitate *multiple-employer bargaining* for certain kinds of employees, being the low paid and those who have not historically had the benefits of enterprise-level collective bargaining.

The government believes this will help employees working in areas like child care, aged care, community services, security and cleaning.

How will it work?

A bargaining representative or a union may apply to Fair Work Australia for entry into the low-paid stream to bargain with a specified list of employers. It is not clear how this entry will be determined. The fact sheet describes the following criteria.

Fair Work Australia will consider “... a range of factors to determine if the proposed multi-employer bargaining is in the public interest.”

These factors will include:

- i. The questions of whether it would assist low paid employees and
- ii. The history of bargaining in the industry in which the employees work.
- iii. Fair Work Australia will also be required to consider the extent to which the applicant is prepared to respond to the needs of individual employers.

Individual employers will be able to seek exemption from the process if they “... feel they should not be included.”

Decisions by Fair Work Australia that allow multi-employer bargaining will be subject to appeal. Where an employer may appeal to is not answered.

Powers of Fair Work Australia

Fair Work Australia will have powers to facilitate negotiations for the making of a multi-employer agreement. It will be able to:

- Order **compulsory conferences**: Fair Work Australia will have the power to bring the parties together if this will assist in settling an agreement and to take a more hands-on role in facilitating the negotiations.
- Fair Work Australia will be able to require a **third party** to attend a conference in certain circumstances, if this is necessary to advance the negotiations. For example leading contractors who actually influences the terms and conditions that apply in a workplace or site.
- Issue **good faith bargaining orders**: Parties in this bargaining stream can apply to Fair Work Australia for orders to ensure that bargaining processes are being conducted in good faith (last month's edition of Employee Relations MONTHLY).
- **Dispute resolution**: Fair Work Australia will have broad powers to mediate or conciliate and

to make recommendations. It will not be able to arbitrate.

- **Binding determinations**: Some or all of the parties involved in the bargaining may agree to request Fair Work Australia to settle matters the parties cannot agree on.

However, Fair Work Australia would not be able to order bargaining participants to make concessions or to require the inclusion of particular content in an agreement.

No resort to industrial action

Parties who bargain in the low-paid bargaining stream will not be able to take protected industrial action in support of their bargaining claims. Protected action is available only in support of single employer bargaining.

Conclusion

It is not clear whether an individual employer that does not want to settle the negotiations on the terms agreed by other employers would be bound by the majority that do. This is an important issue as the only information offered so far says the employer must apply for an exemption from bargaining rather than the union having to argue for their inclusion. I suspect that most employers in this situation will simply accept their fate. A process similar to being *roped into* an award.

Multi-employer bargaining under the current laws binds employers where a majority of employees across multiple businesses vote in favour of an agreement. However, any individual employer may withdraw from the negotiations prior to the vote if they choose to do so.

It would be an unusual outcome if an employer was required to make an agreement against its wishes – compulsory arbitration by stealth.

There is also no guarantee at the moment limiting the particular industries or occupational groups that would be included in the low paid stream. Is \$15 per hour low paid? Is \$20 per hour low paid? What particular community services would be included? We don't know

This *second tier* of collective bargaining can be viewed from a couple of perspectives.

The first is that it will facilitate an orderly pattern of wage outcomes for government funded sectors (especially those funded by state governments that operate in the federal system of regulation). There are various examples of how this has been done in the past especially in Victoria.

The second perspective is slightly more jaundiced.

Multi-business agreements may be designed to spread the benefits of collective bargaining campaigns waged in more militant sectors of the economy. If that is the policy underlying the proposed rules then the government risks a return to the 1980's wage outbreaks that fuelled the high inflation experience over that period.

Its success will largely depend upon how supportive the new Fair Work Australia agency will be as well as upon the organising capabilities of unions. I suspect the union movement does not have the same organising ability it had twenty five years ago and therefore the potential for the second outcome would be very small. In either outcome, we shall follow the progress of the legislation very closely over the next few months. The Bill is expected to be introduced into the Australian Parliament in the Spring session.

AROUND THE STATES - What's making news in State jurisdictions?

New South Wales

Mature aged workers

The NSW Government has published material encouraging employers to employ mature aged people.

An ageing population, low fertility rates and a shrinking workforce means businesses will increasingly need to employ mature aged workers. By 2016 over 80% of labour market growth will come from people over the age of 45

The Guides offer advice on how to flexibly structure work conditions to attract and retain people who for example have carer's responsibilities.

[\[More\]](#)

Victoria

Boost to training

The Victorian Government has released its new policy entitled *Securing Jobs for Your Future - Skills for Victoria*.

The Ministerial Statement commits \$316 million over four years to training options for both individuals and business, including an additional 172,000 training places for Victorians.

[\[More\]](#)

Family responsibility guidelines

The Victorian Equal Opportunity & Human Rights Commission and Industrial Relations Victoria have developed guidelines that provide details of the amendments, offer answers to common questions asked by employers and employees, and include a model process that employees and employers can use to make and consider requests for changes to work arrangements.

[\[More\]](#)

Queensland

Public service pay deal

A pay rise over three years for 125,000 of Queensland's public servants has been announced by Premier Anna Bligh.

In a joint media conference with Queensland Public Sector Union (QPSU) general secretary Alex Scott, Ms Bligh said the workers will receive a 12.5 per cent increase over three years,

This will be made up of a 4.5 per cent pay rise in the first year, and four per cent rises in each of the next two years.

The minimum increase will be \$34 a week.

South Australia

Recovery and return to work awards

A young man who broke his back and lost an eye in a workplace injury, and a case manager who returned 74 injured workers to work in the past twelve months are two of the inspirational winners of Work Cover SA's second annual Recovery and Return to Work Awards.

[\[More\]](#)

Western Australia

Participation of women in workforce

The Department of Consumer and Employment Protection has welcomed a report by the State's peak employer group on how to increase female participation in the workforce.

[\[More\]](#)

Further information

[Contact us](#) for further advice on any of the subjects discussed in this edition.