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Workwatch

AUSTRALIAN WORKPLACE AGREEMENTS (AWAs): CURRENT STATE OF PLAY

Since the WorkChoices legislation came into force in March 2006, public debate has focused on two features of the legislation: unfair dismissal provisions and Australian Workplace Agreements (AWAs). Dismissal, together with related matters such as redundancy, have been discussed in recent Workwatch columns and will undoubtedly be mentioned again as further cases on these issues are determined. With regard to AWAs, the basic questions are, firstly, the conditions which employers may impose and, secondly, measures available to workers who are unhappy with proposed content of AWAs. Further debate is bound to occur now that the Stronger Safety Net legislation¹ has been passed. These issues have been raised by ALIA members and this month's Workwatch discusses provisions relating to AWAs.

In practice, provisions covering AWA negotiations can apply differently to employees negotiating with a prospective employer than to situations where an existing employment relationship exists. In the case of an employee being offered a position, it is open to the employer to stipulate that acceptance of an AWA is a condition of employment. Section 400(6) of the Workplace Relations Act states clearly that it is not duress to insist that an AWA be a condition of engagement. Where an existing employee is being considered for promotion or for a position with a different designation following a restructure or company or departmental merger, definitive advice is difficult to give as each situation will be determined on its own facts. In both of these general situations, however, some basic parameters apply. For example, while an award applying in a particular industry does not have to be followed in an AWA, some protections with regard to leave and working hours must be observed. For both prospective and existing employees, the actual terms of a proposed AWA can be the subject of negotiation within the governing parameters once agreement is established that an employee is prepared to consider acceptance of an AWA.

Basic conditions relate mainly to annual and personal/carer's leave and to maximum working hours. While an AWA may allow the 'cashing out' of either form of leave, a minimum of two weeks' annual leave must be retained and the balance of personal/carer's leave cannot be cashed out to below 15 days. The maximum number of ordinary hours worked per week is 38 plus 'reasonable additional hours'. Factors determining 'reasonable additional hours' include any risk to employee health and safety; personal circumstances, (including family responsibilities); workplace operational requirements; and the amount of notice given by the employer of the requirement to work additional hours.

All parties are limited with regard to certain matters not permitted to be canvassed within AWAs. These matters are referred to as 'prohibited content' and include encouraging or discouraging union membership; allowing industrial action during the term of an agreement; prescribing the manner of re-negotiation of an agreement; and matters not relating to the employment relationship. All workplace agreements must be lodged by the employer with the Workplace Authority (formerly the Office of the Employment Advocate) within 14 days of approval by employees, with the Authority having power to void any term of an agreement containing prohibited content.

Further protection to both employers and employees exists through provision for appointment of bargaining agents, which may be a union, noting that one agent cannot act for both parties. The appointment of a bargaining agent has obvious advantages for parties with little knowledge of relevant conditions and especially where a party may have a first language other than English.

Workplace Relations Fact Sheet

The federal government has published a *Workplace Relations Fact Sheet* summarising rights and responsibilities of employers and employees under the WorkChoices regime. From 20 July it will be compulsory for employers to provide the fact sheet to new employees and to existing employees within three months of 20 July. The fact sheet can be downloaded from <www.workplace.gov.au>, where it is discussed under 'Current News'.

Some qualifications and links

It should be noted that the above summary of AWA arrangements is not exhaustive as the relevant legislation is vast. Some aspects of the application of WorkChoices are also still untested, while those that have been considered by courts and tribunals may be reviewed further as cases with different facts are decided and the Stronger Safety Net provisions applied. ALIA members and their library colleagues seeking further information about AWAs and other features of WorkChoices should refer to the Workplace Authority website at <www.workplaceauthority.gov.au>. Library workers who are members of unions should confer with their respective unions where they are unsure as to whether WorkChoices applies in a particular workplace² and, if so, the applicable rights and responsibilities of employers and employees.

In addition to these sources of information, the Employment segment of the ALIA website is regularly updated to take account of changes in all areas of library employment, including recommended salary scales. Members should also, of course, contact me at any time where I can be of assistance in providing either general advice or commenting on a particular workplace situation.

Notes:

1. *Workplace Relations Amendment (A Stronger Safety Net) Act 2007*.
2. In short, WorkChoices applies in the ACT, the NT and in organisations deemed corporations as per s51(xx) of the Australian Constitution.

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