



STRATEGIC INDUSTRIAL PLANNING SERVICES

*WCRA Queensland
Industrial Relations Issues*

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AGENDA

- ❖ **ARTIO**
- ❖ **IR ISSUES**
 - **Fair Work Act**
 - ◆ **New IR regime**
 - ◆ **Bargaining protocols**
 - ◆ **UFDs**
 - ◆ **Right of entry**
 - **Award modernisation**
 - ◆ **Waste Management Award 2010**



ARTIO

❖ Australian Road Transport Industrial Organisation (ARTIO)

- Registered organisation of employers for the transport industry, particularly road
- First registered in 1984
- Branches in each State, except SA
- Generally operates through the relevant State Association eg VTA, QTA etc
- Over 400 members



ARTIO

- ❖ **ARTIO has participated in all major IR cases affecting the transport industry over the last decade, including:**
 - **Making of the current Federal Award**
 - **National Wage cases**
 - **DG allowances**
 - **Overnight allowances for LD drivers**
 - **Award modernisation from the outset**
 - ◆ **We have appeared in every transport hearing**



Fair Work Act

- ❖ **Fair Work Australia**
- ❖ **Collective Agreement Making**
 - Protected industrial action
- ❖ **Unfair Dismissal & Redundancy**
- ❖ **Right of Entry**
- ❖ **National Employment Standards (NES)**
- ❖ **Modern Awards**



Fair Work Act – brief history

- ❖ **Workchoices commenced March 2006**
- ❖ **Workchoices ended 30 June 2009**
- ❖ **Fair Work Act commenced 1 July 2009**
- ❖ **Bridging period 1 July to 31 Dec 2009**
- ❖ **Modern Awards and NES commence 1 January 2010**



Fair Work Australia Institutions

❖ Fair Work Australia

- the industrial umpire
- replaces AIRC, Aust Fair Pay Comm, Workplace Authority.
- Conducts annual safety net review (old national wage case),
- Makes and varies awards,
- Approves enterprise agreements,
- Dispute settlement, industrial action orders, bargaining orders, protected action ballots,
- Unfair dismissals
- Right of entry permits and disputes

❖ Fair Work Ombudsman

- Investigates breaches of awards and agreements
- Investigates breaches of industrial laws
- Inspectors have power of entry and to examine time and wages records
- Will include specialist building and construction Division



Enterprise Agreements: Parties

- ❖ While no longer a distinct process for approving new EA's according to whether union or non-union, there will be EA's that have union involvement and EA's that have no union involvement.
- ❖ A union is the default bargaining representative if it has at least one member in the workplace and the member does not appoint another bargaining representative in writing.
- ❖ Agreements without union involvement are only possible if there are no union members or union chooses not to be covered by the agreement.
- ❖ Employer cannot choose which unions to bargain with and must bargain in good faith with all unions with members in the workplace.



Good Faith Bargaining

- ❖ **Attend and participate in meetings at reasonable times,**
- ❖ **Disclose relevant information in a timely manner,**
- ❖ **Response to proposals by the other parties in a timely manner,**
- ❖ **Give genuine consideration to proposals and provide reasons for the response to those proposals, and**
- ❖ **Refrain from capricious or unfair conduct that undermines freedom of association or collective bargaining.**



Good Faith Bargaining Orders

- ❖ **But, there is no requirement to:**
 - **Make concessions during bargaining, or**
 - **Reach agreement on the terms to be included in an agreement**

- ❖ **FWA can Order party to negotiate on GFB lines or Order party to refrain from capricious or unfair conduct in bargaining.**

- ❖ **Idea of GFB Orders is to prevent intransigence.**



Majority Support determinations

- ❖ If employer refuses to bargain with its employees a bargaining representative can apply to FWA for a majority support determination*.
- ❖ FWA can use any method to gauge whether majority of employees want to bargain.
- ❖ FWA can also issue ‘scope orders**’ to identify appropriate group of employees to bargain for new EA.

‘*Majority support determinations’ new to IR legn (from USA).

‘**Scope orders’ are to prevent to prevent particular cohorts of employees being falsely sidelined or falsely added to the bargaining group for a new EA.



Making EA at enterprise level

- ❖ Employer must take all reasonable steps to notify employees of right to be represented by a bargaining representative (usually union)
- ❖ Notification must be within 14 days of when, amongst other things:
 - The employer initiates or agrees to bargain; and
 - Not less than 21 days before any proposed ballot to obtain employees consent
- ❖ Content of notice (Schedule 2.1, Notice of Employee Representational Rights) includes notification:
 - That the employee may appoint a bargaining representative;
 - That the Union the employee belongs to will be the default bargaining representative if the employee does not appoint another
 - That copies of instruments of appointment of bargaining agents must be given to the employer or union respectively



Enterprise Agreements: Contents

- ❖ Permitted matters
 - ❖ Matters pertaining to relationship between
 - Employer and employee
 - Employers and employee organisation
 - ❖ Wage deductions for any purpose
 - ❖ How the Agreement will operate (e.g. renegotiation)



Enterprise Agreements - Contents

❖ **Compulsory clauses:**

- **Dispute settling clause which allows representation of employees**
- **Consultation clause covering major workplace change which allows for representation of employees**
- **Flexibility term which allows for individual agreement to vary:**
 - ◆ **Arrangements for when work is performed, overtime rates, penalty rates, allowances and leave loading**



Employees must genuinely agree to proposed Enterprise Agreement

- ❖ **Employers may ask employees to approve a proposed agreement, but not until:**
 - 7 days prior to vote – provide employees with a copy of or access to the proposed agreement
 - Taking all reasonable steps to explain the terms and effect of the agreement to employees
- ❖ **An Agreement is ‘made’ when a majority who cast a valid vote approve the Agreement**
- ❖ **The ‘made’ agreement is then submitted to FWA for its approval – along with Forms F 16,17 & 18**



FWA approval of Enterprise Agreements

❖ **FWA must approve an Agreement that:**

- Is genuinely agreed to
- Does not exclude the NES
- Passes the 'better of overall' test (BOOT) when compared to the modern award
 - ◆ An Agreement that does not pass the test may be approved if, because of extraordinary circumstances it is not contrary to public interest to do so
- Contains no unlawful terms
- Specifies a nominal expiry date not more than 4 years after FWA approval



National Employment Standards (NES)

❖ **10 minimum standards applying to all employees**

- Maximum weekly hours
- Flexible work arrangements for parents
- Annual leave
- Parental leave
- Personal/Carers leave
- Community service leave
- Public holidays
- Notice of termination and redundancy pay schedule
- Long service leave
- Fair work information statement



NES: Maximum Weekly Hours

- ❖ **Maximum of 38 ordinary hours**
 - ◆ **Plus employers can require employees to work reasonable additional hours**
 - ◆ **Factors going to reasonable**
 - Risk the employee's health/safety
 - Personal circumstances
 - Needs of the workplace
 - Entitlement to overtime payments, penalty rates
 - Notice given to the employee
 - Notice given by employee in refusing to work additional hours
 - Level of responsibility
 - Usual pattern of work

Employee may refuse additional hours if not reasonable



NES: Flexible Working Arrangements

- ❖ **Employees can request flexible working hours (must have 12 months continuous service and be parent of under school age children)**
 - **Maybe be refused by employer on reasonable business grounds - financial impact, inability to organise work, replacement of staff**
 - **Request in writing and response within 21 days**
 - **Details of refusal must be given**
 - **Subject to challenge before FWA**



NES: Parental; Personal/Carer's Leave

- ❖ **Parental Leave (maternity, paternity, adoption) – unpaid up to 12 months guaranteed, and further unpaid 12 months but may be refused on reasonable business grounds**
- ❖ **Personal/carers leave – full time, P/T (not casuals) entitled to 10 days paid personal/carers leave per year – cumulative – paid at base rate – can cash out if permitted in award or EBA but must retain balance of 15 days.**



NES: Compassionate Leave

- ❖ **Compassionate Leave – 2 days paid per occasion for personal illness or personal injury that poses serious threat to the life of a member of the employee’s immediate family or household, or if they die - paid at the base rate – not cumulative.**



Notice of Parental/ Personal/ Compassionate Leave

- ❖ **Must give notice to the employer asap stating reason**
- ❖ **Only require evidence if the employer requests it**
- ❖ **Evidence to satisfy a reasonable person- Awards and agreements may outline what is reasonable evidence**
- ❖ **Medical certificate is not mandatory**
- ❖ **Statutory declaration can be provided**
- ❖ **May not be reasonable to require an employee to provide evidence on every occasion**



NES: Annual Leave: Taking

- ❖ **4 weeks paid leave for each year of service (5 weeks for shift workers where business runs 24/7 incl public hols and Sundays)**
- ❖ **By Agreement**
- ❖ **Employer must not unreasonably refuse**
- ❖ **Is exclusive of public holidays and personal leave**
- ❖ **Paid at the base rate of pay**
- ❖ **Accrued annual leave must be paid out on termination**



NES: Annual Leave: Cashing Out

- ❖ In accordance with the Modern Award or Agreement
- ❖ Written agreement for Award free employees
- ❖ If Award or Agreement not provide for cashing out then it cannot be done
- ❖ Must retain balance of 4 weeks after cashing out
- ❖ Each arrangement must be in writing
- ❖ Can direct to take annual leave:
 - If reasonable
 - Customary and practice
 - Reasonable period of notice is given



NES: Community Service Leave

- ❖ **Employee engages in eligible community service**
 - **Jury service – paid up to 10 days – no double dipping**
 - **Voluntary emergency management activity- natural disaster or emergency - unpaid**
- ❖ **Time taken to undertake the activity**
- ❖ **Reasonable travelling time**
- ❖ **Reasonable rest periods**
- ❖ **Employee must give notice as soon as possible - advise of period or expected period of absence - evidence must satisfy a reasonable person**



NES: Long Service Leave

- ❖ **State Legislation**
- ❖ **Working on a national standard**



NES: Public Holidays

- ❖ **Paid at the base rate**
- ❖ **An employer can make a reasonable request to work on a public holiday**
 - **Penalty rates may apply (modern Award)**
- ❖ **Employee may refuse to work if they have reasonable grounds**
- ❖ **Public Holidays are as declared by the NES or State laws**
- ❖ **Substitution of public holidays is allowed**
- ❖ **if the employee is not ordinarily required to work on a public holiday (eg Easter Sat) then there is no obligation to pay for that public holiday**



NES: Notice of Termination and Redundancy pay

- ❖ **Notice of Termination (min 1 week, max 5 – table follows)**
- ❖ **Redundancy (severance pay table follows)**
- ❖ **Redundancy does not apply to**
 - **Small businesses (less than 15 employees)**
 - **Employees with less than 1 year service**
 - **Irregular Casuals or fixed-term employees**
 - ◆ **Regular & systematic casuals entitled to redundancy**
 - **Employees terminated for serious misconduct**
 - **Apprentices and trainees**



NES: Notice of Termination

❖ **Statutory Notice requirements**

- **Notice period or Payment in lieu thereof**
 - ◆ **Less than 1 year: 1 week**
 - ◆ **1-3 years: 2 weeks**
 - ◆ **3-5 years: 3 weeks**
 - ◆ **Greater than 5 years: 4 weeks**
 - ◆ **NB: An employee is entitled to one additional week of notice if the Employee is over 45 years of age at the time of the giving of notice and has completed at least two years' continuous service with the Employer.**



Redundancy (Severance Pay Table)

Period of Continuous Service	Pay Period
At least 1 year- less than 2	4 weeks
At least 2 years- less than 3	6 weeks
At least 3 years- less than 4	7 weeks
At least 4 years- less than 5	8 weeks
At least 5 years- less than 6	10 weeks
At least 6 years- less than 7	11 weeks
At least 7 years- less than 8	13 weeks
At least 8 years- less than 9	14 weeks
At least 9 years- less than 10	16 weeks
At least 10 years	12 weeks



NES: Fair Work Information Statement

- ❖ **All new employees that start work after 1 January 2010 will be required to be given a copy of the Fair Work Information Statement**
 - **Will be prepared by Fair Work Ombudsman**
- ❖ **No requirement to be given to existing employees**
- ❖ **Contains info on:**
 - **The NES**
 - **Modern awards**
 - **The right to freedom of association; and**
 - **The role of Fair Work Australia and the Fair Work Ombudsman**



Modern Awards

- ❖ **Modern awards will be the 2nd level of the safety net - to be read in conjunction with NES**
- ❖ **Contain a further 10 minimum employment standards covering -**
 - **Minimum wage rates as per classifications**
 - **Type of work performed**
 - **Allowances, will be expressed as a percentage of standard rate**
 - **Arrangements for when work is performed**
 - **Overtime rates**
 - **Penalty Rates**
 - **Minimum annualised wages or salary arrangements**
 - **Expands on leave details, leave loading and arrangements for taking leave**
 - **Superannuation**
 - **Consultation, representation and dispute settling procedures**



Modern Awards: standard Flexibility Clause

- ❖ **Standard clause inserted into all modern awards**
 - Similar to that imposed into EBAs
- ❖ **Allows for an employer and individual employee to make an agreement varying an employee's minimum award entitlements**
 - Arrangements for when work is performed
 - Overtime rates
 - Penalty rates
 - Allowances
 - Leave loading



Modern Awards: Road Transport Industry

❖ 4 Modern Transport Awards

- 2 for General Freight
 - ◆ Road Transport and Distribution Award 2010
 - ◆ Road Transport (Long Distance Operations) Award 2010
- 2 'specialist' modern awards -
 - ◆ Road Transport (Cash in Transit) Award 2010
 - ◆ Waste Management Industry Award 2010
- Transport/Waste companies will also have to apply:
 - ◆ Clerks - Private Sector Award 2010 for clerical admin staff
 - ◆ Manufacturing and Associated Industries Award 2010 for tradesmen/mechanics



Modern Awards

❖ **Waste Management Award 2010**

- **Based on Federal Refuse, Recycling & Waste Management Award 2001**
- **Issues**
 - ◆ **Classification structure**
 - ARTIO filed application on 28 October to vary to VWMA/WCRAQ and major players agreed structure
 - Submission in support filed 12 November
 - Any opposition to file by 27 Nov
 - ARTIO (& supporters) have until 5 Dec to file any further material in response
 - 10 supporting submissions lodged, including WCRA NSW



Waste Management Award 2010

- ❖ **ARTIO's grounds for application to vary**
 - **To ensure compliance with the Ministerial Directions issued to commence the Award Modernisation process.**
 - **To give effect to the Commission's decision that new modern awards would be based around existing Federal Award classification structures and rates.**
 - **To maintain parity with other new modern awards applying to the transport industry.**



Application to vary

- To ensure that employers in the industry are not subject to enormous wage increases with the introduction of the proposed classification structure.
- To maintain industrial peace and harmony at the workplace level by ensuring employees are treated equitably in this process.
- To more accurately reflect operational language used and understood within the waste industry concerning vehicle size and operation.
- Any other reasons considered by Fair Work Australia.



Waste Management Award 2010

- ❖ **Provides that leave loading is to be paid in addition to shift loadings**
 - **Not the higher of, which is the accepted standard**
 - **ARTIO has also sought to vary the award to reflect well established & accepted standards**
 - **Submissions to oppose due by 1 Dec**



Public Holidays

- ❖ **New award provides for work on PHs to be paid at 325% or 275% of base rate**
- ❖ **Current Award provides for:**
 - **300% plus 10% of base rate**
 - **250% plus 10% of base rate**
 - **If base rate is \$20 ph then difference is a maximum of \$3 ph**



Any questions ?