

**HIGHER EDUCATION HR CONFERENCE 2009
INTERNATIONAL PERSPECTIVE –
EMPLOYMENT FRAMEWORKS AND LABOUR
LAW REFORMS**

ARE WE HEADING IN SIMILAR DIRECTIONS?

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**Ron Baragry LLB MLLR (Syd)
Accredited Specialist in Employment and Workplace Law
Legal Counsel National Workplace Relations
Australian Industry Group**

Background

- From centralised conciliation and arbitration to enterprise bargaining
- Conservative Federal Govt from 1996 to 2007
- 2006 WorkChoices Legislation based on Corporations power
- WorkChoices upheld by High Court
- Results in direct employment legislation by Federal Government and large transfer of employees to Federal system

A New Federal Government in 2007

- Continues Primary Reliance on Corporations Power
- Early removal of Australian Workplace Agreement (“AWAs”) availability.
- Consultation Process
- New Legislation – Fair Work Bill and Transitional Provisions Bill

Elements of New System

- Fair Work Australia replaces Australian Industrial Relations Commission with enlarged powers including award making and wage setting
- Fair Work Ombudsman
- National Employment Standards and Awards provide minimum employment conditions.
(shared power between Government and Fair Work Australia)
- Equal Remuneration for Comparable Work

Industrial Action

- Prior to 1993 all industrial action illegal but remedies difficult
- From 1996 protected industrial action available when agreement making
- 2006 Electrolux High Court decision – only matters pertaining to employer and employee relationship
- 2006 additional restrictions – Prohibited Content
- 2006 secret ballot for industrial action
- 2009 matters pertaining to union and employer added

Bargaining

- Enterprise bargaining retained
- Single enterprise, multi-employer and greenfields agreements
- Bargaining representatives
- Majority Support Determination
- Scope Order to deal with bargaining difficulties
- Bargaining Orders to enforce good faith bargaining and Serious Breach Declarations
- Low paid authorisation
- Workplace Determinations – Low Paid, Industrial Action Related and Bargaining Related

Other Elements of New System

- Union right of entry – investigate breach, confer and OH&S rights
- Permit required and written notice
- Supervision by Fair Work Australia
- Privacy

Other Elements of New System Cont...

- General Protection (Formerly “Freedom of Association”)
- Stand downs
- Registered Unions and Employer Associations
- Transfer of Instruments – Change in approach

Termination of Employment

- Statutory Notice and Redundancy
- New Unfair Dismissal Process gives FWA wide powers
- Conference and/or hearing at FWA election.
- Unlawful Termination and FWA certificate

Non Legislative Framework

- Building Industry Code uses Government Procurement Leverage
- Higher Education Workplace Relations Requirement – Grants Leverage.

Other Industrial Framework

- Different systems in each state except Victoria
- Workers Compensation
- Safety Regimes
- Apprenticeship/Trainee
- Equal Opportunity and Discrimination

Summary of Australian Employment Framework

- Federal/State Regulation
- Federal Minimum Conditions – Standards plus Awards by Fair Work Australia and Minimum Wage Fixing
- Registered Enterprise Agreements
- Good Faith Bargaining System
- Protected Industrial Action Only When Negotiating New Agreement.
- Registered Organisations of Employees and Employers
- Unfair Dismissal System with Unlawful Termination
- Enforcement by Fair Work Ombudsman
- State Employment Legislation for Non Federal Employees
- Workers Compensation, Safety, Apprenticeship, Equal Opportunity and Discrimination.