



Major reform to Australia's IR landscape

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Prime Minister John Howard has announced a package of changes to the Federal Workplace Relations Act which will impact on employers, employees and unions across the nation. Once implemented, the reforms will be the most significant change to Australia's industrial relations (IR) landscape since 1904.

It is proposed that the changes will over-ride and replace the industrial relations systems in each of the states other than Victoria. Victoria has already referred its IR powers to the Federal Government.

At the Council of Australian Governments meeting on 3 June 2005, the Prime Minister invited the remaining states to refer their IR powers to the Commonwealth but the states refused.

It is expected that the Federal Government will legislate using its corporations power (and other Constitutional powers) to override the states' IR systems, or part of these systems. This may well lead to a High Court challenge, initiated by some state governments, unions or other interested parties.

Timing

Although the Liberal/National coalition Government will have a majority in the Senate after 1 July 2005, we anticipate that the reforms are unlikely to take effect before 1 January 2006, and are more likely to take effect in early to mid 2006.

What is proposed?

The main features of the proposed reforms announced by the Prime Minister, and some issues arising from each of them, are:

One national system to replace the separate state systems (the Unitary System)

The Federal Government plans to use the corporations power (and a collection of other powers) to override the states' systems so that most employees will be covered by the Unitary System. Approximately 15% of the workforce may remain beyond the reach of the new Unitary System.

Establishment of the Australian Fair Pay Commission

Currently, the Australian Industrial Relations Commission (AIRC) conducts a National Wage

Case each year, where it hears submissions from unions, employer groups, governments and others, and then sets an increase for the minimum wage rate under awards.

This 'safety net' increase eventually flows through to all Federal and state awards.

The Federal Government proposes to refer the power to set further increases to the minimum wage, and to set award rates of pay and casual loadings, to a new body named the Australian Fair Pay Commission. It appears to be intended that this body will focus on economic and other national considerations, rather than purely industrial relations issues, in setting minimum wages.

Minimum terms and conditions set by new Australian Fair Pay and Conditions Standard

The Government will create a legislative Australian Fair Pay and Conditions Standard, dealing with annual leave, personal leave, parental leave and maximum ordinary hours. This standard, rather than awards, will form the comparison point for applying the 'no disadvantage' test to new certified agreements and Australian Workplace Agreements.

Stream-lining of certified agreement and Australian Workplace Agreement making

The power to assess and approve certified agreements will be taken from the AIRC, and given to the Office of the Employment Advocate. The Office is currently responsible, among other things, for the approval of Australian Workplace Agreements.

The maximum nominal life of agreements will be increased from three years to five years and the process for approval of certified agreements and Australian Workplace Agreements will be stream-lined.

Reduction in allowable award matters

The AIRC currently has power to arbitrate on 20 allowable award matters (which are essentially core employment conditions) in the absence of special circumstances. It is proposed that the number of allowable award matters will be reduced.

Superannuation, long service leave, notice of termination and jury service, which are already dealt with in legislation, will be removed from awards.

Further rationalisation of awards and classification structures

The Government will create a Task Group, to review and rationalise existing awards and award classification structures, over a period of 12 months. This may well lead to recommendations to Parliament to rationalise the list of allowable award matters, such as leave and hours of work, which will be covered by the Australian Fair Pay and Conditions Standard.

Change in role of AIRC

The Prime Minister announced to Parliament that the AIRC's focus 'will be on its key responsibilities of resolving legitimate disputes and further simplification of awards'. This is likely to lead to a reduction in its powers.

Unfair dismissal laws

The Government intends, by agreement or by using the corporations power, to over-ride the states' unfair dismissal laws (and, possibly, some of the 'unfair contracts' legislation).

At the same time, the Government has announced that all small and medium employers, that is those with less than 100 employees, will be exempt from unfair dismissal legislation. This is an advance from previous proposals to exempt small business employers with 15 or 20 employees, and may prove to be a negotiation point between the state and Federal governments. It is unclear whether corporate groups will be counted together.

It is also proposed that employees who have been employed for less than six months will be unable to make unfair dismissal claims (currently a three month qualifying period applies).

Dealing with unlawful industrial action

Amongst the concerns which employers and the Government have had under the current *Workplace Relations Act* is that unions do not always comply with orders to stop industrial action.

The Prime Minister has announced that there will be 'stronger laws in relation to industrial action'.

These laws might include imposing statutory penalties for engaging in unlawful industrial action and the removal of barriers to legal action against unions for engaging in industrial action (eg. requiring that the AIRC conciliate for up to 72 hours before some legal action can be taken against unions).

Secret ballots

Another reform announced by the Prime Minister is the use of secret ballots for industrial action. Overseas experience suggests that this might lead to administrative difficulties and may slow down, or even prevent, the taking of protected industrial action.

Other changes

Other changes, which will be expanded upon in the months to come, include protection of the status of independent contractors, further reforms for the building and construction industry, the exemption of small business from severance pay obligations, and the removal of barriers to some apprenticeships.

Some of these reforms are dealt with in draft legislation currently before Parliament, or that was introduced in the past but rejected by Parliament when the Coalition did not have a majority in the Senate. It is likely that they will be passed into law some time after 1 July 2005.

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