



IMPORTANT EMPLOYMENT INFORMATION FOR UNITING CHURCH EMPLOYERS BASED IN NSW

NSW Refers IR Powers to the Commonwealth¹

The NSW and Commonwealth Parliaments have passed legislation enabling the NSW state government to refer its industrial relations powers to the Commonwealth. The referral will bring those NSW private sector employers who are non-constitutional corporations under the federal law.

The NSW *Industrial Relations Act 1996* will no longer apply to any private sector employees in NSW from 1 January 2010. All NSW private sector employers will be regulated by the *Fair Work Act 2009* from 1 January 2010 and the only employees not covered by the *Fair Work Act 2009* in NSW will be state public servants and local government employees.

This has significant implications for Uniting Church employers based in NSW who will be transferring to the national system.

KEY CHANGES

1 Fair Work Australia – The National Regulator

Fair Work Australia is the national workplace relations tribunal and will replace the NSW Industrial Relations Commission. It has power to carry out a range of functions including settling workplace disputes and industrial action, setting minimum wages and modern award conditions and regulating enterprise bargaining.

¹ Source Information contained in this paper has been provided by the AFEI

2 The Fair Work Ombudsman

The Fair Work Ombudsman is the national inspectorate. Fair Work Inspectors investigate compliance with the *Fair Work Act 2009* and enforce the laws through the court system. They investigate complaints or suspected breaches of workplace laws and agreements.

3 Modern Awards

Modern awards will cover those employees brought under the national system by the referral. This will not happen immediately.

Employees currently covered by NSW state awards will be “transitioned” to modern awards over the 12 month period from 1 January 2010 to 1 January 2011.

Modern awards also contain transitional provisions which will subsequently apply to employees moved to the national system.

The state awards currently applying to NSW state system employers will be known as Division 2B State Awards on 1 January 2010 and these awards will govern the terms and conditions of employment for affected employees from 1 January 2010 to 31 December 2010.

On 1 January 2011, a relevant modern Award will come into operation for transferred employees. The Division 2B State Awards will operate on a ‘no detriment’ basis with the National Employment Standards (see below) and the national minimum wage.

During the 12 month period, Fair Work Australia will consider whether a modern Award should be varied to provide different transitional arrangements for incoming State employees and employers.

This will be subject to the existing rules in the *Fair Work Act 2009* about what may be included in modern Awards.

Given the industry and occupational coverage of modern Awards, it is expected that Division 2B State Awards will be fully replaced by modern awards on 1 January 2011. However, if there are employees covered by a Division 2B State award for which there is no corresponding modern award at that time, they will be covered by the Miscellaneous Award 2010.

State employers and employees who are not covered by a State award at referral commencement but who are capable of being covered by a modern award will become covered by that modern Award from referral commencement.

Employers who are non-constitutional corporations currently covered by federal awards

There are employers who are not constitutional corporations and who are covered by federal awards made under the federal workplace relations system prior to 2006.

These federal transitional awards were scheduled to lapse in March 2011, with the relevant employers and employees 'falling out' of the national workplace relations system and back to the state systems. These employers and employees will now be part of the national system and covered by modern awards and their transitional arrangements.

State Agreements

Agreements made in the state industrial system will become **Division 2B Agreements** and will operate as a federal agreement until replaced under the Fair Work Act or terminated.

Employees currently covered by NSW state enterprise agreements will continue to be covered by the terms of the agreement for up to a period of 4 years ending on 31 December 2013 unless the agreement is:

- displaced by another Federal enterprise agreement;
- terminated by consent of the parties by application to Fair Work Australia ;
- terminated by Fair Work Australia after the nominal terms have expired on consent of a party;

subject to a public interest test.

Take Home Pay Orders

An employee's take home pay cannot be reduced as a consequence of moving to a modern award. Fair Work Australia can make remedial take-home pay orders where the take-home pay of one or more employees is reduced as a result of movement to a modern Award.

4 The National Employment Standards (the NES)

On 1 January 2010, the NES will commence operation. These are new core national standards that underpin the terms of any modern Award or enterprise agreement.

The NES are a set of extensive employee rights that include extended parental leave, a new right to request a change in working conditions for employees

returning from a period of parental leave and minimum redundancy payments for national system employees.

The ten NES relate to:

1. maximum weekly hours
2. requests for flexible working arrangements
3. parental leave and related entitlements
4. annual leave
5. personal/carer's leave and compassionate leave
6. community service leave
7. long service leave
8. public holidays
9. notice of termination and redundancy pay
10. Fair Work Information Statement.

The NES will apply to incoming state employees and employers from 1 January 2010, and will prevail over a Division 2B State award or agreement where these instruments are detrimental in comparison.

For a copy of the NES please go to www.fairwork.gov.au.

The Fair Work Information Statement

From 1 January 2010, all employers covered by the national workplace relations system have an obligation to give each new employee a Fair Work Information Statement ("the Statement") before, or as soon as possible after, the employee starts employment.

To obtain a copy of the Statement please go to www.fairwork.gov.au.

5 Fair Work Act Payslip and Record Keeping Requirements

There are some differences in record keeping requirements and payslip information between current state legislation and the Fair Work Act.

Record keeping

Under the Fair Work Act the following details must be kept in employee records and retained for 7 years:

1. The name of the employer and the name of the employee.
2. From 1 January 2010 - the Australian Business Number (ABN) (if any) of the employer.
3. Date the employee started employment.
4. If the employee is full-time, part-time.
5. If the employee is permanent, temporary or casual.
6. The employee's pay rate, including gross and net amounts paid and any deductions from the gross amount.
7. Any loadings, monetary allowances, bonuses, incentive-based payments, penalty rates or other entitlements paid that can be singled out.
8. If a penalty rate or loading must be paid for overtime hours actually worked, the number of hours of overtime worked, or when the employee started and finished working overtime.
9. Hours worked if the employee works casual or irregular part-time hours and is guaranteed a pay rate set by reference to a period of time worked.
10. A copy of the written agreement if you and your employee have agreed to average the employee's work hours.
11. If you and your employee have agreed to an individual flexibility arrangement, a copy of that agreement, and, if the agreement is terminated, a copy of the termination.

Payslip Details

Employers must issue pay slips to each employee within 1 working day of their pay day.

The pay slip must be issued in electronic form or hard copy. Electronic delivery can only be used where the employee has access to download and print the payslip in private.

Employers must ensure that a pay slip is issued to an employee, even when they are on leave. The following information must be shown on the employee's payslip:

- the name of the employer

- from 1 January 2010 - the Australian Business Number (ABN) (if any) of the employer
- the employee's name
- the date of payment
- the pay period
- the gross and net amount of pay
- any loadings, monetary allowances, bonuses, incentive-based payments, penalty rates or other entitlements paid (separately identified)
- if the employee is paid an hourly rate - the ordinary hourly pay rate and number of hours worked at that rate and the amount of pay at that rate
- if the employee is paid an annual rate (salary), the rate as at the last day in the pay period
- any deductions made from the employee's pay, including the amount and details of each deduction (including superannuation) including the name, or the name and number, of the fund or account the deductions are paid into
- if the employer is required to pay superannuation contributions for their employee's benefit, the employer should include:
 - (a) the amount of each superannuation contribution made during the period to which the pay slip relates, or the amounts of contributions that the employer is liable to make; and
 - (b) the name or the name and number of the superannuation fund the employer pays superannuation contributions into.

6 Unfair Dismissal and the Fair Dismissal Code for small business

Transferring employers need to be aware of the unfair and unlawful dismissal provisions in the Fair Work Act. Employees can apply to Fair Work Australia if they consider they have been unfairly or unlawfully dismissed. Fair Work Australia can find that

- the dismissal was harsh, unjust or unreasonable, and
- the dismissal was not a case of genuine redundancy

and reinstate or compensate the employee.

There are some **exemptions** that are based on the employer's size, the employee's length of service and their rate of pay:

1. If the employer is a small business employer, ie an employer with less than 15 employees, the employee cannot make an unfair dismissal claim within one year of their employment.
2. If the employer is not a small business employer, the employee cannot make an unfair dismissal claim within 6 months of their employment.
3. Employees who earn above the high income threshold cannot make an unfair dismissal claim. The high income threshold for 2009-10 is \$108,300.

If you are a small employer (up to 15 employees) special arrangements for small business have been provided in the Fair Work Act in the form of a Small Business Fair Dismissal Code. Employer compliance with the Code does not prevent an employee from claiming unfair dismissal. FWA will then assess the employer's performance in achieving compliance with the Code. To obtain a copy of the code please go to www.fairwork.gov.au.

The Fair Work Act also prevents dismissal of an employee because they have or have not exercised, or intends to exercise, or not to exercise a "workplace right". A person has a workplace right where they are

- (a) entitled to the benefit of, or has a role or responsibility under, a workplace law, workplace instrument or order made by an industrial body; or
- (b) able to initiate, or participate in, a process or proceedings under a workplace law or workplace instrument; or
- (c) makes a complaint or inquiry about their employment either to the employer or a compliance authority.

7 Enterprise Bargaining

The Fair Work Act provisions for enterprise agreements took effect from 1 July 2009 and will apply to transferring employers from 1 January 2010.

No individual agreements are permitted. Agreements can be either a single-enterprise agreement (SEA) or multiple business enterprise agreements (MEA) made between two or more employers who agree to bargain together.

A special stream of MEAs will be used for so called "low-paid" employees. Fair Work Australia can direct employers to bargain and may make low paid authorisations.

Greenfields (new enterprises) agreements can be made with unions.

Enterprise bargaining requirements under the Fair Work Act include the following:

- Must be negotiated directly with employees or with a union
- Employer must notify relevant employees of their representation rights, and follow detailed notification requirements
- Employees may appoint a bargaining agent; where they do not, the union(s) entitled to represent the employees will be the bargaining agent (do not need to have employees as members)
- Employers must negotiate "in good faith"
- When negotiating the agreement, either party may take protected industrial action, subject to certain requirements being met
- Must pass the Better Off Overall Test (BOOT)
- Must be approved by Fair Work Australia
- Employers must provide the employees to be covered by the agreement with access to the agreement in writing at least seven days prior to the agreement being approved and a copy of an information statement issued by the Fair Work Authority.

8 Excluded legislation which will still apply

There is a lengthy list of state laws that are excluded from the referral. The state laws that deal with the following workplace issues continue to apply:

- anti-discrimination and equal opportunity
- superannuation
- workers compensation
- occupational health and safety
- matters relating to outworkers
- child labour
- training arrangements
- long service leave
- leave for victims of crime
- attendance for service on a jury, or for emergency service duties
- declaring and substituting public holidays
- workplace surveillance
- business trading hours.

When does all this start from?

It takes effect from **1 January 2010** along with the National Employment Standards in the Fair Work Act and the commencement of modern awards.

What should Uniting Church employers do next?

The provisions of the state awards currently applying to your employees will continue to apply throughout the 12 month transition period.

HR Services will advise Uniting Church employers based in NSW if there is any alteration or variation.

However so that all Uniting Church employers are prepared for the changes that will ultimately take effect from 1 January 2011, they should contact HR Services to discuss which modern awards will cover your employees and the likely adjustments you will need to make.

The provisions of the *Fair Work Act, 2009* will apply from **1 January 2010**, including the National Employment Standards, enterprise bargaining, unfair dismissal and record keeping arrangements.

Therefore at an absolute minimum all Employers need to make sure that they will be compliant with the National Employment Standards and the record keeping requirements.

FOR FURTHER INFORMATION

If Uniting Church employers have any questions please contact HR Services by telephone on (02) 8267 4365 or (02) 8267 4369 or e-mail vickir@nsw.uca.org.au or alit@nsw.uca.org.au.