Labour Regulation in Australia

Australia is a federation, comprising the Commonwealth of Australia, six States (New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania) and a number of Territories, of which the two largest are the Northern Territory and the Australian Capital Territory.

The main labour statute is the federal **Fair Work Act 2009**, which covers around 85% of employees, including almost everyone in the private sector. For the most part, it operates to the exclusion of any State or Territory labour laws. However, there are important exceptions. The regulation of work health and safety, workers compensation, training and child labour, for instance, are all matters that are primarily left to the States and Territories. Discrimination is another matter on which federal, State and Territory laws can and do co-exist.

Under the Fair Work Act, all 'national system employees' (including managers) are entitled to the benefit of the **National Employment Standards**, which set minimum entitlements in relation to working hours, various forms of leave, notice of termination and redundancy (severance) pay. There is also a national minimum wage, currently set at A$19.84 per hour.

In addition, most non-managerial employees are covered by a further and more detailed set of minimum entitlements, enshrined in instruments known as **awards**. Traditionally, awards were made by industrial tribunals in settlement of labour disputes, and there were thousands of such instruments, many covering single enterprises. However the award system has been reviewed and simplified. Most employees are now covered (if they are covered at all) by one of 121 industry or occupational awards. These set minimum wage rates based on the type of work performed and the skills or qualifications required to perform it. There are also loadings or 'penalty rates' for overtime, shiftwork, evening or weekend work, or work on public holidays. 'Casual' (temporary) employees are also usually entitled to a premium of 25% on their wages, in lieu of any entitlement to annual leave, personal leave or severance pay.

Australia has a strong tradition of trade unionism and collective bargaining. Although union density has fallen to 15% overall, and just 9% in the private sector, it is still common for larger employers to negotiate collective **enterprise agreements** that set wages and other employment conditions. Since the early 1990s, it has become standard practice for these agreements to be registered under labour statutes. A registered agreement displaces the operation of any award(s) that would otherwise apply, and is enforceable under the statute in the same way as an award. It applies to union members and non-members alike. Just over a third of Australian employees are covered by such agreements, although the proportion has dropped over the past decade and only 10–15% of non-government employees are covered by current (non-expired) agreements.

Enterprise agreements can be negotiated with one or more unions, or directly with a group of employees. Either way, the final text must generally be approved by a majority of employees in some sort of vote, before being submitted to the Fair Work Commission (see below) for approval. An agreement will only be approved if it leaves each affected employee 'better off overall' than they would be under an otherwise applicable award.

An employer cannot be forced to bargain, unless a majority of employees request an agreement. Once bargaining is initiated, however, all concerned must negotiate in good faith, though there is no obligation to bargain to conclusion. Employees may take 'protected' (ie, lawful) industrial action in support of a new single-enterprise agreement, though only after the expiry date of any existing agreement. Employers can only initiate a lockout in response to protected action by employees. Any other form of industrial action is unlawful.

The Fair Work Act allows a dismissed employee who has served a minimum qualifying period to complain of **unfair dismissal**. A successful claim may result in reinstatement (plus back pay), or compensation of up to six months' remuneration. Higher-paid non-award employees, including many managers, are excluded from making such a claim.

The Act also contains various **general protections** against discriminatory or otherwise wrongful treatment at work. For example, it prohibits an employer from taking adverse action against an employee or job applicant on the ground that they are a union member or non-member, or that they have or are proposing to exercise some sort of 'workplace right'. There are also a range of other federal, State or Territory laws that deal with discrimination on the grounds of race, gender, age, disability, and so on.

There are two main regulatory agencies under the Fair Work Act. The **Fair Work Commission** operates for certain purposes as a tribunal, but in other ways through administrative decisions. Its responsibilities include:

- adjusting minimum wage rates;
- making and varying awards;
- policing industrial action and other tactics used in negotiating enterprise agreements;
- helping to resolve bargaining disputes, including (though only in limited instances) through compulsory arbitration;
- scrutinising and approving enterprise agreements;
- resolving disputes arising under awards, enterprise agreements or the National Employment Standards, where the parties have agreed it should have that role;
- determining unfair dismissal claims; and
- conciliating and (with the consent of the parties) arbitrating general protections claims.

The **Fair Work Ombudsman** promotes compliance with awards, enterprise agreements and other statutory obligations. Its inspectors have the power to enter workplaces, investigate breaches and initiate enforcement proceedings. It is also responsible for providing education and advice on workplace laws to employers and employees.