

## Award Modernisation and NES



### National Employment Standards

The government's proposed safety net comprises 10 National Employment Standards (NESs) which will apply to everyone and which cannot be removed or replaced.

In addition there will be 10 minimum employment standards in awards which are tailored to the needs of the industries, occupations or enterprises which they cover. Awards may also build upon and provide industry detail about the NESs.

Unlike the NESs the award system is not intended to have universal application.

Historically award-free employees are intended to remain award-free. Award-covered employees earning over \$100,000 may be employed on an award-free basis.

Although awards would only contain 10 additional employment matters some of these individually have wide scope. For example, one of the award provided minima is 'minimum wages' which include skill based classifications and career structures, incentive systems and bonuses, wage rates and other arrangements for apprentices and trainees.

### Modernised award system

The government is committed to urgently modernising and simplifying the award system and to that end the AIRC will identify a priority list of key awards that will be simplified within a 12 month period.

The new system is intended to commence no later than 1 January 2010 and the process of modernising and simplifying awards is intended to be overwhelmingly completed within a two year period. It seems likely that the government would become more active if the process appeared to be bogging down.

### Priority - award modernisation

The policy provides that priority will be given to industries and occupations covered by instruments which will not be in the new system, including industries with high numbers of AWAs and industries and occupations covered by commonly used state awards (NAPSAs).

In places the use of the term 'award' is not clear but it seems that the starting point for the award review process which gives rise to the system of modernised awards could be federal awards, even in traditionally state award-regulated industries and occupations.

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## Flexible Awards

The government's policy is that the modern, simple awards which will come into effect by 2010 will be relevant to the Australian economy and will not be prescriptive; they will be flexible; they will not enshrine inefficient work practices; and they will promote flexible and family friendly work arrangements.

## Awards to have less detail

The thrust of the policy suggests the government is aiming for reduced numbers of pre-reform awards, and that reviewed awards should be more accessibly written and contain less detail. There seems a potential tension between this policy objective and the potential for industry relevant detail about the National Employment Standards and the 10 award matters to increase award length and complexity.

## Modernisation

Modernisation (which seems to be envisaged as taking place simultaneously with simplification) will involve the AIRC hearing those who will be affected by the new award system so as to consider:

- which industries and occupations require separate awards;
- how minimum terms and conditions for the 10 award matters can be set for particular industries and occupations;
- how details of the 10 National Employment Standards can be provided on an industry/occupational basis;
- which industries and employers have used AWAs to over-ride prescriptive or complex award terms;
- how to address state awards applying as NAPSAs or Preserved State Agreements (this appears confined to NSW);
- family friendly provisions.

## Enterprise awards

Enterprise awards will not be reviewed unless requested by the parties.

## Transitional legislation

Most recently the government has said it will introduce transitional legislation in the first sitting week (12 February 2008). The bill will, amongst other things:

- prevent the making of new AWAs and introduce ITEAs
- rescind fact sheet requirements
- provide a new 'no disadvantage' test for new agreements

- enable the AIRC to undertake award modernisation

## **Comment on employment standards**

The government will also, at or about the same time, release draft amendments to create the 10 NESs, for comment by April 2008. This may mean that the AIRC would not hear submissions about the matters, or some of the matters, identified regarding the modernisation of awards (see above) until some time after mid-2008.

## **Flexibility clause**

As well, government policy is for modern awards to contain a flexibility clause which enables arrangements meeting the genuine individual needs of employers and employees, but which cannot be used to disadvantage individual employees ('upwards flexibility').

Examples given include rostering and hours; all-up rates; an 'exemption' rate (excluding the operation of identified award provisions); or early start/finish arrangements to fit in with collecting a child from school.

The nature of the flexibility clause is not clear. While some of the examples of flexibilities look like things that employees might request (such as changed start/finish time to meet school hours) but other flexibilities such as all up rates or an exemption clause seem more employer driven.

This may mean that the flexibility clause will identify conditions for agreement between an employer and employee. Under the policy the AIRC is to prepare a draft flexibility clause which may be modified in particular awards.