

*invigorating*



# FAIR WORK ACT 2009

Presentation to the Boating Industry Association  
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# Overview Fair Work Act 2009



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## This presentation is about ...

- Fair Work
- Terms and Conditions of Employment
  - NES
  - Modern awards
- Unfair Dismissal & General Protections
- Agreement Making
  - Overview



## Fair Work

Started 1 July 2009

- Fair Work Australia
- Fair Work Ombudsman
- Incorporated employers

NSW Referral – remainder of private sector employers

- Fair Work Act and NES applies
- State awards continue to apply until 2011 subject to NES and embedded increases (if any)
- National Wage Review applies
- Transition to be worked out



# Terms & Conditions of Employment



## NES

- Apply to all private sector from 1 January 2010

## Modern awards

- Apply according to coverage
- Apply subject to transitional provisions
- Do not apply to employees under an operating agreement, non-constitutional corporations

## Enterprise agreements

- When enterprise agreement operating modern award does not apply
- Existing agreements (state or federal) continue to apply until terminated or replaced



## National Employment Standards

- Maximum ordinary hours
- Requests for flexible working arrangements
- Parental Leave
- Annual Leave
- Personal Leave
- Community Service Leave
- Long Service Leave
- Public Holidays
- Notice of Termination and Redundancy
- Fair Work Information Statement



### Maximum Weekly Hours

- 38 per week full-time
- Reasonable Additional Hours
- Averaging only through award/ agreement except award/ agreement free employees

### Flexible Working Arrangements

- 12 months continuous service
- Employee responsible for care of child under school age, disabled child under 18
- Request in writing (identifying change and reason)
- Response in writing within 21 days
- Refusal on reasonable business grounds only and must provide reasons
- Modification of request regarded as refusal



## National Employment Standards cont...

### Parental Leave

- 12 months continuous service
- Up to 24 months unpaid (12+12)
- Only three weeks can be taken concurrently
- Right to be consulted about changes affecting job while on leave

### Annual Leave

- 4 weeks
- 5 weeks – shift workers
- May cash out if
  - Award/agreement covered and award/agreement provides for it;
  - or
  - Award/agreement free and employer and employee agree in writing



## National Employment Standards cont....



### Personal/ Carers' Leave and Compassionate Leave

- 10 days leave per annum for personal or carers' leave purposes
- Carer's leave for care or support to member of e'ee's household or immediate family
- 2 days unpaid carers' leave for casuals or e'ee with no accrued entitlement
- 2 days compassionate leave for each occasion (unpaid for casuals)
- Must provide reasonable notice, employer can require proof
- Modern awards and agreements may provide for cashing out



## National Employment Standards cont...

### Community Service Leave/Jury Service

- Paid Jury Service Leave
- Up to 10 days paid
- Unpaid Community Service Leave for voluntary emergency management activity
- Leave includes travel and reasonable recovery time

### Long Service Leave

- Currently being developed
- Broadly speaking, existing state act, federal award or agreement with express entitlements continue to apply



### Public Holidays

- Permanent employees can be absent with pay
- Employee may refuse to work if request is unreasonable

### Notice of Termination and Redundancy

- Written notice of day of termination no later than day of termination (except fixed expiry contract, casuals, serious misconduct)
- Provide statutory notice or payment in lieu
- If position is redundant entitlement to severance pay of up to 16 weeks (except fixed expiry contract, casuals, serious misconduct, small business (< 15), industry specific scheme in award)

### Fair Work Information Sheet

- All new employees, casuals once each 12 months



## Modern Awards

Modern awards commenced 1 January 2010

- Transitional arrangement for rates of pay are included in modern awards

Terms that are common to all modern awards:

- Coverage terms
- Flexibility terms providing for individual flexibility arrangements
- Terms about settling disputes
- Ordinary hours of work
- Pieceworker terms (if applicable)
- Automatic variation of allowances



## Modern Awards cont...

### Transitional provisions:

- General transitional provisions apply to
  - Minimum wages (including industry allowances) and piece rates (where there is a difference – the “transitional amount”)
  - Casual, part-time loadings
  - Saturday, Sunday, public holiday, evening or other penalties, shift allowances/penalties (where there is a difference – the “transitional percentage”)
- Some transitional arrangements in specific clauses such as
  - district allowances (allowance usually retained until 31 December 2014)
  - retention of pre-12 September 2008 superannuation schemes
  - phase out of clerks’ exemption.



## Modern Awards cont...

### Flexibility terms

- Potentially provide employers with flexibility in managing individual employees
- Awards list the matters that can be subject to a flexibility arrangement, such as:
  - hours of work
  - overtime and penalty rates
  - allowances
- Cannot reduce overall terms and conditions of employment of the employee



## Unfair Dismissal

### Unfair dismissals

- > New threshold <15 & qualifying periods
- > Written notice required
- > Fair dismissal code

No evidence of blow-out in claims - yet!



## General Protections

### General protections

- > 'Adverse action'
- > Like unlawful termination on steroids
- > Employees, prospective employees and others

Case law to be developed



## Agreement Making

Only collective agreements – no AWAs or ITEAs

Single Business ‘Enterprise Agreements’

- Between group of employees and an employer; or
- Two or more single interest employers

Multi Business

Greenfields

- Genuine new enterprise
- Before employees who will be covered are employed
- Agreement between employers and relevant union(s)



## The Bargaining System

### Bargaining starts when

- Employer initiates or agrees to bargain
- FWA makes an order or determination

### Within 14 days of bargaining starting

- Employer must take all reasonable steps to give employees notice of their right to be represented
- Notice can be given before

Bargaining process is complex and time intensive!



## The Bargaining Process (Good Faith)

BR's must bargain in good faith

- Attending and participating in meeting at reasonable times
- Disclosing relevant information in a timely manner
- Responding to other parties' proposals in a timely manner
- Genuine consideration to the proposals and giving reasons for responses
- Recognising and bargaining with the other bargaining representatives
- Refraining from capricious or unfair conduct that undermines freedom of association or collective bargaining



## Approval Timeline

- Approval vote cannot be held earlier than 21 days after last notice of right to be represented
- Access to agreement must be at least 7 days before vote
- At least 7 days' notice of time, place and method of voting
- Agreement lodged by a bargaining representative within 14 days of being made
- Processing time for FWA to approve agreement



## FWA Approval

### Assessment criteria

- There was genuine agreement
- Passes the Better Off Overall Test [BOOT]
- Doesn't breach the NES
- Employees covered must be fairly chosen
- No unlawful terms
- No designated outworker terms
- Agreement has a nominal expiry date
- Agreement has a dispute settlement procedure
- Complying provisions concerning shiftworkers, pieceworkers, outworkers, school-based apprentices and trainees



## Take-away

### Pay slips:

- ABN
- Names of employee and employer
- Date of payment and pay period
- and then some...

### Modern awards

- Check your award

### NES and modern awards have started

- Pay rates transitioned in

