

ACTUS WORKPLACE LAWYERS

Insights into Current Workplace Relations Issues



23 February 2023

Welcome to the February edition of Actus Workplace Lawyers' *Insights into Current Workplace Relations Issues* for 2023. Please get in touch if you would like to discuss any of the issues covered in this edition or discuss the workplace relations services or support that Actus Workplace Lawyers could provide to your business.

Multi-employer wage fight test

As Stephen Smith, Principal of Actus Workplace Lawyers, highlighted in an [article by Ewin Hannan in *The Australian*](#) on 15 February, a small group of heating, ventilation and air-conditioning (HVAC) installation businesses are currently discussing a multi-enterprise agreement with the Australian Manufacturing Workers Union (AMWU). At least some of these businesses have entered into generous pattern enterprise agreements with the AMWU in identical terms. The agreements are called: "[Insert company name] On-Site Construction HVAC Workers NSW Enterprise Agreement 2020-2023" and they expire this year.

The pattern agreement contains a 36-hour week, base pay rates of \$48 per hour, a \$191 per week travel allowance, \$110 per employee per week into a redundancy fund, income protection insurance through the union's preferred provider, a \$3.60 per hour site allowance, and numerous other employee benefits.

It appears likely that any multi-enterprise agreement that is agreed upon between this small group of HVAC businesses and the AMWU will be a 'single interest employer agreement' under the Government's new IR laws. If such an agreement is made and the union then applies to vary the agreement to include other employers (as is likely), many HVAC businesses are going to have to devote a lot of time and money to proving to the Fair Work Commission (FWC) that their operations and business activities are not 'reasonably comparable' with those of the employers originally covered by the agreement and that they do not have 'common interests' with the other employers.

It is not surprising that a small group of HVAC businesses want their competitors to pay the same extremely generous rates and conditions they have conceded in response to union claims, but why should hundreds of other HVAC businesses be forced to do so? There is nothing fair about this.

The Government's and unions' argument that these laws are designed to avoid a 'race to the bottom' does not stack up because Australia has a very comprehensive safety net of awards and legislated minimum standards. Also, widespread skill shortages are resulting in substantial wage movements in the HVAC sector and many other industries. The laws appear to be designed to impose a 'race to the top', regardless of how sustainable that is for many businesses and their customers, or whether those employers who are paying at the 'top' are doing so just to maintain industrial peace or to remain on the unions' list of preferred contractors.

This same scenario is set to play out in numerous industry sectors. The effect will be less competition, less investment, lower employment, lower economic growth, more costly community infrastructure, and more disruption.

A copy of Actus Workplace Lawyers handy 30-page digital *Guide to Bargaining under the Secure Jobs, Better Pay Amendments* can be ordered and immediately downloaded [here](#).

Strategic bargaining considerations

The Government's new bargaining laws will come into operation on 6 June 2023.

It is timely for employers to consider their bargaining options including such questions as:

- Should we enter into new enterprise agreements or renew expired agreements before June, to better protect the business against being roped-in to multi-enterprise agreements and losing control over the setting of wages and conditions?
- Is it time to start afresh and draft contemporary enterprise agreements, rather than continuing to roll over enterprise agreements that were drafted nearly 20 years ago?
- How can enterprise bargaining play a positive role in the business in boosting employee engagement?

Once an employer is covered by a multi-enterprise agreement, it will be extremely difficult to return to bargaining at the single-enterprise level in the future, given the way that the new bargaining laws operate.

Actus Workplace Lawyers is well placed to provide strategic and operational assistance to businesses with all enterprise bargaining matters. Please contact Stephen Smith, Principal of Actus Workplace Lawyers at stephen.smith@actuslawyers.com.au.

Employers would be wise to devote resources to workplace compliance

Given the complexity of Australia's workplace laws and award system, few businesses would be brave enough to proclaim they are fully compliant with all legislative and award requirements. Non-compliance exposes businesses, their directors and senior managers to major cost and reputational risks.

Federal 'wage theft' laws are set to be implemented later this year exposing managers and directors to terms of imprisonment for certain underpayments. Also, civil penalties for breaches of the Fair Work Act and awards [increased substantially on 1 January 2023](#) (up to a maximum of \$825,000 for a serious contravention).

Actus Workplace Lawyers is on hand to provide confidential and privileged advice to employers on all workplace compliance matters. Please contact Justine Smith, Lawyer of Actus Workplace Lawyers at justine.smith@actuslawyers.com.au.

Legislation to implement seven IR measures will be introduced by mid-year

During a Senate Estimates hearing on 15 February, representatives of the Department of Employment and Workplace Relations clarified that legislation will be introduced into Parliament by mid-2023 to implement seven measures. [Read more](#)

The reforms that the Government intends to introduce in the second half of 2023

In a [National Press Club Speech](#) on 1 February, Employment and Workplace Relations Minister Tony Burke MP outlined the issues to be dealt with in workplace relations legislation that will be introduced in the second half of 2023. [Read more](#)

Important employer obligations regarding over 100,000 'zombie agreements'

On 14 February, the FWC published a [list of over 100,000 'zombie agreements'](#) that will automatically sunset on 7 December 2023 unless terminated or replaced with a new enterprise agreement before this date, or the FWC is convinced to extend the period of operation of a particular agreement.

Employers are required to give affected employees at least six months' notice of the automatic sunsetting. These notices must be given to employees by no later than 6 June 2023. [Read more](#)

Should you wish to discuss any of the issues in this report or require any legal advice or assistance, please contact Stephen Smith, Principal of Actus Workplace Lawyers at stephen.smith@actuslawyers.com.au. If any other members of your staff would like to receive this regular report, please advise of the details through this link: <https://actuslawyers.com.au/contact-us>

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