

Illawarra INDUSTRY MATTERS

June 2010

Fair Work System – One Year On

1 July marks the first year of operation of the *Fair Work Act* and, a year on, the law is still evolving and far from settled. Many employers are uneasy about the law and ongoing union attempts to stretch its boundaries, while they are also finding compliance very challenging. 1 July is also when businesses will need to begin phasing in changed penalties, loadings and wage rates in modern awards, and when the annual wage review decision takes effect.

Ai Group is concerned by the recent significant increase in applications to FWA for ballots to authorise industrial action. The bargaining process is proving to be challenging with:

- unions attempting to stretch the boundaries of what can be lawfully included in enterprise agreements;
- union claims for restrictive provisions which would impede competitiveness and efficiency, eg. restrictions on the engagement of contractors and labour hire, rather than provisions which would improve productivity;
- refusal by unions to allow individual flexibility arrangements to be made; and
- Rising wage expectations of employees and unions.

Skills Survey

The initial results of Ai Group's latest skills survey show:

- 85% of businesses consider there is a moderate to extreme risk of shortages impacting in the effective operation of their business this year;
- 90% of businesses consider there is a moderate to extreme risk of shortages impacting on the effectiveness of their operations within 5 years;
- nearly 40% of companies are giving the management of shortages high priority; and
- 73% of companies consider it highly important or extremely important that government take active steps to address skills shortages now.

Illawarra Industry Council

It is with great pleasure I announce that at the AGM on 29 June the following member representatives' have been appointed to Illawarra Industry Council:

Alex Spillett	AusZinc Metals & Alloys
Anton Atie	Mainteck Services
Mark Carberry	K & R Fabrications
Renee Whiteside	David Brown Gear Industries
Robert McCulloch	Tyree Industries
Ross Kennedy	CTPM Australasia
Phil Brodie	Thomas & Coffey
Paul Veitch	AllFab Constructions
Tom Gallo	WGE
Paul Kunkler	MultiServ
Adam Oswald	KJ Scaffolding
Phil Smith	Blue Scope Steel
David Lidden	Joy Mining Machinery
David Rosette	Alminco (B&W Group)
Paul Bollen	Orrcon
Geoff O'Donnell	Rollco (Shin Investments)
Gary Bruce	Veolia Environmental Services

Further, the following members have been appointed to executive positions:

Chairman - Robert Spiers, Spiers Engineering;
Deputy Chairman - Peter Corkish, Blue Scope Steel; and
Treasurer - Tracey Freeman, Mainteck.

National Workforce Literacy Project

Ai Group's first project report on employers' views has been completed. The key findings are:

- over 75% of respondents reported that their business was affected by low levels of literacy and numeracy;
- 45% reported that labourers and process workers were the occupational group most affected by low levels of literacy and numeracy.
- the most frequently cited impacts resulting from a lack of literacy and numeracy skills were: poor completion of workplace documents and time-wasting through repeated work; and
- respondents saw a role for government, employers, education authorities and individuals in improving workforce literacy and numeracy skills – 38% think employers have a role.

For Report: www.aigroup.com.au/policy/reports

Fair Work System – Still Evolving

Ai Group has pursued appeals in our own right, or intervened in proceedings initiated by others, in a large number of Full Bench cases dealing with critical aspects of the Act, including:

- an appeal against the decision of Commissioner McKenna to reject an enterprise agreement negotiated between McDonald's Restaurants and the SDA, covering 80,000 employees. Ai Group was concerned that most employers who negotiate an enterprise agreement (EA) would not be able to meet the extremely onerous procedural requirements and approach to applying the no disadvantage test adopted by the Commissioner. (Result: decision overturned).
- an appeal against a decision of Snr Deputy President Hamberger which held that an EA clause requiring all contractors and labour hire providers used by Airport Fuel Services (a Caltex operation) to have an enterprise agreement with the TWU, could be the subject of protected industrial action. (Result: Decision overturned).
- an appeal by Ai Group against the decision of Commissioner Ryan to approve an agreement applicable to Dunlop Foams containing an allegedly unlawful term relating to union right of entry. Commissioner Ryan interpreted the right of entry and unlawful term provisions in the Act in a manner which will cause problems for industry. (Result: Decision overturned).
- an appeal against the decision of Commissioner Ryan in a case involving TriMas the Commissioner interpreted the provisions of the Act, which require a flexibility term to be included in all EAs, in a very narrow manner. (Result: Decision overturned).
- full bench proceedings relating to applications by the Metropolitan Fire & Emergency Services Board and the UFUA for scope orders to determine the scope of bargaining and whether the Board should be required to bargain for an agreement covering both operational employees and managers. (Result: The employer's scope was upheld).
- an appeal against the decision of Commissioner Smith to reject an agreement negotiated between Woolworths and the SDA because the dispute settlement clause did not include compulsory arbitration. (Result: Decision overturned).
- a case involving Abigroup in which the powers of FWA to issue an order cancelling or delaying a ballot to approve a proposed EA were under consideration. (Result: The matter was settled between the parties before a final decision was made. However, a favourable decision for employers was made in a subsequent Full Bench case relating to Tahmoor Coal).

With regard to the implementation of modern awards, a Full Bench FWA decision on 25 June will give employers some welcome relief. In response to an application by Ai Group, the Full Bench clarified that employers are generally entitled to absorb modern award entitlements into over-award payments.

The terrain for workplace relations is only going to get trickier over the period ahead as the economy picks up, and skill shortages re-assert themselves. All workplace relations systems need to be continually monitored and evaluated, including Australia's Fair Work system.

Upcoming Events

Manage the constraints in your business - Breakfast briefing

7:15 – 9:03 am 23 July

Christie Conference Centre, Kilimanjaro Room,
100 Walker Street, North Sydney

BIZassist Briefing

8.00 – 10.15 am 29 July

Villa Doro Centre, Flinders Street Wollongong

Fair Work Essentials for HR/Payroll

9.00 am – 12.30 pm 30 July

Ai Group Head Office
51 Walker Street, North Sydney

Manufacturing & associated industries Modern awards Clinic

5 August 2010, 9.00 am – 4.30 pm

Ai Group Head Office
51 Walker Street, North Sydney

For further information contact: Skye Lacey on 4228 7266 or email slacey@aigroup.asn.au