

# Australian workplace agreements – what are they?

by Nick Healy

Given the increasing number of Legal Practitioners becoming involved in the negotiation and drafting of Employment Agreements it is important to understand all options open to organisations deciding on a suitable legally binding document setting the Employee's terms and conditions of Employment. In the past, Employers had the option of adhering strictly to the relevant Industrial Award or drawing up a Certified (Enterprise Bargaining) Agreement. The Workplace Relations Act 1996 introduced a new player to the arena with the creation of the Australian Workplace Agreement (AWA).

Since their introduction hundreds of Employers have found these agreements to be the most suitable, providing an opportunity for both Employers and Employees to benefit from more flexible employment arrangements best suited to the needs of their enterprise or workplace without any unwanted third party interference. These AWAs have already been adopted by some of Australia's most prominent organisations, including the Commonwealth Bank of Australia, the Civil Aviation Safety Authority, British Aerospace, Raeco International and Impulse Airlines. Many small businesses from cafes and pre-schools to small manufacturers have also made AWAs, recognising the benefits they can provide for their workplaces.

The following outlines what an AWA is, what they can cover, how they differ from Certified Agreements and how they are approved by the Office of the Employment Advocate.

## **What is an Australian Workplace agreement**

An AWA is an individual written agreement between an employer and an employee about the employee's terms and conditions of employment. AWAs give employers and employees flexibility in setting wages and conditions, and enable them to create arrangements that suit their workplaces and preferences.

Each employee who wishes to be party to an AWA must sign it. Legally each agreement between an employee and the employer is a separate AWA, although several may be included in one document.

AWAs completely displace Federal and State Awards and most State Laws but will not override Commonwealth Legislation.

Both Employers and Employees can nominate a bargaining agent to negotiate the agreement on their behalf, however those bargaining agents can only become involved on behalf of those individuals who specifically nominate them and cannot negotiate on behalf of other employees, nor can they become a party to the agreement.

To have legal effect, AWAs must be approved by the Employment Advocate.

## **What can AWA cover?**

It is up to Employers and employees to decide what is to be included in their AWA. An AWA completely displaces any federal or state award or state agreement, which would otherwise cover the employee concerned, however an AWA may call up the provisions of an existing award or agreement which will then become part of the AWA. Territory laws on apprenticeship, worker's compensation and occupational health and safety cannot be displaced by an AWA.

Some businesses and their employees address one key issue through an AWA and include the provisions of the relevant Award to cover other terms and conditions of employment. Others address a number of issues or make completely new arrangements entirely tailored to their needs.

## **What is the difference between an AWA and a certified agreement?**

There are two main differences between AWAs and Certified Agreements:

- 1) AWAs are individual agreements, whereas Certified Agreements are collective. That is, even though AWAs can be made with a group of employees, they only apply to those employees who sign them. A certified agreement, on the other hand will apply to all employees in a group, provided that a majority of those employees have endorsed it. Certified Agreements may also be made with a Union on behalf of the employees.
- 2) AWAs are assessed and approved by the Office of the Employment Advocate, whereas certified agreements are assessed and approved by the Australian Industrial Relations Commission.

## **How are AWAs approved**

In assessing an AWA the Office of the Employment Advocate applies what is known as the No-Disadvantage Test which is a global

test including not just the overall remuneration package but also non-monetary considerations. The test considers whether the AWA reduces the overall package of terms and conditions of employment when benchmarked against the applicable Industrial Award. The Employment Advocate needs to be sure that the test has been met for each employee.

Office of the Employment Advocate case officers compare the provisions of the AWA with the award and relevant laws, focusing on areas of significant difference.

The main aim of the Australian Workplace Agreement is to provide for a more flexible workplace that best suits the individual needs of both Employer and Employee without unwanted external interference. Employers and Employees can tailor an agreement to best suit their workplace provided that it passes the No-Disadvantage Test and does not conflict with any Federal Legislation, or Territory laws on occupational health and safety, apprenticeships or worker's compensation.

For any further information, or should any firm wish for a detailed presentation surrounding Australian Workplace Agreements please contact Steve Attenborough or Nick Healy at the Office of the Employment Advocate Ph. 8946 1642.

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