

The National Employment Standards may override Agreements

Julia Gillard, the Minister for Employment and Workplace Relations, has made a number of announcements regarding the Fair Work Bill, the Government's new industrial relations legislation.

A highly significant, but little publicised announcement, related to various 'old Act Agreements'. These 'old Act Agreements' include:

- an Agreement made in accordance with the Act as it existed from 1993;
- an Australian Workplace Agreement;
- an Individual Transitional Employment Agreement;
- a Union Collective Agreement, and
- an Employee Collective Agreement.

The Minister announced that these Agreements would "continue to apply until such time as a new Agreement is made...(however) to balance this...the National Employment Standards ('the NES') will (apply from) 1 January 2010 for all employees and will override any inferior conditions".

The overall effect of such an announcement, if put into law, is that those 'old Act Agreements', will continue to operate, but will be required to be read in conjunction with the *NES from 1 January 2010.

What does this mean for employers?

Employers who are a party to an 'old Act Agreement' would need to ensure that an employee's wages and conditions comply with the NES from 1 January 2010.

Should the NES provide a more favourable outcome than that provided in the 'old Act Agreement', then the NES:

- would prevail over the provisions provided in the 'old Act Agreement', and
- would need to be applied to the employee(s) subject to the 'old Act Agreement'.

Further detail will be available when the transitional provisions for the Fair Work Bill is tabled before Parliament in the early part of 2009. Please note that it is possible that the Minister may reverse her public position on this before the transitional bill is finalised.

Employers who are concerned about the ramifications of this announcement or who have any questions about the contents of this EMA Note should contact EMA Consulting.

*A summary of the NES was provided in EMA Note Edition 32.

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