AIR Bulletin

15 May 2008 Volume 18/08 with the Decision Summaries for the week ending Friday, 9 May 2008.

Contents

AIRC Rules amendment.................................................................2
Decisions of the Australian Industrial Relations Commission...............3
Websites of Interest........................................................................9
Registry Addresses ......................................................................10
AIRC Rules amendment

On 6 May 2008, the President of the Australian Industrial Relations Commission signed amendments to the AIRC Rules. The majority of amendments are consequential to the amendments to the Workplace Relations Act 1996 by the Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008.

The amendments in this regard introduce new Forms for the making of applications to extend the expiry date and vary pre-reform certified agreements as well as terminate collective agreements and old IR agreements. There are also new Forms for the making of applications to extend the expiry date and vary preserved collective State agreements.

The amendments commence on 15 May 2008. Further information as to these and the remaining amendments is contained in the signed Rules and Explanatory Statement.
REGISTERED ORGANISATIONS – registration – application by transitonally registered association – jurisdiction – whether requirement for geographic limitation in eligibility rules – whether body registered is same as body which applied for registration – ss18, 19, 25 Schedule 1, Workplace Relations Act 1996 – Regulation 4.4, Part 4 of Chapter 6 Workplace Relations Regulations - appeal – Full Bench – appeal against decisions granting registration as organisation to Qld State registered association (that was also a transitonally registered organisation under WR Act) – appellant contended application not valid in absence of geographical limitation of its eligibility rules to Qld – eligibility rule contains no geographical limitation, however under State Act registration was limited to Qld and it follows that its eligibility rule was limited to employees in Qld – effect of decision under appeal is that union could enrol members throughout Commonwealth – fundamental criterion in federal registration scheme is avoidance of overlapping membership coverage – effect of decision under appeal is that a transitonally registered association could expand membership coverage upon registration without having to comply with that criterion - most unlikely Parliament intended body which emerged from registration process should have broader industrial coverage than body which applied for registration - body registered must in critical respects be body which applied for registration - because eligibility rules of body registered were fundamentally different from those of body which applied, applicant association was not registered rather some other body was registered – decisions affected by error – leave to appeal granted – decisions quashed - subsequent to initial decisions, regulations amended to require geographic limitation in rules – because decisions quashed Bench obliged to deal with appeal on basis of law as it presently stands and not as it stood at time of original decisions – State registered association given leave to amend rules to conform with amended legislation – appeal adjourned.


C2008/2226
Guidice J
Harrison SDP
Larkin C

TERMINATION OF EMPLOYMENT – 100 employees or fewer – short period casual – s643 Workplace Relations Act 1996 – no hearing held – respondent stated they have 21 employees – no submissions from applicant – matter struck out for want of prosecution.
3 TERMINATION OF EMPLOYMENT – merit – capacity to perform inherent requirements – workplace injury – ss643 Workplace Relations Act 1996 – Disability Discrimination Act 1992 – applicant suffered workplace injury and was restricted to modified duties – terminated due to inability to perform duties of position – applicant submitted he was able to perform duties he was originally engaged for – reclassification – applicant’s position reclassified by new certified agreement – whether reclassification changed duties or requirements of position – Commission determined applicant did not have capacity to perform inherent requirements of his position (as defined either before or after reclassification) – whether disability discrimination – not satisfied there was discrimination relating to disability as appropriate recognition must be given to business judgment of employer in organising its undertaking and in regarding this or that requirement as essential to the particular employment [X v The Commonwealth] – valid reason for termination – application dismissed.

Tham v Coles Group Supply Chain P/L

U2007/6071 [2008] AIRC 110
Lacy SDP Melbourne 9 May 2008

4 TERMINATION OF EMPLOYMENT – 100 employees or fewer – related bodies corporate – ss643 Workplace Relations Act 1996 – satisfied respondent (including related bodies corporate) employed 79 employees – no jurisdiction – application dismissed.

Place v UrbanVirons Group P/L

U2008/3154 [2008] AIRC 406
O’Callaghan SDP Adelaide 8 May 2008

5 ENTERPRISE BARGAINING – protected action ballot – variation – extension of time for voting – when does a ballot order expire – postal delays – ss451, 469 Workplace Relations Act 1996 – Commission previously issued secret ballot order – after ballot closed APF sought variation to extend voting period – whether there is jurisdiction to vary order after ballot closed – ss496 allows Commission to vary a ballot order ‘at any time before the order expires’ – Act does not specify when order ‘expires’ – time at which a ballot order expires to be ascertained from terms of order itself – it expires when it has no further work to do – final step in original order was close of ballot not declaration of result – satisfied order expired – no jurisdiction to vary order – fair and transparent vote requires the rules for its conduct to be known and adhered to [Egan v Maher] – application to vary order refused.
6 TERMINATION OF EMPLOYMENT – amendment of application – unfair dismissal – unlawful dismissal – ss110, 643, 659 Workplace Relations Act 1996 – request to amend application to include unlawful dismissal grounds under s659 – discretion of Commission wide and must be exercised in accordance with equity, good conscience and substantial merits of case, without regard to technicalities and legal forms (s110(1)(c)) – amendment allowed – matter re-listed for conciliation.

Haydon v Coles Supermarkets Australia P/L

U2008/130 [2008] AIRC 403
Hamberger SDP Sydney 9 May 2008


De Costa v The University of Sydney

Hamberger SDP Sydney 7 May 2008


Smith v Department of Human Services

U2007/6578 [2008] AIRC 246
Hamilton DP Melbourne 8 May 2008

9 INDUSTRIAL ACTION – order against industrial action – probability of industrial action – interim order refused – public interest – s496 Workplace Relations Act 1996 – application for order to stop industrial action – employer asserted it was probable employees would take industrial action to address workplace grievances rather than following dispute procedures in agreements – Commission not able to determine matter in 48 hours and refused to issue interim order under s496(7) as not in public interest (one reason being whether employees sufficiently notified of, and able to participate in, proceedings) – satisfied
various work stoppages over past year constituted industrial action – probable some employees (but not all) will take further action – order issued to cover action that is probable until 31 August 2008 when project ends – order only binds employees who have participated recently in industrial action.

Kaefer Integrated Services P/L and Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union & Anor

<table>
<thead>
<tr>
<th>Reference</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>C2008/2021</td>
<td>[2008] AIRC 412</td>
</tr>
<tr>
<td>McCarthy DP</td>
<td>Perth 9 May 2008</td>
</tr>
</tbody>
</table>

**10** TERMINATION OF EMPLOYMENT – 100 employees or fewer – s643 Workplace Relations Act 1996 – satisfied respondent employed 100 employees or fewer – no jurisdiction – application dismissed.

Davidson v Northern Territory Wardrobes & Shower Screens

<table>
<thead>
<tr>
<th>Reference</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawson C</td>
<td>Sydney 7 May 2008</td>
</tr>
</tbody>
</table>

**11** TERMINATION OF EMPLOYMENT – 100 employees or fewer – s643 Workplace Relations Act 1996 – satisfied respondent employed 100 employees or fewer – no jurisdiction – application dismissed.

De Haas v Dukest Group P/L t/as Briars Inn

<table>
<thead>
<tr>
<th>Reference</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>U2008/2346</td>
<td>[2008] AIRC 370</td>
</tr>
<tr>
<td>Lawson C</td>
<td>Sydney 7 May 2008</td>
</tr>
</tbody>
</table>

**12** TERMINATION OF EMPLOYMENT – 100 or fewer employees – s643 Workplace Relations Act 1996 – satisfied respondent employed 100 employees or fewer – no jurisdiction – application dismissed.

Whitwell v Central Coast Motorcycles P/L

<table>
<thead>
<tr>
<th>Reference</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>U2008/2210</td>
<td>[2008] AIRC 408</td>
</tr>
<tr>
<td>Lawson C</td>
<td>Sydney 8 May 2008</td>
</tr>
</tbody>
</table>

**13** TERMINATION OF EMPLOYMENT – extension of time – s643 Workplace Relations Act 1996 – 3 months late – no acceptable reason for delay – applicant did not contest termination – no merit in substantive application – contention that termination not for genuine operational reasons not supported by evidence – extension refused – application dismissed.

Shepherd v Ausco Building Systems P/L

<table>
<thead>
<tr>
<th>Reference</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>U2008/2470</td>
<td>[2008] AIRC 411</td>
</tr>
<tr>
<td>Lawson C</td>
<td>Sydney 8 May 2008</td>
</tr>
</tbody>
</table>

**14** TERMINATION OF EMPLOYMENT – 100 employees or fewer – short period casual – ss638, 643, 661 Workplace Relations Act 1996 – determination on basis of written submissions – respondent had 8 employees – applicant was casual for less than 12 months – no notice required – no submissions from applicant – no jurisdiction –
TERMINATION OF EMPLOYMENT – extension of time – illness – ss643, 659 Workplace Relations Act 1996 – 13 days late – acceptable explanation for delay – applicant 17 years old with limited work experience – actively contested termination – applicant ill and unable to attend work – case has merit – extension granted – amendment of application – amendment to application to include unlawful grounds relating to illness under s659 allowed – resignation – respondent’s assertions that applicant resigned rather than terminated not yet considered – matter to be listed for conciliation unless respondent advises it intends to press that objection.

Jopson v Subway Bass Hill

TERMINATION OF EMPLOYMENT – 100 employees or fewer – ss643 Workplace Relations Act 1996 – satisfied respondent employed 100 employees or fewer – no jurisdiction – application dismissed.

Grigg v Smiledoctor t/as Pittwater Dental Care P/L

TERMINATION OF EMPLOYMENT – extension of time – internal review of decision to terminate – ss631, 647, 648 Workplace Relations Act 1996 – 84 days late – applicant submitted delay due to employer’s internal review of termination after employment ceased – delay also due to flooding and moving house – Brodie-Hanns applied – application lodged months after internal review ceased – no acceptable reason for that delay – noted also that during internal review process applicant advised employer he would not appeal against review decision – other reasons for delay rejected – extension refused – application dismissed.

Paterson v Rio Tinto Aluminium Ltd

TERMINATION OF EMPLOYMENT – 100 employees or fewer – ss643 Workplace Relations Act 1996 – satisfied respondent employed 100 employees or fewer – no jurisdiction – application dismissed.
19 TERMINATION OF EMPLOYMENT – 100 employees or fewer – s643 Workplace Relations Act 1996 – satisfied respondent employed 100 employees or fewer – no jurisdiction – application dismissed.
Websites of Interest

**Australian Industrial Relations Commission** (AIRC) - [http://www.airc.gov.au/](http://www.airc.gov.au/) – includes hearing lists, rules, forms, major decisions, termination of employment information and student information. Related websites include:


**Australian Fair Pay Commission** – [http://www.fairpay.gov.au](http://www.fairpay.gov.au) – established to set and adjust the federal minimum wage to promote the economic prosperity of the people of Australia;


**ComLaw** - [http://www.comlaw.gov.au/](http://www.comlaw.gov.au/) - legislative repository that has replaced SCALEplus, contains:

- Commonwealth primary legislation, as well as other ancillary documents and information, in electronic form; and
- the new Federal Register of Legislative Instruments (FRLI) which was established on 1 January 2005 under the *Legislative Instruments Act 2003* as the authoritative source for legislative instruments and compilations of legislative instruments;

**Department of Employment and Workplace Relations** (DEWR) - [http://www.dewr.gov.au/](http://www.dewr.gov.au/) - provides general information about DEWR and its Ministers, including their media statements;


**Tasmanian Industrial Commission** - [http://www.tic.tas.gov.au](http://www.tic.tas.gov.au);


**Work Choices** – [https://www.workchoices.gov.au/](https://www.workchoices.gov.au/) – provides pay and conditions information for employees and employers of constitutional corporations and the Commonwealth, those in the ACT, Northern Territory, Christmas and Cocos (Keeling) Islands, and most employees and employers in Victoria;

**Workplace Authority** - [http://www.workplaceauthority.gov.au](http://www.workplaceauthority.gov.au) - primary role is to accept lodgments of workplace agreements; includes information regarding Australian Workplace Agreements (AWAs), development and lodging procedures;

**workplace.gov.au** – [http://www.workplace.gov.au](http://www.workplace.gov.au) - provides access to online employment and workplace relations services and information, including government assistance, jobs, careers, training, working conditions and Indigenous Employment Centres;


Registry Addresses

Principal
Level 4, 11 Exhibition Street
Melbourne
GPO Box 1994
Melbourne Vic 3001
Tel: (03) 8661 7777
Fax: (03) 9655 0401
Out of hrs emergency: 0419 960 157
Email: melbourne@air.gov.au
Industrial Registrar: Doug Williams

Queensland
Level 14, Central Plaza Two
66 Eagle Street
Brisbane
PO Box 5713 Central Plaza
Brisbane QLD 4001
Tel: (07) 3000 0399
Fax: (07) 3000 0388
Out of hrs emergency: 0419 335 202
Email: brisbane@air.gov.au
Deputy Industrial Registrar: Damien Staunton

New South Wales
Level 8, Terrace Towers
80 William Street
East Sydney NSW 2011
Tel: (02) 8374 6666
Fax: (02) 9380 6990
Out of hrs emergency: 0419 318 011
Email: sydney@air.gov.au
Deputy Industrial Registrar: Barry Jenkins

South Australia
Level 7, Riverside Centre
North Terrace
Adelaide
PO Box 8072
Station Arcade SA 5000
Tel: (08) 8308 9863
Fax: (08) 8308 9864
Out of hrs emergency: 0419 563 601
Email: adelaide@air.gov.au
Deputy Industrial Registrar: Lynne Staplyton

Tasmania
1st Floor, Commonwealth Law Courts
39-41 Davey Street
Hobart
GPO Box 1232M
Hobart Tas 7001
Tel: (03) 6214 0200
Fax: (03) 6214 0202
Out of hrs emergency: 0418 124 021
Email: hobart@air.gov.au
Deputy Industrial Registrar: Ross McCarroll

Victoria
Level 4, 11 Exhibition Street
Melbourne
GPO Box 1994
Melbourne Vic 3001
Tel: (03) 8661 7777
Fax: (03) 9655 0401
Out of hrs emergency: 0419 960 157
Email: melbourne@air.gov.au
Deputy Industrial Registrar: Ross McCarroll

Western Australia
Floor 12, 111 St Georges Terrace
Perth
GPO Box X2206
Perth WA 6001
Tel: (08) 9464 5172
Fax: (08) 9464 5171
Out of hrs emergency: 0448 275 936
Email: perth@air.gov.au
Deputy Industrial Registrar: Ross McCarroll

Northern Territory
10th Floor, Northern Territory House
22 Mitchell Street
Darwin
GPO Box 969
Darwin NT 0801
Tel: (08) 8936 2800
Fax: (08) 8936 2820
Out of hrs emergency: 0418 895 495
Email: darwin@air.gov.au
Deputy Industrial Registrar: Neil McHattie

Australian Capital Territory
2nd Floor, CML Building
17-21 University Avenue
Canberra
GPO Box 539
Canberra City ACT 2601
Tel: (02) 6209 2400
Fax: (02) 6247 9774
Out of hrs emergency: 0408 447 112
Email: canberra@air.gov.au
Deputy Industrial Registrar: Christine Hayward

The address of the AIRC Home Page is: http://www.airc.gov.au/

The Australian Industrial Registry Bulletin is a weekly publication that includes information on the following topics:

- information concerning notice of matters before the Commission;
- Practice Directions concerning the practice and procedure of the Commission;
- weekly decisions summaries;
- details of procedural changes and developments within the Registry; and
- advice regarding the rights and obligations of organisations registered under the Workplace Relations Act 1996.

For inquiries regarding publication of the Bulletin please contact the Registry's Information Help Desk - Postal address: GPO Box 1994, Melbourne Vic 3001, Tel: (03) 8661 7807, Fax: (03) 9655 0406.

© Commonwealth of Australia 2008