AIR Bulletin

26 June 2008 Volume 24/08 with the Decision Summaries for the week ending Friday, 20 June 2008.

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Termination of Employment—New Remuneration & Compensation Limits and Lodgment Fee

New remuneration and compensation limits take effect for termination of employment applications under the Workplace Relations Act 1996:

Remuneration limit - From 1 July 2008, in accordance with sub regulation 12.3(a), Division 4, Part 12, Chapter 2 of the Workplace Relations Regulations, an employee not employed under award conditions whose remuneration exceeds $106,400 (indexed from $101,300) per year is excluded from making application.

Compensation limit - From 1 July 2008, in accordance with paragraph 654(12)(b) of the Act, the limit of compensation that may be awarded by the Commission in lieu of reinstatement to an employee not employed under award conditions is $53,200 (indexed from $50,700).

Lodgment fee - From 1 July 2008, the new lodgment fee for Termination of Employment applications will be $57.30.
Decisions of the Australian Industrial Relations Commission

Summaries of decisions signed and filed in the Australian Industrial Registry during the week ending Friday, 20 June 2008.

1 AWARDS – award modernisation – priority industries or occupations – model award flexibility clause – timetable – apprentices, trainees and supported wage – Request from Minister for Employment and Workplace Relations – s576E Workplace Relations Act 1996 – Full Bench – Minister’s Award Modernisation Request required Commission to complete 3 tasks by 30 June 2008: (1. make list of priority industries or occupations for award modernisation, (2. develop timetable for completion of award modernisation process, and (3. develop model award flexibility clause – priority list – priority list issued which consists of 13 industry awards and 1 occupational award: (1. coal mining; (2. glue and gelatine; (3. higher education; (4. hospitality (catering, liquor and hospitality, restaurant and licensed club industries); (5. metal and associated industries; (6. mining industry; (7. racing; (8. rail; (9. retail; (10. rubber, plastic and cablemaking; (11. security; (12. textile, clothing and footwear; and (13. vehicle manufacturing – occupational award is private sector clerical occupation – modernised metal award to be in conjunction with others – metal and associated industries to be made in conjunction with rubber, plastic and cablemaking, glue and gelatine and vehicle manufacturing industries – principles regarding priority list – in developing priority awards Commission had regard to: industries with high numbers of NAPSA’s and AWA’s, size and importance of relevant industry, dimensions of award modernisation exercise, parties’ views and desire to include industries across spectrum of economy – Act and Request require Commission to primarily make broad industry awards to cover all award-covered employees in relevant industry – occupational award may be appropriate in certain circumstances – model award flexibility clause – purpose of model flexibility clause is to permit reduction in 1 or more minimum award entitlements as part of agreement which meets genuine individual needs of employer and employee without ‘disadvantaging’ employee – such agreement made on individual basis not by majority of employees or conditional upon agreement of majority – model clause (paragraph [187]) allows agreement in relation to (1. arrangements for when work performed, (2. overtime
rates, (3. penalty rates, (4. allowances, and (5. leave loading (separate provision for flexibility in relation to payment of salaries and other monetary provisions s576J(f)) – flexibility agreement under model clause designed to vary application of terms of award rather than vary award terms themselves – agreement only available after employment commences rather than between employer and prospective employee – Commission to review operation of model clause after it has operated for reasonable period – flexibility agreements to be in writing – any agreement under award flexibility clause should be in writing, name parties to agreement, state date agreement commenced, be signed by parties (or parent/guardian if employee under 18), be kept by employer as time and wages record and copy provided to employee – agreement reached can be terminated at any time by agreement or by 4 weeks written notice by either party – disputes in relation to model clause or agreement reached under it shall be dealt with under general modern award dispute resolution clause – no disadvantage test – no-disadvantage test means there is no reduction, on balance, in overall terms and conditions of employment of employee (test adapted from test relating to Individual Transitional Employment Agreements (ITEA) (formerly AWA’s) under ss346D – no disadvantage test applied at time agreement commences, not continuously applied over life of agreement – union/representative involvement in flexibility agreement – employer/employee may seek advice from union or other representative in relation to proposed flexibility agreement or have representative negotiate on their behalf however operation of clause not contingent on union or representative involvement – principles relating to model clause – s576A contains principles to apply when drafting model awards and enterprise flexibility clauses – Request clearly provided for new form of individual flexibility – timetable – timetable for further stages of award modernisation process announced – apprentices, trainees and supported wage – under request, modern awards to provide fair minimum wages for all employees – Wages and Allowances Review 2006 decided transitional awards should contain model clause dealing with school based apprentices and trainees and model supported wage system clause – same policy adopted in relation to model awards.

Malhorta v Homlesglen Institute of TAFE

U2007/5044 [2008] AIRC 539
Lacy SDP Melbourne 17 June 2008

4 INDUSTRIAL ACTION – order against industrial action – union meeting – work stoppage – probability of industrial action – public interest – s496 Workplace Relations Act 1996 – employees attended union meeting outside workplace during working hours – employers sought order to stop industrial action – Commission satisfied no industrial action since then – ABCC granted leave to appear – matter not determined in 48 hours – contrary to public interest to issue interim order – applicant holds suspicions of industrial action but evidence discloses nothing more than that – 2 union officials involved in discussions with employees who stopped work – insufficient evidence that 2 officials incited or encouraged any action – no action threatened, impending or probable – application for order dismissed.

Project Support Services Asia P/L and Construction, Forestry, Mining and Energy Union & Anor

C2008/2033
McCarthy DP
Perth


Michael Lualua v Toll P/L

U2008/3331
Harrison C
Sydney

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

McGuinness v Secret Desires

U2008/2604
Hoffman C
Brisbane

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

Ellis-Hardy v Get Fresh (Vic) P/L

U2008/3602 [2008] AIRC 554
Foggo C Melbourne 19 June 2008

8 TERMINATION OF EMPLOYMENT – extension of time – representative error – illness of representative – employer failed to provide termination letter – s643 Workplace Relations Act 1996 – 104 days late – reasons for delay: (1. employer did not immediately provide written confirmation of termination to applicant, and (2. illness of applicant’s representative caused further delay – Brodie-Hanns and Clark applied – reasonable explanation for delay – extension granted – referred for conciliation.

Kelly v Mars Australia P/L trading as Mars Petcare Australia

U2008/3690 [2008] AIRC 545
Cargill C Sydney 20 June 2008

9 TERMINATION OF EMPLOYMENT – misconduct – breach of code of conduct – length of service – s643 Workplace Relations Act 1996 – applicant terminated for allegedly acting aggressively following adverse promotional decision by Transport Appeals Board (TAB) and making unauthorised media comment – applicant’s response after losing appeal aggressive, inappropriate and unacceptable – applicant’s telephone call to colleague intended to intimidate – conduct serious and warranting disciplinary action – however, not valid reason for termination – not persuaded that article by applicant in press could be read as representation purporting to be on behalf of RailCorp – applicant’s disciplinary record considered – not open to employer or Commission to have regard to previous disciplinary record on basis of time – record must be seen against 27 years employment – RailCorp promoted applicant during that time – termination harsh, unjust and unreasonable – remedy – appropriate to reappoint applicant to position immediately prior to termination
with continuity of employment – no order for remuneration lost following termination.

Vrettos v Rail Corporation NSW

U2007/6616 [2008] AIRC 551
Larkin C Sydney 19 June 2008


Ryan v All A Glow Cleaning Services

U2008/3648 [2008] AIRC 535
Whelan C Melbourne 19 June 2008


Stredwick v VoIP Distribution P/L t/as VExpress

U2008/2189 [2008] AIRC 372
Roberts C Sydney 19 June 2008
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;


**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;


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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.

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