

# SECRETARY'S REPORT

## KATH EVANS



### INTRODUCTION OF THE FAIR WORK ACT 1 JULY 2009

The AMIEU has successfully concluded negotiations for the renewal of Site Agreements with nominal expiry dates occurring during the 2009 year.

The focus has been on maximizing wages and conditions of employment utilizing the Rudd Governments transitional legislation prior to the implementation of the Fair Work Act 2009.

#### Fair Work Act 2009

1st July, 2009 saw the introduction of new Industrial Relations Legislation, Fair Work Australia.

One of the principal commitments of the Rudd Governments Industrial Relations Policy Position was the creation of ten (10) National Employment Standards as a strong safety net of minimum conditions.

#### National Employment Standards

From 1st January, 2010 the National Employment Standards will apply as minimum employment conditions for all Australian employees, regardless of who they are or what pre-existing awards/agreements employment contracts or other arrangements govern employment arrangements.

Under the new National Employment Standards employees will be protected by minimum pay and conditions. This is a safety net that cannot be stripped away.

This safety net is made up of 2 parts - the National Employment Standards and new modern awards.

#### What's in the National Employment Standards?

- maximum weekly hours of work
- the right to request flexible working arrangements
- parental leave and related entitlements
- annual leave

- personal / carer's leave and compassionate leave
- community service leave
- long service leave
- public holidays
- notice of termination and redundancy pay
- a 'Fair Work Information Statement' for all employees that make clear their rights and entitlements under the new system and how to get advice and help.

#### Modern Awards

New Modern Awards can add to the National Employment Standards or provide clarification about how the Standards are to be applied.

#### What's in modern awards?

Modern awards are industry or occupation-based.

Modern awards may include terms that represent the needs of a specific industry.

#### Terms of Modern Awards may relate to:

- minimum wages, including piecework rates
- types of employment (e.g. full-time, part-time, casual)
- overtime and penalty rates
- work arrangements (e.g. rosters, variations to working hours)
- annual wage or salary arrangements
- allowances (e.g. travel allowances)
- leave, leave loading, and taking leave
- superannuation
- procedures for consultation, representation and dispute settlement
- employing outworkers and the work they perform
- an industry-specific redundancy scheme.

***The AMIEU is concerned that there is currently no regulation relating to a third party assessment to ensure that any flexibility agreement between the employer and the employee will meet the Better Off Overall Test (BOOT) Test***

***The introduction of the National Employment Standards may impact upon some existing workplace agreements. AMIEU Officials will ensure that your employer complies with the new legislative requirements.***

## Introduction of a Flexibility Clause

Modern awards must also contain a flexibility clause which enables an employer and an employee to be able to negotiate changes relating to workplace conditions of employment as specified by legislation and the new Modern Award.

From 1 January 2010 onwards, most industries will be subject to a modern award.

## Who is affected by modern awards?

Modern awards will cover all employers and employees in the national workplace relations system. This affects all AMIEU Members.

Modern awards are industry or occupation-based, and will apply to employers and employees who perform work covered by the award.

## What do these changes mean for AMIEU Members?

If you are currently employed under an existing award, there is a good chance you will be covered by a modern award in the future.

## Are there any transitional arrangements?

While modern awards commence operation on 1 January 2010, the Australian Industrial Relations Commission (AIRC) has allowed for transitional arrangements over a five-year period to assist affected employers and employees in the move to the modern award system.

The AIRC determined that any increases or decreases in wages, loadings and penalty rates would be phased in from 1 July 2010.

This includes:

- minimum wages
- casual and part time loadings
- Saturday, Sunday and public holiday penalty rates
- evening and other penalty rates
- shift allowances

It is intended that this six month period provides time for the parties affected by a modern award to make the required changes.

During the period between 1 January 2010 and 1 July 2010, the pre--modern award pay-related entitlements remain in effect. That means entitlements contained within a pre-modern award (e.g. a federal award, or NAPSA) regarding any of the above continue to operate.

This will apply to AMIEU Members who are currently working to the terms of an Award.

From 1 July 2010, if a modern award results in an increase or decrease in wages or penalty rates, some modern awards will allow for the incremental phasing-in of changes to minimum wages or penalty rates over a five-year period.

However, all other entitlements under modern awards will apply from 1 January 2010.

The following Modern Awards will apply to AMIEU Members from 1 January, 2010.

**Meat Industry Award 2010** will replace the Butchers Wholesale Newcastle and Northern Award and the Federal Meat Industry Processing Award 2010

**Poultry Processing Award 2010** will replace the Poultry Processing (State) Award

**General Retail Industry Award 2010** will replace the Butchers Retail State Award and the Federal Meat Industry Retail Award.

**Food Beverage and Tobacco Manufacturing Award 2010** will replace the Dairy and Other Products Newcastle and Northern Award.

## Existing Workplace Agreements (made pre-1 July 2009)

If AMIEU Members are covered by a current statutory agreement entered into under the Workplace Relations Act (for example, an AWA, an employee collective agreement or a union collective agreement etc), the transitional provisions to the Fair Work Act may impact on the operation of your agreement.

There are also specific rules dealing with the impact of modern awards on existing workplace agreements.

**Generally speaking, your existing agreement will continue to operate until its nominal expiry date. However, other entitlements provided for under the Fair Work Act; National Employment Standards and possibly the Industry Modern Award provisions may override the terms of your agreement.**

**For example,**

**From 1 January 2010, the National Employment Standards will override an existing agreement to the extent that they are more favourable.**

The AMIEU will be conducting training during January and February, 2010 for all AMIEU Delegates and AMIEU Workplace Consultative Committee Members to ensure that your Workplace AMIEU Representative understands the impact of the provisions of the Fair Work Act and your terms and conditions of employment.

For further information please contact your AMIEU Official.

**AMIEU MEMBERS ARE ADVISED  
TO SEEK ADVICE FROM THE  
UNION IF YOU ARE  
APPROACHED BY YOUR  
EMPLOYER RELATING TO A  
PROPOSED FLEXIBILITY  
AGREEMENT.**