

Queensland refers IR powers to federal government

FROM 1 JANUARY 2010 MOST OF QUEENSLAND'S INDUSTRIAL RELATIONS POWERS WILL BE REFERRED TO THE FEDERAL GOVERNMENT.

The Queensland Government has announced it will refer most of its industrial relations powers to the federal government, under a national scheme to align all the Australian states with the *Fair Work Act 2009* (the Act).

Corresponding legislation was introduced into federal parliament in early October 2009, which sets the framework for the states to transition to the federal system. Queensland, Victoria, South Australia and Tasmania have so far referred their powers. The referral will have effect from 1 January 2010.

There are good reasons for the referral

The operation of state and federal industrial relations jurisdictions has caused duplication and confusion for decades.

Under the Australian Constitution, the federal government is provided with powers to conciliate and arbitrate 'interstate' industrial disputes. These powers are notoriously limited and, over time, the states developed substantial independent industrial laws and awards.

In 1996 and again in 2006, the federal

government expanded its authority over state industrial laws by utilising its constitutional power to regulate corporations. However, this constitutional power can only apply to incorporated entities, which meant sole traders or partnerships (unincorporated entities) could not be included in the new national system. Consequently, duplication was destined to continue unless each state 'gave up' its jurisdiction to the federal government.

The operation of a national system, determining awards, employment standards, disputes and enterprise bargaining, is the most significant change to the regulation of industrial relations in Australia since federation. The referral by Queensland of state powers is supported by Master Builders and will enable all its members – incorporated and unincorporated – to operate within the same awards and employment laws.

National Industrial Relations Standards

As from 1 January 2010 the state industrial relations system will transfer to the Fair Work Act 2009. This means all statutory National

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FOR FURTHER INFORMATION PLEASE CONTACT THE INDUSTRIAL RELATIONS TEAM ON (07) 3225 6407, EMAIL workplacerelations@masterbuilders.asn.au OR LOG ONTO THE MASTER BUILDERS WEBSITE – WWW.MASTERBUILDERS.ASN.AU.

Master Builders
417 Wickham Terrace
Brisbane Queensland 4000
Telephone (07) 3225 6444
Facsimile (07) 3225 6541
ask@masterbuilders.asn.au
www.masterbuilders.asn.au



Employment Standards (NES), awards, enterprise agreements, unfair dismissals, dispute resolution and right of entry will be determined by the Act and Fair Work Australia (previously the Australian Industrial Relations Commission).

More information about the NES and the Act can be found on our website at www.masterbuilders.asn.au.

The NES and national minimum wage will apply to all incoming employees and employers from 1 January 2010, and will prevail over transitional state awards and state enterprise agreements if the state instrument is less favourable.

Transition to modern awards

Unincorporated employers and their employees, who are presently covered by state awards, will convert to modern federal awards from 1 January 2011.

In the 12 months from 1 January 2010, Fair Work Australia will consider any special transitional arrangements for incoming employers and employees. For example, most state award wages are inconsistent with corresponding modern awards and Fair Work Australia may vary a modern award to ensure incoming employees and employers are not unreasonably disadvantaged.

Employment benefits accrued by employees under a state award, such as leave entitlements, will be preserved and will transfer to the new modern awards. The modern awards, including on-site construction, civil, joinery, shop fitting and clerical, will be published and available from Master Builders. Information on modern awards may be obtained by contacting the Master Builders' Workplace Relations team.

State employers and employees who are not covered by a state award (award free) may, after 1 January 2010, be covered by a modern award

made in the industry or occupation they are engaged.

At this stage, Master Builders anticipates that employees in emerging industries, which have no award cover, or some in administrative occupations, could be affected. However, the federal government has stated it does not seek to extend modern awards to cover employees who are engaged in work traditionally considered award free, such as managerial occupations.

State enterprise agreements

State Certified Agreements, or Employment Agreements, as they will be referred to after 1 January 2010, will continue to apply until terminated in accordance with the agreement, or otherwise by consent of the parties.

After 1 January 2010, these state employment agreements will be required to provide benefits no less favourable than the NES and minimum wage in the relevant modern award.

Exemption for government services

The referral of state industrial relations powers to the federal government will not include employees of Queensland state government or local authorities. These bodies will continue to be regulated by relevant state awards and agreements.

More information

Master Builders will be holding a series of member briefings on the new system in early December. More detailed training, Understanding Modern Awards, will commence in January 2010, and cover all key industry modern awards, including construction, clerical, electrical and joinery industries.

For more information, please contact Master Builders' Workplace Relations team on (07) 3225 6407.