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Western Australian Industrial Law

Steve Heathcote
Partner, Workplace Relations



Overview

- Constitutional corporation
- Relevant legislation
- Minimum conditions generally
- Minimum Wage determinations
- Awards
- Enterprise Bargaining
- Unfair Dismissals/Denied Contractual Benefits
- Questions



Which system applies?

- Constitutional Corporations
- *“a corporation to which paragraph 51(xx) of the Constitution applies”.*
- *“Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth,”*



Relevant Legislation

- *Industrial Relations Act 1979 (WA)*
- *Minimum Conditions of Employment Act 1993 (WA)*
- *Long Service Leave Act 1958 (WA)*
- *Occupational Safety and Health Act 1984 (WA)*
- *Workers Compensation and Injury Management Act 1981 (WA)*



Minimum Conditions

- Awards and General Orders
 - Statutory minimum wage
 - Location Allowances
 - TCR
 - Apprentices



Minimum Conditions

MCE Act

- Maximum hours of work (38 hours)
- Minimum rates of pay (adults and junior rates derived from adult rate)
- Minimum casual loading (20%)
- Methods of payment
- Sick leave; Carer's leave (76 hrs pa)
- Annual leave (152 hrs pa)
- Bereavement leave (2 days)
- Parental leave (up to 12 months unpaid)
- Significant change and redundancy
- Records and access to records

Wage fixing

- Two mechanisms:
 - Determination of State Wage Order (adjusting MCE minimum rate)
 - State Wage Case (adjusting award rates)



Awards

- Operate by common rule (s37)
- No ability to contract out of award coverage
- Enforceable in court (fines and remedial payment)



Enterprise Bargaining

- Collective Bargaining only (practically)
 - must include a union party
 - 3-year maximum term but continuing
- Bargaining periods and industrial action
 - Initiate (90-day limit – pre-expiry)
 - Response (21 days)
- Good faith bargaining (s42B)
 - WAIRC may 'assist' and make orders
 - WAIRC may undertake consent arbitration
 - WAIRC may make enterprise orders (max of 2 yrs)

Unfair Dismissal Laws

- Two methods
 - s29(1)(b)(i) by an employee
 - s44 by a union (interim orders)
- Touchstone
 - Abuse of the right to dismiss (reason and process)
- Procedure
- Remedies



Denied Contractual Benefits

- *“that he has not been allowed by his employer a benefit, not being a benefit under an award or order, to which he is entitled under his contract of employment”*



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**THANKYOU
Questions?**


