

SUBMISSION TO NATIONAL EMPLOYMENT STANDARD DRAFT

The National Employment Standards (NES) legislation needs to include as one of its key minimum conditions, the right of all employees to be covered by the same modern award or collective agreement which is applicable to other equivalent employees in the same workplace.

A system of fair, equivalent and equitable employment conditions in a workplace needs to be clearly established and demonstrated, to ensure the isolation and disadvantage allowed to occur by the "loose interpretation" of the Work Choices legislation does not occur again.

The NES should provide the right for all new employees to have the first choice to start working under the applicable modern award or collective agreement, before considering any employer offer of a "superior" alternative employment contract conditions.

The NES should also provide the right for all existing employees to have the first choice to transfer back (not mandatory) to working under the applicable modern award or collective agreement at the equivalent position level. Such a transition from an individual employment contract (AWA or Common Law) back to the applicable modern award or collective agreement would need to include agreed pro-rata adjustments to compensate for accumulated but not realised entitlements such as superannuation and other employment service period entitlements.

For example, defined benefit type superannuation retirement entitlements which are calculated on a final annual salary basis may need to be adjusted on a financial no-disadvantage basis at the time of the transfer, to maintain the equivalent entitlement transfer value. An effective decrease in the value of annualised salary could be adjusted by an equivalent increase in accrued benefit multiple at the time of transfer, to compensate for equivalent pro-rata past contributions and associated retirement benefit.

To provide flexibility, employers should retain the option to offer an employee a "superior" alternative individual employment contract. Any alternative employment contract must demonstrate it is mutually beneficial to both the employee and employer, for the purpose of business productivity improvement.

For the NES to restore fairness, it is vital the new Australian workplace relations system guarantees practical protection of minimum employment conditions as a starting point for all employees and includes mechanisms to stop the practice of employers trying to impose alternative employment contract conditions.

For the NES to stop the isolation and disadvantage of individual employment contract conditions, the employer should be required to demonstrate and document that any alternative employment contract conditions offered are equivalent or superior to the applicable modern award or collective agreement.

The NES should also provide the right for any employees who receives an employer offer of alternative employment contract conditions, the choice to refer any such optional offer to the Australian Industrial Relations Commission for a "no-disadvantage test" pass or fail assessment, before considering the alternative offer.

I believe guaranteeing the employee the right to a fair, equivalent and equitable starting point of minimum employment conditions in their workplace and then providing the guidelines for the employer and employee to negotiate a "superior" mutually beneficial arrangement, is the practical way to encourage both parties to focus on business productivity improvement.

Regards,

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