

The logo for WorkSight, featuring the words 'WORK' and 'SIGHT' in a stylized font inside an oval shape.

WORK SIGHT

A background image showing a group of people in a meeting or office setting, looking at documents and talking.

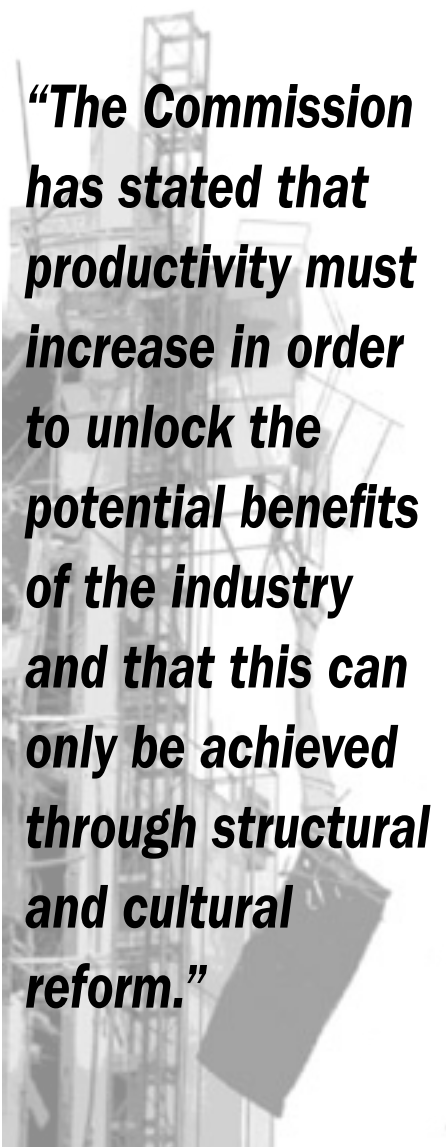
WorkSight Focus International

April 2003

News, opinions, events and more from the WorkSight team

WorkSight Pty Ltd, an independent and innovative company delivering valuable human resource advice and training to a range of local, national and international clients. The company specialises in policy development, organisational change management and advice on employment practices.

Our third newsletter is designed to provide you with an update into current labour relations issues in Australia.

A background image of a building under construction, showing scaffolding and structural elements.

“The Commission has stated that productivity must increase in order to unlock the potential benefits of the industry and that this can only be achieved through structural and cultural reform.”

Building Industry Royal Commission

The Federal Government has announced the formation of a new taskforce to regulate the building and construction industry, along with new industry-specific legislation following the release of the final report of the Cole Royal Commission.

Widespread disregard for the law, hundreds of instances of unlawful conduct committed by unions and employers, and numerous individuals referred for possible criminal prosecution were amongst the major findings of the final report on the building and construction industry.

But opposition parties have denounced the recommendations of Royal Commissioner Terence Cole, describing the report as an expensive, anti-union witch-hunt, and have refused to support the Government’s building industry legislation in the Senate.

The Cole Royal Commission’s report and its 212 recommendations and findings on the building and construction industry were released in late March 2003. The Commission has stated that productivity must increase in order to unlock the potential benefits of the industry and that this can only be achieved through structural and cultural reform. Central to the proposed reforms are changes to the industry’s bargaining regime.

The recommendations from the Royal Commission are overleaf.

Recommendations from the Cole Royal Commission

The Commission has proposed new industry specific legislation - the Building and Construction Industry Improvement Act - to amend the Workplace Relations Act 1996. The new laws would facilitate implementation of the following recommendations:

- outlaw pattern bargaining;
 - allow for injunctions for unlawful pattern bargaining and deregistration of unions or employer organisations which fail to comply with such injunctions;
 - require pre-strike ballots;
 - prohibit common expiry dates for large numbers of agreements;
 - ban retrospective pay rises in enterprise agreements so as to encourage negotiation of new enterprise agreements before current deals expire;
 - require “genuine bargaining” i.e. good faith bargaining;
 - ban provisions on start and finish times, days when work can occur and specifying days for RDOs through further award simplification;
 - empower the AIRC power to impose weekly overtime caps in awards;
 - limit protected industrial action to two-week periods followed by a 21-day cooling-off period;
 - restrict the scope of industrial action to matters pertaining to the employment relationship, so as to exclude bargaining fees;
 - render void unregistered project and industrial agreements;
 - prohibit secondary boycotts as defined under the Trade Practices Act and impose penalties of \$100,000 for individuals and \$20,000 for organisations
- See www.royalcombcgi.gov.au for the Cole Royal Commission final report



(www.getthepixel.com)

Workplace stress

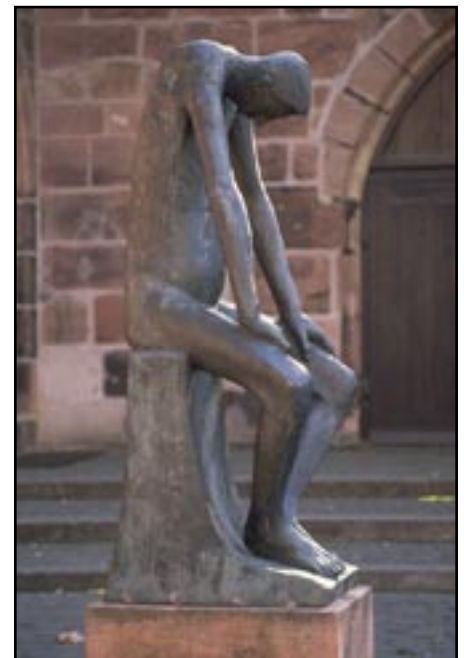
Workplace stress can lead to chronic fatigue, depression, insomnia, anxiety, migraines, emotional upsets, allergies and substance abuse. Studies have also found links between stressful working conditions (such as boring, repetitive work, absence of control over the way work is done and workplace bullying) and injury/illness rates.

Not only employees pay the price for stressful working environments. Sick and injured workers represent a huge cost to business. Recent decisions of the SA Workers Compensation Tribunal and the Court of Appeal of the NSW Supreme Court illustrate the courts' willingness to accept the link between stress and illness, and to compensate workers accordingly.

The SA Workers Compensation Tribunal accepted evidence that workplace stress had contributed to the onset and development of an employee's terminal cancer. In its landmark ruling the Tribunal found in favour of the employee's widow, who claimed that the stress caused to her late husband by his employment with the Department for Correctional Services played a role in his death from colorectal cancer.

Simpson & Simpson (deceased) v State of SA (Dept for Correctional Services [2002] SAWCT 122, 20 December 2002.

In another case, the caretaker of two blocks of Housing Commission flats was awarded close to half a million dollars in damages after he left the job



suffering from depression, post traumatic stress disorder and chronic dysthymia.

State of NSW v Coffey [2002] NSWCA 361, 7 November 2002.

Reasonable overtime

NSW employees have won the right to refuse to work unreasonable overtime following a decision by the NSW Industrial Relations Commission to flow-on last year's federal reasonable hours decision to State awards.

Similarly to the federal ruling, the decision introduces a provision in State awards that recognises the right of employers to require employees to work reasonable overtime at overtime rates, while expressly providing that employees may refuse to work "unreasonable overtime".

The Commission ordered that the following clause should be inserted in State awards:



- 1.1 Subject to Clause 1.2 an employer may require an employee to work reasonable overtime at overtime rates.**
- 1.2 An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours, which are unreasonable.**
- 1.3 For the purposes of clause 1.2 what is unreasonable or otherwise will be determined having regard to:**
 - 1.3.1 any risk to employee health and safety**
 - 1.3.2 the employee's personal circumstances including any family and carer responsibilities**
 - 1.3.3 the needs of the workplace or enterprise**
 - 1.3.4 the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it**
 - 1.3.5 any other relevant matter.**

State Working Hours Case 2003, Re [2003] NSWIRComm 86, (10/4/03).

Implied terms in certified agreements

The Federal Court of Australia has ruled that terms can be implied in a certified agreement if it is necessary for the agreement's reasonable or effective operation.

In a recent ruling the Court said that casual award rates were superseded by new rates in a certified agreement, despite the fact there was no express provision in the agreement for wages payable to casuals. The employer, Skilled Engineering Limited, argued that casuals should be paid according to the current award rates.

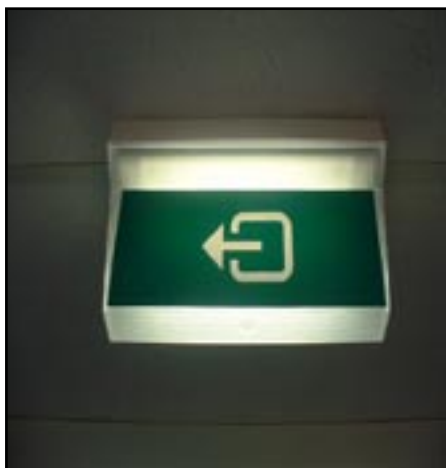
But the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU) was successful in its argument that the obligation to pay the new rates in the certified agreement existed as a matter of construction by implication of a term.

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v Skilled Engineering Ltd [2003] FCA 260 (27 March 2003).

Unfair Dismissal Bill

The Senate's Employment, Workplace Relations and Education Legislation Committee has tabled its report on the federal government's new unfair dismissal laws.

This Bill is the first time the government has used the "corporations" power for the constitutional underpinning of the termination laws, which may be regarded as another step towards a "unitary" industrial relations system



The committee majority advocates the advantages of a single jurisdiction for unfair dismissal arguing that it will reduce the confusion and complexity of multiple jurisdictions.

The majority said that a high proportion of employers and employees are unaware of whether they come under State or federal awards and as a result injustices may go without remedy. It would also allow for the development of consistent principles under the Australian Industrial Relations Commission's appeal procedures.

The majority also said that small business exceptions in the Bill were necessary given that State and federal unfair dismissal laws place a relatively greater burden and cost on small businesses, which don't have the same financial resources to defend claims as larger businesses.

At present, the federal unfair dismissal provisions only cover employees under federal awards and agreements, Victorian and Territory employees provided in each case they are employed by a constitutional corporation.

The Bill seeks to extend that coverage to any employee employed by a corporation (apart from the usual exclusions such as "short-term" casual employees, etc), which means that federal rather than State law would cover them.

OECD urges Australia to review super tax

Australia's superannuation tax system is unduly complicated, and a simplification of the tax rules is needed, according to the OECD's 2003 Economic Survey of Australia.

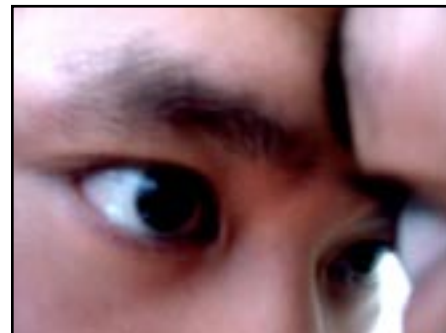
The fact that a lump sum has up to seven alternatives to the standard flat rate income tax normally paid on the withdrawal of superannuation benefits means Australia must simplify the tax rules with an anchoring to income tax rates, the OECD report stated.

In addition, the OECD believes the means testing of the basic pension may encourage people to retire from the labour force and dispose of assets before the age of eligibility for the state pension, thus lowering incentives to work. This could be achieved by aligning the preservation age for superannuation benefits with that required to access the Age Pension, currently 65 years.

To access the assessment and recommendations of the Report visit www.oecd.org

Risk management and bullying

A new set of anti-bullying guidance notes warns that workplace bullying should be treated as any other workplace health and safety hazard. Bullying incidents or practices should be risk assessed with steps taken to minimise the risk.



Dealing With Workplace Bullying, published by the WorkSafe Western Australia Commission, consists of three booklets: a guide for employers, a guide for employees and a general pamphlet

The Dealing With Workplace Bullying guidance notes can be downloaded from the Consumer and Employment Protection website

Union bargaining fees

The Federal Government has managed to win the support of the Democrats in the Senate on the issue of union bargaining fees in order to pass legislation to ban compulsory fees.

The Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002 [No 2] was passed by the Senate on 26 March 2003.

The new legislation seeks to:

- prohibit conduct designed to compel people to pay compulsory bargaining services fees
- prohibit the inclusion of compulsory bargaining service fees clauses in agreements, and make void existing clauses
- provide for the removal of compulsory clauses
- prohibit the making of false or misleading representations about bargaining services fees.

International Focus looks at

The Fine Print



Redundancy Guidelines Reinforced

Well-established industrial principles have been set down outlining the obligations employers owe their employees in redundancy situations. A recent case before the NSW Industrial Relations Commission offers some guidance on the issue.

The judgment, outlined an employer's obligations in redundancy situations:

- give reasonable notice to employees and/or their Unions;
- adequately consult with employees and/or their Unions on the impact of the proposed changes;
- explore genuine alternative options for redundancy, such as redeployment or relocation;
- ensure such options are fairly offered to the affected employees;
- provide reasonable standards of redundancy benefits;
- provide appropriate ancillary services, such as time off to seek alternative work, retraining opportunities, outplacement services or financial planning;
- ensure employees nominated for redundancy are fairly selected on an objective and unbiased basis.

Grazyna (Grace) Jankowski and Excellent Management Services Pty Ltd



Workplace Relations Specialists

Here are some examples of our recent work:

- advice on unfair dismissal claims;
- advice on redundancies;
- drafting employment agreements;
- certifying employment agreements in the AIRC;
- advice on the use of performance appraisal systems;
- advice on disciplinary matters;
- reviewing the staffing and work practices of businesses;
- advice on salaries.
- research and policy development

Next time you have a staffing problem call WorkSight and see what we can do for you.

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For on-line advice and assistance visit:
www.worksight.com.au

This newsletter is intended to provide a general outline and is not intended to be and is not a complete or definitive statement of the law on the subject matter. Further advice should be sought before any action is taken in relation to the matters described in this newsletter.