

# Australia

## Introduction

The Australian industrial relations system is characterized by a high level of government regulation of trade unions and stakeholders. While Australian trade unions are provided with rights under state and federal industrial legislation, Australian unions rank as some of the most highly regulated unions in the world. This regulation extends to the eligibility rules of unions, their internal processes, and control of their finances. In exchange for this regulation, Australian trade unions enjoy a voice in the Australian industrial relations system effectively guaranteed by statute, as well as the right to be consulted by employers on many issues relating to the terms and conditions and employment security of their respective members.

Effective March 2006, all corporate employers and their employees became regulated under a single federal statute called the Workplace Relations Act 2006 (the “Federal Act”).

## Trade Unions

### The General Role Of The Trade Union

Under the Australian industrial relations system, trade unions enjoy the status of “party principal” and can therefore adopt a view in any proceedings that is not necessarily consistent with the views of its members. The most common role of the trade union is to act as the collective bargaining representative of the members in a particular workforce who fall within the union’s eligibility rules. However, the employer is not bound by law to collectively bargain.

Where a particular employee or group of employees fall within the eligibility rules of the trade union, the trade union may approach the federal labour tribunal in an attempt to have an industrial award made between the individual employer and the union. An industrial award is a binding order made by an industrial tribunal containing terms and conditions of employment for certain employees. While the actual employees often take an active part in the negotiation of a particular industrial award, a union may seek an industrial award for an entire industry and negotiate the same with the major employers at an industry level.

Until such time as the industrial tribunals consider, review, and formally approve the matters agreed upon between the parties, the matters agreed upon with any eligible union have no legal status. Once the industrial tribunal formally approves the industrial award or agreement, it becomes an “Industrial Instrument” and therefore has the force of law.

Where employees fall within the eligibility rules of a particular trade union, the trade union may also have the ability to bring forth an industrial dispute on behalf of its members and to have the industrial dispute made the subject of conciliation and/or arbitration by the applicable industrial tribunals. This may also include individual grievances such as discrimination and/or unfair dismissals.

While Australian trade unions have historically enjoyed an effective statutory monopoly on bargaining rights for various categories of employees, changes to the federal industrial relations laws in the mid-1990s allowed for individual employees and their employers to negotiate individual employment agreements in the absence of the relevant trade union and to have these agreements registered by an independent government body, now called the Workplace Authority. As long as the individual labour agreement does not disadvantage the employee as compared to the relevant industrial award, the individual agreement is then approved by the Workplace Authority and has the status of an Industrial Instrument.

## **Constitution Of The Trade Union**

The constitutions, or “eligibility rules,” of Australian trade unions effectively outline the types of employees that a union can represent before labour tribunals. These rules are determined by the various federal and state labour tribunals. Historically, the rules of the particular union and unions have been drafted to ensure that there is no overlap between unions so as to avoid demarcation disputes.

Australian trade unions have historically aligned on a craft basis; however, with the advent of site-specific bargaining in the 1980s and 1990s, there has been a move by individual unions to dominate particular worksites or segments of industry to the detriment of other unions. Where demarcation disputes have arisen with respect to two or more unions claiming coverage of particular employees, or a particular union seeking exclusive coverage of employees at a particular site, labour tribunals have been empowered to effectively award representation to a particular union over the interests of a less dominant or effective union.

Federal and state industrial legislation determines the internal workings of a particular union, including provisions with respect to ballots and whether individuals are fit and proper persons to hold union positions.

## **The Scope Of Trade Union Rights In Businesses**

While Australian trade unions purport to represent a broad range of their members' interests, the most effective method of union activity is in the form of industrial action and employer-specific negotiations held in order to obtain concessions from individual employers on the terms and conditions of employment. Where the terms and conditions of employment agreed upon come within the definition of industrial matters in the relevant legislation, industrial awards or agreements can be made that are then binding on both the employer and the unions. It is the approval process via the relevant labour tribunal or Workplace Authority that gives the Industrial Instrument its legal force.

Matters that can be contained in Industrial Instruments include terms and conditions with respect to wages, hours of work, leave, meal breaks, overtime payments, and redundancy/severance entitlements. Trade unions have also historically attempted to negotiate and/or arbitrate award terms and conditions that effectively require the employer to consult with the relevant trade union in circumstances such as redundancy, technological changes, and/or restructuring of the workforce. Despite attempts in 2006 by the federal government to remove such consultative provisions from Industrial Instruments, most site-specific labour agreements continue to reference understandings or side agreements that require the employer to consult with the relevant trade union in restructuring situations.

## **The Function Of Trade Union Representatives**

While many Australian trade unions have paid officers, attorneys, and officials, very few employers have day-to-day contact with trade union officials. The more common form of representation is by way of a union delegate, who is generally a worker who is a paid member of the trade union and is elected by other trade union members at the site to represent the individual workers in consultation with the paid officials of the union. The Federal Act makes no reference to delegates and/or their role. The Federal Act strictly regulates when a trade union may visit a work site. These regulations place a positive requirement on the union to nominate the reason

for the visit and when such a visit can occur. Only union officials with a written permit can attend the workplace, and the employer can in most cases restrict access to such times and locations as to not disrupt the workplace.

## **Works Councils**

There is no requirement under Australian law for works councils to be formed. Works councils are not part of the Australian industrial relations system.

## **Trade Union Employee Protection Rights**

State and federal industrial legislation prohibits discrimination against union delegates and persons engaged in union activities at the workplace.