

## Contact Us

### NSW FARMERS' ASSOCIATION INDUSTRIAL STAFF

**Justin Crosby**  
IR Manager

**Adam Wilding**  
IR Officer

**Michal Roucek**  
IR Officer (Legal)

### NSW Farmers' Association

T: 1300 794 000

F: 02 8251 1750

Level 25, 66 Goulburn Street  
Sydney NSW 2000

E: [industrial@nswfarmers.org.au](mailto:industrial@nswfarmers.org.au)

W: [www.iressentials.com.au](http://www.iressentials.com.au)

## Inside:

### FAIR WORK ACT CHANGES

STATE REFERRAL OF IR  
POWERS – When will the  
changes affect your business?

WILL THERE BE A  
CHANGE IN RATES OF  
PAY?

## FAIR WORK INDUSTRIAL UPDATE

On 19 November 2009, the NSW Minister for Industrial Relations announced that the NSW State Government would be referring its Industrial Relations (IR) powers to the Commonwealth as part of the creation of a National Workplace Relations system. The subsequent bill introduced in the NSW Parliament has since been passed. This means employers operating in the State IR system will refer to the national system from 1 January 2011.

For a majority of NSW Farmers' Association members referring to the transitional version of the Federal Pastoral Industry Award, this means an eventual move to the national system (see effective dates below) including Modern Awards and the National Employment Standards (NES).

Generally speaking, broadacre farming, livestock operations and shearing will be covered by the modern Pastoral Award 2010. The Association has pro-actively sought to have the flexible conditions of the Federal Pastoral Industry Award [Cth] adopted in the modern Pastoral Award 2010 and those conditions have mostly been maintained. Members' operating in the Horticultural Industry will need to refer to the Horticultural Award 2010. The Association is continuing to actively seek that current industry conditions be maintained for farmers in the horticultural industry.

The Fair Work Act 2009, which covers all private sector employees, contains provisions for the (NES), a set of 10 minimum standards covering all employees. Wage reviews previously handed down by the NSW Industrial Relations Commission (State system) and the Australian Fair Pay Commission will now be the responsibility of Fair Work Australia. The Association anticipates the first wage review will take effect from 1 July 2010.

The Association estimates the Pastoral Industry Award [Cth] is used by approximately 40% of the pastoral and agricultural industry in NSW. The majority of NSW agricultural producers, including an estimated 85 percent of Association Members are unincorporated enterprises and the move to the national system will mean a more centralised industrial relations framework that provides less ambiguity than the way the current state and federal systems operate.

Employers moving into the national system will also be able to enter into award flexibility agreements with their employees. This provides the

## IR Essentials update

option to provide a greater flexibility in workplaces compared to the NSW IR System and can be achieved collectively through an enterprise agreement or with individual employees through an award flexibility arrangement.

### **Unfair, Unlawful Dismissal & Adverse Action**

#### **Unfair Dismissal**

With the referral of powers and commencement of the Act there has been no change to the general legal concept of unfair dismissal. If a dismissal is harsh (issues of proportionality, effect on employee's personal and economic circumstances), unjust (procedural fairness) or unreasonable (not a valid reason for dismissal), an employee may have grounds for a claim.

Under the Act, an employee of a small business is not able to claim for unfair dismissal until after they have been employed for at least 12 months and if the dismissal was consistent with the Small Business Fair Dismissal Code. The definition of a small business has changed under the Act from 100 or less to fewer than 15 employees.

Only casual workers employed on a regular and systematic basis and who have a reasonable expectation that their employment would continue can make an unfair dismissal claim. A casual worker who is not employed on a regular basis will not have the ability to bring an unfair dismissal claim.

A defence to unfair dismissal on the grounds of necessity for "operational reasons" is no longer available to employers however the provision for termination for reasons of genuine redundancy will remain in the Act. A genuine redundancy has three requirements under the Act: 1) The employer must no longer require the job to be done by anyone; 2) the Employer must have complied with consultation obligations under a modern awards or enterprise agreement; 3) it was not reasonable in the circumstances for the person to be redeployed within the enterprise, or the enterprise of an associated entity of the employer.

Unfair dismissal applications are to be filed within 14 days, as opposed to 21 days period under the previous legislative framework. An unfair dismissal application will result in either an informal conference to deal with the dispute privately or a full public hearing at Fair Work Australia. Remedies for unfair dismissal brought before Fair Work Australia include reinstatement and compensation.

### **When the System Commences**

#### **Who refers to Modern Awards?**

Incorporated employers (Pty Ltd) will be covered by modern Awards which will commence 1 January 2010.

Unincorporated employers (i.e.: sole traders and partnerships) who were bound by the Federal Pastoral Industry Award will be covered by the modern Pastoral Award 2010 from 1 January 2010.

Unincorporated employers who employ under State Awards (including the Horticultural Industry (State) Consolidated Award) will refer to modern Awards from 1 January 2011.

## IR Essentials update

### Rates of Pay

Rates of pay for those who refer to modern Awards from 1 January 2010 will remain unchanged until 1 July 2010 when the wage case will result in the first wage variation of the modern Awards. Unincorporated employers who refer to State Awards will continue to pay under current rates until the State commission variation following the 2010 State Wage Case.

### Will My Rates of Pay Increase?

There will be a 5 year transitional period to assist employers deal with potential wage increases as a result of the Award modernisation process. The transitional measures will operate on the basis that there will be no reduction in pay and where there is an increase, any change will be phased in at 20% of the difference per year for five years.

### Fair Work Information Statement

A Fair Work Information Statement (FWIS) is a fact sheet to be given to all new employees (commencing employment after 1 January 2010) by employers which outlines prescribed information about an employee's rights and entitlements at work, including the 10 National Employment Standards, how to make various agreements under the *Fair Work Act 2009 (Cth)*, termination of employment, individual flexibility arrangements and the role of Fair Work Australia and the Fair Work Ombudsman.

We have attached a Fair Work Information Statement to this circular which can be photocopied and supplied to all new employees commencing employment after 1 January 2010. Alternatively, Fair Work Information Statements can be found on the Association's website: [www.iressentials.com.au](http://www.iressentials.com.au)