

[[Major News - Federal Politics - Workplace Issues](#)] [[Next](#)]

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The first day in the rest of your working life

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Some workers are set to get an early taste of the new regime, writes Nick O'Malley.

SOME of the first to feel the effects of the new **workplace** laws will be the staff of two Salvation Army aged-care homes in Canberra.

About 100 nurses who look after patients at the Mountain View and Burrangiri nursing homes have been negotiating with the Salvation Army since their last enterprise agreement expired a year ago.

At last, a consensus was reached. Happy with an offer of a 4 per cent pay rise and improved conditions, the Australian Nursing Federation recommended staff accept the offer early this month. All the Salvation Army had to do to put the agreement to bed was to arrange a ballot and file the document with the Australian **Industrial** Relations Commission before the new laws came into effect, as thousands of employers have done over recent months.

But the Salvation Army didn't make the deadline, and now the nurses must forge an agreement under a very different set of laws.

They could lose not only their pay rise but every condition they enjoy outside the five minimum standards required for new agreements.

And under the new laws there are a host of provisions they are not allowed to even suggest be part of negotiations: the so-called prohibited content.

"If you look at the labour cost of nursing it is primarily made up of shift allowances, penalties, overtime, those sorts of things," says Nick Blake, federal **industrial** officer with the Australian Nursing Federation.

Because nurses often work through the night, on average more than 22 per cent of their income comes from shift penalties that are no longer guaranteed.

Not only must the nurses negotiate with an employer empowered by the new laws, their right to use strikes to support their negotiations has been severely restricted. They must now hold an approved secret ballot that can be challenged by employers before they can walk off the job.

Dr Chris Briggs, of Sydney University's **Workplace** Research Centre, says it could take up to six months to arrange a legal strike under the new laws.

Mr Blake says nurses are generally reluctant to strike, in any event.

"What they will do is leave. They'll go down the road and find someone who'll offer them more money," he says.

The Government has not only put a powerful new weapon in the hands of employers, but provided a commercial incentive for them to use it. If any employer wins a commercial advantage over its competition by cutting labour costs using the new laws, the competition will have to follow suit.

The Salvation Army itself has recognised how this might hurt people at the bottom of the **employment** ladder.

"The Salvation Army deals with people who are desperate, and I can assure you that a desperate person will be quite willing to accept the most basic conditions to get their rung on the ladder," said its spokesman, John Dalziel, in October.

There is little consensus about which broad sector of the workforce will feel the full impact of the new rules.

Steven Penning, a **workplace** law specialist and partner at the law firm Turner Freeman, expects a rash of sackings from businesses with fewer than 100 staff because such companies are now freed of unfair dismissal regulations.

"They would have been waiting. Why run the risk of an unfair dismissal claim from someone who has been a problem for the last few months when you could easily do it [today]?"

Last week the Prime Minister, **John Howard**, suggested as much himself, saying in a radio interview that "some people who have been a disruptive influence in a small firm may not find it as easy to remain".

The scrapping of unfair dismissal laws for smaller businesses is expected to boost **employment** by companies that no longer fear the costly dismissal of poor staff.

There is general agreement that skilled workers in demand have little to fear as long as economic growth continues.

But for the lowest paid and lowest skilled, pay is expected to gradually fall under the new Fair Pay Commission.

The **union** movement's greatest fear is that the Government has not finished its revolution, and there are signals that it could be right.

In October the Treasurer, **Peter Costello**, said he would be happy to "look at" scrapping unfair dismissal laws for all employers, not just those with 100 staff or more. And earlier this month the Finance Minister, **Nick Minchin**, apologised to members of the H.R Nicholls Society for the

timidity of the legislation. More needed to be done, he said, but the public hated the package as it stood.

THE NEW ETHIC

HOW THE SYSTEM WILL WORK

* THOSE IN WORK

State awards swept into national **industrial** system. State enterprise agreements become federal enterprise agreements: Preserved State Agreements.

There will be a new federal agreement for each employer for each state award which had applied to them: Notional Agreement Preserving State Awards.

* THOSE STARTING A NEW JOB

Employers can refuse to hire someone who will not sign an individual contract. New contracts or agreements must include new minimum standards; must not include so-called prohibited content.

* MINIMUM STANDARDS

Five minimum conditions are:

- * minimum wage of \$484.40
- * 4 weeks annual leave
- * parental leave of 12 months unpaid between parents
- * personal/carers leave of 10 paid days a year
- * ordinary time of 38 hours a week; can be averaged over 12 months
- * requirement to work 'reasonable' overtime

Penalty rates, overtime, allowances, career structures, some public holidays and redundancy pay up for negotiation.

* PROHIBITED CONTENT

Agreements may not include clauses that:

- * stop employers from offering Australian **Workplace** Agreements
- * restrict use of independent contractors or on-hire arrangements
- * allow for **industrial** action during agreement
- * provide for trade **union** training leave, bargaining fees to trade unions or paid **union** meetings
- * provide that any future agreement must be a **union** collective agreement

- * mandate **union** involvement in dispute resolution
- * provide for unfair dismissal
- * other matters proscribed by regulation/legislation

Unions or employees can be fined for attempting to negotiate for prohibited content.

* CONTRACTS

AWAs no longer have to be checked against equivalent award by Office of the **Employment** Advocate, but must only contain the minimum standards. OEA will approve agreements as they are lodged.

* AWARDS

Allowable matters that can be dealt with in awards reduced from 20 to 16. Rules on jury service, notice of termination, long service leave and superannuation are removed.

* WAGE SETTING

Fair Pay Commission to set minimum wage; wage not be set below current \$12.75 per hour.

* DISMISSAL LAWS

Employees of companies with fewer than 100 staff no longer protected by unfair dismissal laws and can be sacked at any time.

* UNLAWFUL DISMISSAL

Employees can still bring unlawful dismissal action but must prove employer behaved illegally.

* DISMISSAL FOR OPERATIONAL REASONS

Employers can retrench workers if they can prove it was for 'operational reasons', for example, if an employer lost business or was restructuring.

* STRIKES AND **INDUSTRIAL** ACTION

Union access to **workplace** restricted through Right of Entry legislation. Protected **industrial** action requires secret ballot that can be challenged by employers.

Employers may lock out their workforce with three days' notice.

Table :

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Caption :PHOTO: Qantas workers protesting last Friday at Melbourne Airport.

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Section: News and Features

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