



## Recent workplace developments

When this article is published it is likely that an election campaign will have begun. The October 'Workwatch' article canvassed the possible implications of a change of government for federal industrial relations (IR) laws. In the meantime, recent industrial cases have given clarification to some current IR provisions in ways that could guide library workplaces.

### Negotiating AWAs: what is duress?

The WorkChoices legislation makes it clear that it is not duress for an employer to stipulate that acceptance of an Australian Workplace Agreement (AWA) is a condition of employment. What has not been clear is what *does* constitute duress with regard to being party to an AWA. During September, the Federal Court considered this issue in an action brought by a workplace inspector against the Mornington Inn, operating in Hobart.

In 2005, the hotel's new management sought to place all casual staff on AWAs. Staff did not have the opportunity to negotiate their AWA terms, which in many respects offered less favourable terms than those contained in the relevant award. Staff who declined to sign the AWAs had their hours of work cut and were rostered for uncongenial shifts. For example, staff who had for several years been rostered to finish work in the early afternoon to enable them to collect children from school were, under the new arrangements, required to work until 5pm.

The Federal Court determined that the hotel management had 'placed illegitimate pressure' on staff to sign AWAs and did so knowing the financial and personal impact that reduced shifts and altered hours would have. The Court further said that

*there must be many workplaces in Australia with staff profiles similar to those at the Hotel: low paid casual workers dependent for a reasonable living on penalty rates for discretionary shift work ... To exploit that vulnerability to obtain signatures to AWAs, the terms of which are plainly against the workers' interests, is contrary to the principle of free and fair bargaining.*

To date, AWAs have not been widespread in the library sector and are unlikely to become so in libraries which are public institutions, or semi-public such as in universities. Where library workers may need to choose between working under an AWA or a collective agreement, or where an AWA is a condition of employment but negotiation is occurring as to terms of the Agreement, employees are entitled to seek advice concerning proposed terms and as to conduct of negotiations. The Mornington Inn case could be relevant to the library workforce, given the number of casual and part-time workers employed in the sector.

### Coverage of Federal IR laws

In summary, Federal IR laws will apply in the ACT, Northern Territory, most workplaces in Victoria and in organisations deemed trading or financial corporations — that is, as opposed to businesses such as partnerships and sole traders. This coverage stems from relevant sections of the Australian Constitution, including the referral power under which Victoria transferred its industrial relations powers to the Commonwealth in 1996. While new national IR legislation would be introduced after a change of government, the workplaces in which new laws would apply would be generally the same.

In some instances, however, the question of whether an employer organisation is a trading or financial corporation is one of considerable debate which may affect library workplaces. The question considered in these matters is whether an organisation engages in trading and financial activities as a substantial proportion of its overall operations. This can be a vexed question in the case of research institutions, where fundraising is undertaken to support research but not to an extent that would characterise the institution as a trading or financial concern. Similarly, a Federal Court case is currently considering whether a local council can be deemed a trading or financial concern and, therefore, subject to the provisions of WorkChoices. In both of these cases, a finding that the organisations concerned came within the terms of the Constitution could lead to relevant library staff moving into Federal IR coverage. Future 'Workwatch' columns will update members about these developments.

### Independent contractors

ALIA's membership includes independent contractors who provide consultancy services based on qualifications and experience gained in the library sector. This group within the library workforce should be familiar with Federal legislation protecting the interests of independent contractors and the Opposition's recent pledges to maintain those protections. Current conditions are at <<http://www.wo.gov.au>>, going to 'Fact Sheets and Tools', then to the heading 'Special groups of workers'.

### Labour force statistics

This item will need to be deferred until the December-January edition, as the 2006 Census data becomes available in detail on 25 October. Coverage will include developments in the library workforce profile since August 2006.