

# Employment & Industrial Case Note

May 2007

## ***Compass Group (Australia) Pty Ltd -v- Bartram [2007] FCAFC 26***

This decision was delivered by the Full Court of the Federal Court on 9 March 2007. The decision concerned an industrial agreement certified under Federal law and whether there was a long service leave entitlement for a casual employee. The questions to be answered were whether the certified agreement covered or did not cover that long service leave and whether there was provision for long service leave under the relevant State law in Victoria and also what the effect of the then applicable section 170LZ of the Workplace Relations Act 1996 had.

The Federal Court decided the Federal certified agreement overrode any State law in that the certified agreement: By the interaction of clause 45 in the LSL Award, conscious attention had been given to the question whether a casual employee should be entitled to long service, and the question has been answered in the negative.

The decision is interesting in that section 170LZ has now been repealed by the Work Choices legislation and the relevant section is now section 350. That section is different to section 170LZ in that it provides workplace agreements displace prescribed conditions of employment in Commonwealth laws. It does not mention State laws. Section 170LZ dealt with conflicts with State laws – relevantly a certified agreement prevailed over terms and conditions of employment specified in the State law, State award or State employment agreement to the extent of any inconsistency.

### **Action Required**

What employers should now be directing their minds to is whether there are any still applicable Federal agreements specifically dealing with or 'conscious attention' has been provided to long service leave, particularly for casuals. This is relevant in Queensland as the Industrial Relations Act Queensland deals with long service leave and entitlements of casual employees. An employer and an employee may be of a view there is no entitlement to long service leave but given the state of the law with section 350 as it stands now, there may very well be an entitlement to long service leave due to the repeal of section 170LZ. All current and applicable Federal agreements should be reviewed in the light of this decision.

For assistance in dealing with the question of long service leave and certified agreements and agreement making contact our Employment and Industrial Team:

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