

## Important changes to federal employment laws commenced on 1 July 2009

The *Workplace Relations Act 1996* (Cth) (the **WR Act**) is now repealed. Its successor, the *Fair Work Act 2009* (the **FW Act**), introduces a series of significant reforms to the federal industrial relations system.

In the ACT most employers and employees will be covered by the federal system. The application of the federal system to NSW employers and employees is presently more limited.

### **Fair Work Australia & the Fair Work Ombudsman**

Over the next 6 months Fair Work Australia will gradually take over the administration of the federal industrial relations system from several existing governmental agencies including the Workplace Authority, the Australian Industrial Relations Commission and the Australian Fair Pay Commission. It will be a "one stop shop" for information, advice and assistance on workplace issues. The Fair Work Ombudsman has also taken over enforcement and compliance roles from the Workplace Ombudsman.

### **Terms and Conditions of Employment**

From 1 January 2010 the terms and conditions of employment of federal system employees will be regulated by the National Employment Standards (NES), modern awards and other important provisions of the FW Act concerning the method and frequency of wage payments, permitted deductions from wages and guarantee of annual earnings.

The NES sets minimum standards which will apply to the employment of all federal system employees. It differs from the Australian Fair Pay and Conditions Standard in several key ways including in relation to flexible working arrangements, leave to perform eligible community service activities and redundancy payments.

### **Fair Work Information Statement**

From 1 January 2010 all federal system employers must provide all federal system employees with a "Fair Work Information Statement" before (or as soon as practicable after) they commence employment.

### **Transfer of Business**

The FW Act transfer of business rules have changed in several important ways including a broadening of the test for the circumstances which constitute a transfer of business, abolishing the 12 month transmission period for

all transfers of business which occur on or after 1 July 2009 and introducing special rules for high income employees.

### **Workplace Rights**

The FW Act amalgamates various protections previously afforded by the WR Act under the united banner "workplace rights." A workplace right is basically any entitlement conferred on a person by operation of a workplace law, workplace instrument or order made by an industrial body.

An employer must not take adverse action against an employee because the employee has a workplace right, or has or has not exercised (or proposes to or not to exercise) such a right. Adverse action will include dismissal of an employee, causing injury to an employee, prejudicially altering the position of an employee or discriminating between an employee and other employees. It also includes threatening to do any of these things.

The FW Act also contains various protections against coercion, undue influence and pressure, misrepresentation and discrimination.

An employee aggrieved by a dismissal or other adverse action which he or she alleges was made in connection with a workplace right may be entitled to compensation or reinstatement.

### **Unfair Dismissal**

Under the FW Act an employee is protected from unfair dismissal if he or she has completed the minimum period of employment with his or her employer (12 months for small business employers (that is, those who employ less than 15 employees) and 6 months for all others) and either his or her employment is covered by an award or enterprise agreement or he or she earns less than the high income threshold (for the 2009/10 financial year, the high income threshold is \$108,300 per annum).

A person has been unfairly dismissed if Fair Work Australia is satisfied that the person was dismissed in circumstances other than a genuine redundancy and the dismissal was harsh, unjust or unreasonable and inconsistent with the Small Business Fair Dismissal Code (**SBFDC**).

The "genuine operational reasons" and "fewer than 100 employees" exemptions from unfair dismissal are no longer available to employers and the time within which an employee may apply for relief from unfair dismissal has been shortened to 14 days.

### ***Unlawful Termination***

The circumstances which amount to unlawful termination remain largely unchanged. However the time within which an employee may apply for relief from unlawful termination has been extended to 60 days, there is no longer any cap on the amount of compensation a Court may award and the employer now bears the onus of proving that the action taken was not, or is not being, taken for a particular reason.

### ***Enterprise Agreements and Enterprise Bargaining***

The only types of enterprise agreements permitted under the FW Act are collective agreements and there are very specific rules in relation to content, bargaining and pre-requisites to FWA approval. Special rules also apply to enterprise agreements affecting shiftworkers, pieceworkers, school-based apprentices, school-based trainees and outworkers.

### ***Industrial Action***

The FW Act by and large retains the WR Act structure for industrial action and the rules for protected action remain largely the same. However, employers will need to familiarise themselves with several important key changes concerning secret ballot requirements, extension of the protection period and strike pay.

## **Could your workplace practices do with a check up?**

There are many ways in which Bradley Allen can assist business owners to ensure that they are protected and that their employment/industrial arrangements are compliant with the new requirements including:

- providing specific advice in respect of any compliance or procedural deficiencies you have already identified in your business' workplace practices;
- drafting employment instruments, such as enterprise agreements and common law contracts;
- drafting employment policies and procedures on important topics such as bullying, harassment, discrimination, information technology, privacy, confidentiality, intellectual property, business systems and occupational health & safety; and
- acting on your behalf when disputes arise.

Ensuring that your business complies with the legal basics enables you to 'get on with the job' and focus on your business.

If you are not sure whether your business and employment systems, documents, policies and procedures cover all the legal basics and will protect you in the event of a dispute then you may benefit from Bradley Allen's "Workplace Relations Health Check".

Our Workplace Practices Health Check is a service we offer for no charge where we review your existing business and employment systems, documents, policies and procedures to identify and analyse the employment risks that exist in your business and make recommendations for improvement.

### **For more information, please contact:**

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