

Newsletter

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Welcome to the new financial year and the Fair Work Act. Whilst a good deal of information has been previously released, the impact of the Act, in particular the role of unions, will only become apparent over the long-term. This edition will focus on the immediate changes from 1 July. The Australian Fair Pay Commission has handed down a decision providing a wage freezer until early next year. A discussion on wage escalation is in this edition.

Fair Work Act Enterprise Agreements

Yes, enterprise agreements can still be made under the Fair Work Act. The procedure for employee approval and lodgement is a lengthier process and there is the potential of intervention by third parties, such as unions and Fair Work Australia.

The differences / or additions in the new Act are;

- There is a requirement to notify employees of their right to representation during enterprise bargaining negotiations 21 days before the employee ballot to approve the agreement.

Inside this issue:

Enterprise Agreements	1
Unfair Dismissal	2
Right of Entry	2
Australian Fair Pay Commission Decision	3
Wage Growth	3

- Within the 21 days employees will need to have at least 7 days access to the agreement.
- The terms of the agreement need to be explained to all employees.
- Agreements are required to contain flexibility and consultation clauses.

Drayton's can assist in the drafting and lodgement of your enterprise agreement.

Fair Work Act Unfair Dismissal

All constitutional corporations (i.e. Pty Ltd & Limited) are now subject to the unfair dismissal laws. There is no longer an exclusion for small businesses. The only relief for small businesses (less than 15 employees) is the probation period and a simpler process for unfair dismissal. The probation period for employees of a small business is 12 months. For all other businesses, the period is 6 months.

Which employees are eligible for Unfair Dismissal?

- an employee engaged under a modern award
- an employee engaged under an enterprise agreement
- an employee that is not classified as a high income employee, meaning their annual earning is less than \$108,300 exclusive of superannuation

The legislation does not apply to sole traders, partnerships or trusts. These entities remain under the state system, which has similar unfair dismissal legislation.

Training Package

Drayton's Workplace Consulting is offering a presentation and training package for management and supervisors on the new Act, particularly in relation to right of entry and unfair dismissal. The training will take 1-2 hours and be offered for a flat fee (subject to travel). Please call the office for details.

Fair Work Act Right of Entry

A union with the rules/eligibility to represent employees in a workplace will have a right of entry to that workplace. This will apply irrespective of, whether there are any union members in the workplace or the type of workplace agreement (including non-union agreement), or whether the employees desire to meet the union or not.

In Queensland this could mean;

- On Construction sites, the AWU and CFMEU may have access
- In workshop and engineering works, the AWMU and the CEPU may have access
- In administration/ office works, the ASU may have access

Fair Work Act

Right of Entry Cont...

The right of entry will be subject to the following;

- a minimum of 24 hours written notice to the employer
- any discussions with employees must be held in meal times and other breaks that are during working hours

Wages

The Australian Fair Pay Commission announced its fourth and final minimum Wage-Setting Decision on 7 July 2009. In a decision intended to protect jobs and to support a stronger recovery in employment as the economy picks up, the Commission has decided to leave Australia's Federal Minimum Wage unchanged at **\$543.78** per week. (**\$14.31** per hour). The Australian Pay and Classification Scales will also remain unchanged at their present levels throughout 2009. The Commission has left open the possibility of reviewing this decision in early 2010.

The CPI in the 12 months to June 2009 is 1.4%. It has become a trend in recent agreements to not specify future increases but provide for an annual review due to the economic downturn.

Whilst it is unlikely that unions will accept these types of clauses, the wage freeze by the AFPC and the current CPI should be dampening the claims by employees for wage increases.

The downward pressure on wages is not yet reflective in the annual average wage increase of agreements registered. The following table is the March quarter.

Workplace Agreements – Wage Growth

The March 2009 quarter wage trends for collective agreements have been released. Wage growth in Australia across all sectors increased slightly to 4.1% per annum.

Growth in construction industry rates has increased slightly to 4.9% per year, showing some signs that the rapid growth in industry rates are still flowing over.

Average Annualised Wage Increases

	Dec Quarter 2008	March quarter 2009
All current wage agreements		
All sectors	4.0%	4.1%
Private sector	4.0%	4.0%
Public sector	4.1%	4.2%

