

The main feature in this Newsletter is the release of Fair Work Bill which seeks to bring about the election promise changes to the WorkChoices legislation. It should be considered that the legislation does facilitate a stronger role of unions in negotiating enterprise agreements and in the workplace. Whilst the majority of the changes will not commence until 1 July 2009, there are potential employee relations policy and practice issues to be considered in the next 6 months.

This is our final newsletter for the year, and we wish our clients and their families a Merry Christmas and an exciting new year



### Fair Work Bill 2008

The proposed Fair Work Bill 2008 has been introduced in Parliament and will replace the current *Workplace Relations Act 1996*.

It is the intention that most of the changes will commence from 1 July 2009. The National Employment Standards and Modern Awards will apply from January 2010.

The changes are

#### 1. General Structure

The Bill creates one body to carry out arbitral, judicial and enforcement functions. The constitutional difficulties have been overcome with the Bill maintaining a clear distinction between the new bodies, Fair Work Australia (FWA), the Fair Work Ombudsman and the courts.

The Bill effectively through FWA will replace the Australian Industrial Relations Commission (AIRC) and its Registry, the Australian Fair Pay Commission and its Secretariat and the Workplace Authority. FWA will have a pivotal role in setting and adjusting minimum wages, facilitating bargaining for enterprise agreements, the expanded unfair dismissal jurisdiction and dispute resolution under modern awards and enterprise agreements.

#### 2. Enterprise Agreements : Two principle types of agreements

- Single Enterprise Agreement and Multi Enterprise Agreements
- Multi Enterprise Agreements will not need to satisfy a public interest test
- Greenfield agreements can only be made with unions
- All employees will need to be notified of the right of a bargaining agent and where there is a member of the union present the union will become the default bargaining representative
- Proposals for Greenfield agreements will have to invite all unions that have eligibility to cover the employees.
- The minimum approval period will now be 21 days notice

**Drayton's can provide in-house briefing and training on the new legislation changes.**

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### 3. Bargaining in Good Faith

- The Bill has prescribed five good faith bargaining requirements that all bargaining representatives must follow.
- FWA has power to make bargaining orders enforcing the requirements

### 4. Unfair Dismissal

- Extend to small employers (under 100 employees) , 6 month probation / qualifying period,
- Small Business now 15 employees, 12 months probation / qualifying period
- The time frame for lodging a claim has decreased from 21 days to 7 days after the dismissal.
- All employees covered by an enterprise agreement or modern award, and award free employees earning less than the high income threshold (\$100,000) will be able to bring claims,
- Reinstatement is the primary remedy. An order for reinstatement of the person requires the employer to either reinstate the employee at same position the person was employed immediately prior to dismissal or appoint the person to a different position on terms and conditions no less favorable than those previous to dismissal.

### 5. Right of Entry

- 24hrs written notice still required
- Unions with eligibility to cover employees of a workplace will have right of entry to the workplace
- Unions gain the right to enter premises which are currently award-free
- On suspicion of a contravention unions have the right to inspect non-member wage records.

### 6. Transmission of Business

- 12 month instrument transfer period for workplace agreements and awards has been removed
- An instrument that transfers continues to apply to the new employer until it is terminated or replaced.
- FWA power to alter the coverage of instruments following a transfer of business.

## The Economic Downturn - Employment Considerations

The global economic down turn is likely to impact on the private business sector in varying effects. The impacts usually require a reconsideration of the workforce from an operational and/or cost perspective. The impacts on employment can involve redundancy, transfer of employees to lower duties, and outsourcing.

All of these outcomes can attract litigation in unfair dismissal or discrimination. Any restructuring exercise should as part of the consideration contemplate the impacts from changes to employment. There is also the issues of a slow down in wage growth, as a means of companies remaining viable in a competitive market which is the reverse of the labour market of the past two years with the skill shortage.

Drayton's can advise employers on all of these issues. Please call our office for a general discussion or we can visit your workplace.

Workplace Agreements– Wage Growth	Average Annualised Wage Increases		
	March. quarter 2008	June. quarter 2008	
<p>The June 2008 quarter wage trends for collective agreements have been released. Wage growth in Australia across all sectors remains at approximately 4% per annum.</p> <p>Growth in construction industry rates has fallen slightly to 4.8% per year, showing some signs that the rapid growth in industry rates over the last 2 years may be beginning to ease off.</p>	<b>All current wage agreements</b>		
	All sectors	4.0%	3.9%
	Private sector	3.8%	3.7%
	Public sector	4.3%	4.2%