

CGG LAW

THE LAST DAY...

Since the election of the Rudd Labour Government in 2008, we have known that Work Choices would be removed from Australia's industrial landscape. This alert, (and 4 further alerts to follow over the next 4 weeks), will provide detailed information on the nature and effect of the industrial laws that will replace it.

No legislation introduced this year will have a greater impact on the day-to-day operations and the profitability of your organisations. As employers, we encourage you to explore, consider and understand the new industrial laws.

THE HISTORY

On 20 March 2009, the federal government's Fair Work Bill passed through the Senate. With over 200 amendments made to the Fair Work Bill, the *Fair Work Act 2009* (Cth) (the **FW Act**) was created. From 1 July 2009, the FW Act will be the primary source of industrial legislation for most employers throughout Australia.

The primary object of the FW Act is:

... to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians ...

The primary object is to be achieved via various means, including (for example) by providing '*workplace laws that are fair to working Australians, are flexible for business, promote productivity and economic growth for Australia's future economic prosperity*'. The object, and the methods to achieve the object, are indeed idealistic. Of course the report card measuring the success or otherwise of the new laws will not be delivered for some time.

However, it is now the role of business' to understand and comply with the new laws. Set out below is some general information to assist employers in understanding and complying with the new laws.

THE LAWS

As stated above, from 1 July 2009, the FW Act will be the primary source of industrial legislation. However, there are other Bills and Acts of parliament that will impact on industrial relations over the course of the next weeks and months. To keep you up to date with the relevant laws, I have set out below a brief summary of the new industrial laws made (or to be made).

Legislation Title and Effect
<i>Fair Work Act 2009</i>
<i>Fair Work Regulations 2009</i>
<i>Fair Work (Transitional Provisions and consequential Amendments) Act 2009</i> This Act contains the transitional provisions enabling the transition from Work Choices to the FW Act.

Fair Work (State Referral and Consequential and Other Amendments) Act 2009

This Act allows State governments to hand over part or all of their industrial relations powers to the Commonwealth. Importantly, the Queensland State Government recently stated that it agrees in principle to hand over some of its industrial relations powers to the Commonwealth in accordance with this Act.

Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009

This Bill seeks to amend the *Building and Construction Industry Improvement Act 2005* to:

- abolish the Office of the Australian Building and Construction Commissioner and create the Office of the Fair Work Building Industry Inspectorate;
- remove existing building industry specific laws;
- enable the Inspectorate to compulsorily obtain information or documents relevant to an investigation from certain persons;
- provide for safeguards in relation to the Inspectorate's powers to obtain information and documents (including a five year sunset provision); and
- create the office of the Independent Assessor.

Building and Construction Industry (Restoring Workplace Rights) Bill 2008

(this is a Private Members Bill, that is, it was not introduced by the incumbent government)

Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008

Employment and Workplace Relations Amendment Act 2009

This Act amends the:

- *Safety, Rehabilitation and Compensation Act 1988* to increase lump sum compensation to \$400,000 and to \$110 a week (to be increased annually) for benefits paid to each prescribed child in the event of a work-related death;
- *Social Security Act 1991* to: extend the Sickness Allowance and Parenting Payment (single) which prevents a person from receiving payment while there is an Assurance of Support in force, and clarify rent assistance entitlements for Austudy and ABSTUDY receipts.

Fair Work Amendment (Paid Parental Leave) Bill 2009

(this is a Private Members Bill)

Safe Work Australia Bill 2008 [No. 2]

This Bill establishes Safe Work Australia (SWA) as a statutory body, with power to make recommendations directly to the Workplace Relations Ministers' Council in relation to occupational health and safety outcomes and workers' compensation arrangements. SWA will replace the Australian Safety and Compensation Council.

As you can see, there are still a number of laws to be introduced that will affect industrial relations in Australia. We will keep you abreast of developments as they arise over the course of the coming weeks and months.

THE FAIR WORK ACT 2009 (AND THE TRANSITIONAL LAWS)

The essential, practical issues you ought to be aware of in relation to the FW Act and its impact on the day-to-day operations of business are as follows:

1. From 1 July 2009, existing industrial instruments such as employee collective agreements, AWA's (and ITEA's), pre-reform Awards and NAPSA's will become transitional instruments and continue to operate as if the Workplace Relations Act 1996 (Cth) (or Work Choices) had not been repealed.
2. The existing industrial instruments will continue to operate beyond their nominal expiry dates, unless they are terminated or replaced.
3. New unfair dismissal laws will commence on 1 July 2009 – importantly, a key component of the new unfair dismissal laws is the definition of '*small business employer*'. Between 1 July 2009 and 31 December 2010, a 'small business employer' (for the purposes of the unfair dismissal laws only) is defined as a business that has fewer than 15 employees employed on a full-time equivalent basis.

This is important because employees who are employed by a small business employer do *not* have access to the protection of the unfair dismissal laws during the first year of their employment. In the case of everyone else, it is the first six months of employment that protection from unfair dismissal laws is denied.

4. Bargaining of enterprise agreements under the FW Act will commence on 1 July 2009. This means that employers will not be able to make employee collective agreements (or other collective agreements) after this date.

However, between 1 July 2009 and 31 December 2009:

- employers who are currently able to make ITEA's will continue to be able to do so;
- enterprise agreements will be required to be made in accordance with the new bargaining procedures (including an obligation to bargain in good faith);
- enterprise agreements will be scrutinised in accordance with the No-Disadvantage Test;
- the reference instrument will be the applicable NAPSA (or other appropriate industrial instrument);
- if the employee is a union member, the default bargaining agent for negotiating an enterprise agreement will be the applicable trade union (unless the employee appoints someone else).

5. The institutional changes are as follows:

- The AIRC will continue with the Award modernisation process (and other matters on foot as at 30 June 2009) and will cease to operate on 31 December 2009.
- On 31 July 2009 (after handing down its final minimum wage review) the Australian Fair Pay Commission will cease to operate.
- On 1 July 2009, the Fair Work Ombudsman (currently the Workplace Ombudsman) will commence.

WHERE TO FROM HERE?

The impact of the Fair Work Bill should not be underestimated. If you want to be prepared to meet the coming changes we recommend you urgently:

- Read as much as you can on the new legislation and identify those areas where your business will be impacted
- Consider the timing. Think about when you need to have new systems and procedures in place to meet the new Fair Work obligations
- Seek advice. Government, employer groups and firms like Clifford Gouldson are geared up to meet the demand for businesses seeking advice. If you have any doubts about how your business will be affected you should talk to an expert.

As stated above, Clifford Gouldson will be preparing a series of these alerts to cover, as much as possible, the coming changes. We will also be conducting seminars throughout the rest of the year on this topic so keep an eye out for invitations.

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