

## Fair Work Bill 2008 – Transition Bill introduced

The Federal Industrial Relations Minister, Julia Gillard, has introduced the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 ("Transition Bill"). The purpose of the Transition Bill is to provide a mechanism for the transition to the new "Fair Work Australia" industrial relations system.

The Transition Bill repeals the current Workplace Relations Act 1996 ("WRA") with the exception of two Sections dealing with registered organisations and transitional registered associations – these will be dealt with under the Fair Work (Registered Organisations) Act 2009.

The Transition Bill also includes arrangements for moving into the new system and covers such issues as:

- How the WRA industrial instruments interact with the new system, including the National Employment Standards (NES) and modern awards;
- Provisions for bargaining to occur under the new system in an orderly manner;
- How the transfer of assets, functions and proceedings will occur from the institutions under the WRA to Fair Work Australia and Fair Work Ombudsman; and
- Consequential amendments to other Federal pieces of legislation that are considered essential to the operation of the Fair Work Act 2009.

### Timelines

The Fair Work Act will commence on 1 July 2009. It is from this date that the changes to the general protections, unfair dismissal, union right of entry and stand down frameworks will apply.

The 10 National Employment Standards (NES) and modern awards will commence on 1 January 2010.

### NES and Minimum Wages

The Transition Bill provides that from 1 January 2010, the NES and minimum rate of pay, will apply to all national system employees and prevail over any existing workplace instruments and arrangements made before 1 July 2009.

For employment arrangements / agreements made during the period 1 July 2009 to 1 January 2010, entitlements under the Australian Fair Pay and Condition Standard (AFPCS) will continue to apply.

Fair Work Australia will be empowered to make "take-home pay orders" for individuals or groups of workers, when their pay has been reduced as a result of moving onto modern awards.

### Transitional Instruments

Existing collective and individual agreements (Individual Transitional Employment Agreements [ITEAs] previously Australian Workplace Agreements [AWAs]) made before 31 December 2009, will be known as "transitional instruments".

## **Transitional Instruments (cont.)**

Under the Bill, transitional instruments will be dealt with in the following ways:

- They will continue to operate past their nominal expiry date until terminated in accordance with the current rules for termination, or until replaced by a new enterprise agreement made under the new bargaining framework;
- Fair Work Australia will be empowered to vary transitional instruments to resolve ambiguity or uncertainty (including in relation to their interaction with the NES);
- Award-based instruments (such as a range of State based awards previously impacted by the Workplace Relations Act) will cease to operate when they are replaced by modern awards; and
- Parties to enterprise awards and agreements derived from State enterprise awards will be able to apply for the award to be modernised and integrated into the modern award system.

## **Institutions**

The Transitional Bill provides for the establishment of the Fair Work Divisions of the Federal Court and the Federal Magistrates Court.

From 1 July 2009, the functions of the Workplace Ombudsman and Workplace Authority will be taken over by the Fair Work Ombudsman.

A number of other agencies including the Australian Fair Pay Commission, Workplace Authority, the Australian Industrial Relations Commission and the Australian Industrial Registry will all be phased out by 31 January 2010.

## **Bargaining and agreements**

The Transition Bill sets out a framework for bargaining, agreement making and industrial action during and after the bridging period between 1 July 2009 and 1 January 2010. During that period agreements lodged for approval will be vetted against the no disadvantage test, not the "better off overall test". After 1 July 2009, bargaining under the WRA provisions will no longer be allowed, and a new bargaining process under the Fair Work Bill will have to be commenced.

## **Implications for employers**

Before 1 July 2009, employers should:

- review the agreements in place with their employees (either individual or collective) and determine what action may be required to comply with the NES as of 1 January 2010 to be factored into current / future bargaining processes; and / or
- review the instruments applying to their employees (awards) to determine if they remain applicable or if they are replaced by a modernised award.

For more information or support in this process, please contact Kerry Brinkley on (07) 3839 1233 or [kerry@mjsp.com.au](mailto:kerry@mjsp.com.au).