

Workplace Update

URGENT UPDATE: SAY GOODBYE TO HOLLYWOOD

Are you a private sector NSW employer that is, say, a partnership, sole trader, charity or State Owned Corporation? Well, if you are, you will be waking up to a very different IR dawn on New Year's Day.

The NSW Government has just passed a "referral" bill which, when it becomes law, will mean you and your employees will be covered by the *Fair Work Act 2009* from January 2010. The only employees who will still be covered by the NSW IR system will be the public sector rump and local government employees.

The referral of rights includes termination, industrial action, minimum terms of employment, terms in awards and other industrial instruments, enterprise bargaining and transfer of business.

Matters that will remain regulated by the relevant NSW laws are discrimination, workers compensation, long service leave, OH&S (for the time being) and superannuation. We think the retention of discrimination does not include an adverse action claim brought under the *Fair Work Act* that includes an element of discrimination (see our September *Workplace Update*).

In the second reading speech associated with the Bill, the NSW Attorney General stated on 1 December 2009: "*Workplaces such as childcare centres, cafes, small shops and hairdressers have not been prominent in the bargaining stream so far. These provisions give employees in these kinds of workplaces a new and unprecedented opportunity to bargain with their employers employees get a chance to improve their pay and conditions.*"

This means all those IR articles you have been noticing (likely from us if you are reading this) on things like modern awards, adverse action, national employment standards (NES), good faith bargaining guidelines, union rights of entry, unfair dismissal laws and other, new IR additions under the *Fair Work Act*, will soon apply to you.

Your employees will also gain access to new rights and, in some cases, your once award free workforce may well be covered by a new federal modern award such as the Clerical Award (without the wage exemption applying since the recent variation to this award by Fair Work Australia), or the far reaching new Miscellaneous Award which covers most occupations not covered by the other modern awards.

The independent umpire in your workplace disputes about a range of matters such as the NES, enterprise bargaining and dismissals will be Fair Work Australia. NSW Commission members will retain an active role in these matters under the proposed laws by being able to be nominated as dispute resolution providers in federal enterprise agreements. This means you may need to focus on an agreement sooner than later.

Your State award entitlements will be retained for 12 months, other than the immediate application of the NES, and the transition into modern awards will be complete by 2015. This means that the modern awards will apply from whenever they are proclaimed to start in early 2010 but that some aspects will be phased in. Fair Work Australia will, however, be able to make take-home pay orders to ensure no employee will suffer a reduction in net pay by moving to a modern Federal award.

The new bargaining rules, however, will immediately apply which means you can be the subject of a majority support application or scope order by a union or employee bargaining representative. As we stated in our August *Workplace Update*, the word “no” to a request to bargain with a union is no longer an option for employers.

It may sound daunting but we are here to assist you in making the transition as seamless as possible. We are happy to advise as to what modern award may apply to your employees, and to review your contracts, policies and procedures to ensure they comply with the NES and any such modern award. We can help you in your negotiations with your employees or union in relation to new agreements.

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