

Employment & Industrial Alert

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The New Federal Government. What Can we Expect in IR?

With the resounding election victory of the ALP they now have a mandate on a broad range of issues but in particular on IR. What can business expect from the in-coming government on IR?

There is already action with apparent steps taken to draft new legislation. Set out are some brief comments on what we know so far:

New legislation will come in stages – at least two of them with the major changes probably introduced in 2009 for taking effect in 2010. Such timing will depend upon the assessment of the changes and likely impact at the ballot box given there will be an election due late 2010 to early 2011. It is likely they will be introduced so they are bedded down well before the next election. Conduct of major employers in the coming weeks and months may lead to an alteration in timing but so far the word 'retrospectivity' has not been used.

The initial legislation is likely to deal with AWAs and their abolition. What is allowed in their place will be the interesting aspect – common law contracts will be favoured but how they will be treated in the IR system will be something to look out for. Of course there will be a major emphasis on encouraging collective bargaining. If the majority of employees want to collectively bargain then it will be allowed and enforced by Fair Work Australia. Current AWAs will remain in force (until at the latest 01/12/12) subject to an anticipated cutoff date for entering into new AWAs of 1 December 2007. AWAs entered into after 1 December up to when legislation is made law will have an expiry date of December 2009 and those agreements will be able to be converted to what is currently called ITEAs (interim employment agreements) and such ITEAs will be able to be entered into with expiry as at December 2009. We anticipate a much stronger no disadvantage test to replace the fairness test – it may be that this will be introduced in the initial legislation. Prohibited content will probably be something of the past but it will be interesting to see how this will be dealt with. A factor for business to consider is that already since the election result there is a substantial exodus of staff at all levels from the Workplace Authority. The result of this is that administering the fairness test will be much much slower – those rushing to AWAs will find a long delay in getting approval. Collective Agreements still have to be assessed as well so anticipate delays here but administratively they may be dealt with more speedily.

There will be changes to termination of employment laws but when these are to be brought in is unknown. The changes will reflect the policy position of abandoning the less than 100 employee provision. Employers with 15 employees or less will have a protection of 12 months employment period so employees of less than 12 months engagement will not have a right to termination proceedings subject to an expected unlawful termination right remaining with the employee. The qualifying period of 6 months employment is expected to remain for all other employees. There will be introduced a "Fair Dismissal Code" for employers to follow and if followed it will protect employers.

Common law contracts will be an advantage for employers where employees will be earning a proposed figure of \$100000 + for these contracts will be outside the jurisdiction of Fair Work Australia and award free. Contracts of less than \$100000 will not be able to exclude award conditions.

There will be Award simplification and this will be moved on quickly – although the new government may strike the same complications the previous government did in achieving this – although there may be greater commitment to it. There will

be 10 minimum employment conditions basically mirroring the current "Australian Fair Pay Conditions" but adding for example minimum redundancy and long service leave conditions. These conditions will apply to businesses of 15 or more employees. There will also be a further 10 conditions that may be included in Awards.

The AIRC will be back in the IR game and some with the introduction of Fair Work Australia in its place with expanded powers and roles.

This is what we know so far and we will keep you updated through our website and directly.

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