

Epilogue

The Australian Government introduced the Fair Work Bill into the House of Representatives on 25 November 2008. Before the Bill can be adopted into law it will need to pass scrutiny of a full Senate Committee inquiry in 2009. It is anticipated that the new legislation will take effect on 1 January 2010. The Australian Government hopes that certain key aspects of the Bill—in particular the provisions on the bargaining framework and unfair dismissal—can become operative from 1 July 2009 onwards.

The proposed legislation seeks to replace the Workplace Relations Act 1996 (Cth) in its entirety. The text of the Bill, entitled A Bill for an Act relating to Workplace Relations and for Related Purposes, is 575 pages in length. It is accompanied by an equally formidable Explanatory Memorandum comprising 429 pages. The Fair Work Bill 2008 is divided into six chapters. The main substantive provisions can be found in chapters two and three.

Entitled Terms and Conditions of Employment, chapter two contains the much anticipated National Employment Standards as well as the provisions on Modern Awards and Enterprise Agreements. Award terms are divided into three categories: permissive, mandatory and prohibited terms. Permissive terms include provisions on outworkers and industry-specific redundancy schemes. A mandatory

term of note is the provision for a so-called flexibility term. A flexibility term is defined in Section 144 of the Bill as a term enabling individual employees and their employer to agree on an arrangement by which the effect of the award is varied 'in order to meet the genuine needs of the employee and employer'. One crucial proviso is that the employee must be 'better off overall' as a result of the individual flexibility arrangement. Prohibited award contents include, *inter alia*, terms about the union's right of entry to employer premises. The 'better off overall' test also applies to enterprise agreements in relation to employees covered by an award, with the exception of employees employed under an individual flexibility arrangement.

Chapter three is headed Rights and Obligations of Employees, Employers, Organisations etc. The statutory provisions for the protection of employees against unfair dismissal can be found here. Chapter three also spells out the legal rules as regards protected industrial action.

Compliance and enforcement issues fall within the jurisdiction of the proposed Fair Work Divisions within the Federal Court of Australia and the Federal Magistrates Court.

While the Explanatory Memorandum states that the proposed legislation is simpler and substantially shorter than the current Workplace Relations Act 1996 (Cth), the Fair Work Bill 2008 by no means amounts to easy bedside reading. Even so, initial commentary in the general press suggests that both labour and industry are reasonably happy with the formal outcome of extensive, if not always open, consultations with the various stakeholders. In the same vein, Malcolm Turnbull for the Opposition has indicated the Coalition's acceptance of the Government's mandate for labour law reform. But politics is a fickle business. Only the future can tell.