



## Workplace Relations Alert July 2009

### New Fair Work Regulations now in force

The Regulations to the new *Fair Work Act 2009* have now been released by the Federal Government. These Regulations impose a number of obligations on employers, and also clarify certain aspects of the operation of the Act. In this Alert, we summarise those Regulations with most general relevance.

#### **Detail on information to be recorded by employers in employee records**

The Regulations retain fairly onerous record-keeping obligations on employers. This includes when selling or transferring a business, when there is a requirement to transfer all such records to the new owner or operator.

#### **Unfair dismissal claims**

The current salary cap for unfair dismissal claims has been confirmed as \$108,300 per annum, and the Regulations explain the formula to be used to calculate the cap in future.

The Regulations also clarify that Fair Work Australia (FWA) is required to take into account other 'employment benefits' when assessing or calculating the salary cap in unfair dismissal cases. This is a useful guide, as there was some debate in the past over calculation of such benefits.

A new definition in the Regulations clarifies what 'serious misconduct' (entitling the employer to terminate employment without notice) means. This includes, for the first time, a definition of 'intoxication' – being so impaired that the employee is unfit to be entrusted with work duties.

#### **New enterprise agreements**

The Regulations provide:

- > a template notice that is to be given by employers to employees when

bargaining for a new enterprise agreement. This Bargaining Representation Notice clearly provides unions with an opportunity to promote themselves to employees as integral to future negotiations over enterprise agreements, and

- > model clauses that are to be inserted in enterprise agreements made after 1 July 2009. These clauses deal with 'flexibility' and 'consultation' with employees and are mandatory in all new enterprise agreements made under the Act.

At present, there is potential for confusion over which laws apply to workplace agreements. The old Work Choices regime was effectively replaced by the Fair Work Act on 1 July 2009, however there is a 'bridging period' during which parts of the old legislation will continue to apply, particularly to existing agreements. New enterprise agreements from 1 July 2009 will be subject to the new Fair Work Act and further obligations will be introduced from 1 January 2010.

#### **Exclusion of *Contracts Review Act* (NSW)**

New South Wales employers need to be aware that the Regulations prescribe the *Contracts Review Act 1980* as one of the laws whose operation is ousted by the Fair Work Act.



## Welcome to our new Workplace Relations & Employment Partner – Tony Vernier

We would like to take this opportunity to welcome Tony Vernier, a new Partner in our national Workplace Relations & Employment team, based in Sydney.

Tony is an accredited Employment and Industrial Law specialist. He practices in all aspects of industrial relations, employment, discrimination and occupational health & safety law, including:

- > Negotiating and drafting employment agreements
- > Advising on termination of employment and managing the associated legal risks
- > Unlawful and wrongful dismissal claims
- > Corporate restructuring and redundancy
- > Advising and defending OHS prosecutions
- > Conducting workplace training

Tony assists clients to develop effective workplace solutions. He has worked with clients across a variety of industries including mining, manufacturing, retail, cleaning services, security and transport.

With more than 19 years' experience in litigation, employment and industrial law, Tony is often praised by his clients for his practical and creative solutions.

He regularly leads seminars and briefings for clients and has written a number of external papers.

## For more information on the Fair Work Regulations or any aspect of the Fair Work Act, please contact our Workplace Relations and Employment Team:



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