

Workplace Relations Alert

June 2009

Changes to workplace laws at both State and Federal levels

While the new *Fair Work Act 2008* (Cth) has taken most of the headlines recently, a number of other significant changes have been proposed or made to workplace laws at both State and Federal levels. In this Alert, we summarise some that are likely to be relevant to your workplace:

- > *proposed cap on executive remuneration*
- > *Federally funded parental leave*
- > *harmonisation of occupational health and safety laws*
- > *changes to child protection laws*

Proposed cap on executive remuneration

The Federal Government has released an exposure draft of the *Corporations Amendment (Improving Accountability on Termination Payments) Bill 2009* (Cth), which proposes to amend the *Corporations Act* to curb 'excessive golden handshakes' by:

- > significantly lowering the threshold at which shareholder approval is required for a termination payment, from the current threshold of seven times an annual remuneration package to one year's base salary;
- > expanding the number of company officers for whom approval is required;
- > requiring shareholder approval to be sought at a general meeting, which is called for the sole or dominant purpose of deciding the payment issue. Currently, shareholder approval can be obtained at any time;
- > expanding the definition of termination 'benefits' to incorporate all types of payments made on termination of employment including any payments made in lieu of notice of termination, voluntary out-of-court settlement amounts, options which vest on an accelerated or automatic basis on termination, superannuation contributions made in excess of the minimum statutory requirement and any kind of pension; and

- > introducing significantly higher penalties for termination payments that are made without shareholder approval. Individuals would be fined up to \$19,800 (increased from \$2,750 as compared to current law) or receive six months' imprisonment, and corporations would be fined up to \$99,000 (increased from \$16,500).

The Bill is open for public consultation throughout June 2009.

If the Bill becomes law, termination provisions in future executive employment agreements with a notice period of more than six months are likely to require shareholder approval; especially where the individual also has significant equity, bonus or incentive entitlements that are payable on termination of employment. Executives are also likely to seek to negotiate higher salaries and associated benefits at the outset of their employment to counteract the restrictions on termination payments. However, the government has not as yet clarified what will happen if contracts are varied after the passage of this amending legislation, and whether such variations will need to be approved by shareholders. Employers should watch this development, and be ready to review their executive contracts.

Federally funded parental leave

The 2009 Federal Budget included a commitment to invest \$731 million over five years to a new paid parental leave scheme. The scheme will commence on 1 January 2011, and will operate as follows:

- > primary care givers earning less than \$150,000 annually will be paid 18 weeks' paid parental leave at the minimum wage (currently \$553.78);
- > weekly payments will be treated as taxable income;
- > eligible parents will need to have worked continuously for at least 10 of the 13 months before the birth or adoption;
- > part-time workers, contractors, casual workers and the self-employed will also receive paid parental leave;
- > funds will be delivered through employers, rather than directly from the government;
- > employers will not be required to make superannuation contributions on the payments; and
- > secondary carers will not be entitled to paid leave.

The scheme will be reviewed after two years, and further recommendations made by the Productivity Commission will be reconsidered, including whether:

- > the child's secondary carer should be entitled to two weeks' paid leave; and
- > employers should make superannuation contributions on the payments.

The paid parental leave scheme is entirely tax-payer funded, meaning that it will not place a financial burden on your business.

Before 1 January 2011, employers with their own voluntary paid parental leave schemes should consider whether to:

- > retain those schemes in addition to the government's scheme; or
- > reduce costs by combining employees' entitlements under those schemes with their entitlements under the Government scheme.

Harmonisation of occupational health and safety laws

In May 2009, the Workplace Relations Ministers' Council (WRMC) accepted a framework for uniform occupational health and safety (OH&S) laws in Australia, based on the recommendations of two 'National Review into Model OHS Laws Reports' prepared for the WRMC. The proposal is for new model laws to replace all State and Territory legislation, creating a national approach to safety standards.

The key matters that the WRMC has accepted and inserted in its proposal for model laws are:

- > the primary duty of care would be expressed as a person-to-person duty owed by any person who conducts a business or undertaking – as opposed to the current focus on the employment relationship which has been a feature of OH&S legislation in NSW and other States;
- > modified duties of care by reference to what is 'reasonably practicable' and 'due diligence';
- > three categories of breaches. The maximum fine for a category 1 offence (recklessness/gross negligence and serious harm) for a corporation would be \$3 million, for a category 2 offence

(serious harm or risk) \$1.5 million, and for a category 3 offence (breach does not involve serious harm or risk of serious harm) \$0.5 million;

- > a broader range of sentencing options, including adverse publicity orders, corporate probation, and injunctions against offenders;
- > the prosecution would bear the onus of proving beyond reasonable doubt all elements of an offence relating to non-compliance with an OH&S duty of care; and
- > only an official who is acting in the course of a public office or duty would be able to bring a prosecution for a breach of the statutory provisions – effectively removing a union's right to prosecute for suspected breaches of OH&S duties.

The WRMC established the Safe Work Australia Council in February of this year, with the task of drafting the model law in accordance with its recommendations. A draft national model law is expected from the Safe Work Australia Council in August 2009.

We will provide a summary Alert on the new OH&S model laws and what they mean for your business once the exposure draft has been released.

Changes to child protection laws

The new *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009* (NSW) (assented to on 7 April 2009) gives effect to recommendations of the Special Commission of Inquiry into Child Protection Services in New South Wales, carried out by Justice Wood. The Act is aimed at:

- > improving the statutory child protection system by focusing on children at greatest risk;



- > making court processes easier for children and families; and
- > improving inter-agency co-operation on child protection.

Significantly, from an employment perspective, the Act amends the child-related employment provisions of the *Commission for Children and Young People Act 1998* (NSW) by:

- > extending the definition of child-related employment, and high risk groups who must undergo background checks prior to commencing employment in child-related positions;

- > bringing greater clarity to the definition of primary child-related employment to include volunteers providing certain mentoring and personal care services as well as students employed with the Department of Community Services; and
- > amending background checking provisions to extend their application to an adult person who resides in the home of an authorised carer or children's service provider.

If people at your workplace are engaged in child-related employment, it may be timely to review your child protection checks and provisions in your employment contracts to ensure that they are consistent with the amended legislation.

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