

### “VISION IN THE WORKPLACE”

Issue Forty-one, March/April 2009

In this edition of “Vision in the Workplace” we draw your attention to the *Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009* which was recently tabled and assented to Parliament and highlight Ms Julia Gillard’s proposed amendments to the *Fair Work Bill 2008*. We also report on a Federal Magistrate Court’s decision where an Employer was ordered to pay damages to a Union. Lastly, we draw your attention to our change of address and new premises which we have occupied from Monday 30 March 2009.

#### Transitional and Consequential Fair Work Bill Tabled and Assented!

On 19 March 2009, Ms. Julia Gillard, Deputy Prime Minister and Minister for Employment and Workplace Relations, Education and Social Inclusion, tabled the *Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009* (“**the Bill**”) which has the effect of dealing with transitional matters and amending laws in relation to the *Fair Work Bill 2008*. After significant lobbying of independent senators, the Bill was passed by both Houses and assented to on 19 March 2009. The Bill will repeal the current *Workplace Relations Act 1996 (Cth)* (“**the Act**”), apart from Schedule 1 (regarding registered organisations) and Schedule 10 (regarding transitionally registered organisations).

In the Bill’s Second Reading Speech, Ms. Gillard stated that the “*Fair Work Bill will provide employees with a fair safety net of employment conditions that cannot be stripped away. It will provide a right to challenge a harsh, unjust or unfair dismissal for all employees, not just those in the very largest of business.*”

Notably the Bill:

- preserves existing workplace instruments and sets out how they will interact with the new system and the National Employment Standards (“**NES**”). NES will apply to all national system employees including those covered by instruments made before the commencement of the new system;
- enables bargaining to commence in an ‘orderly way’;
- allows agreements to continue past their nominal expiry date until terminated or replaced. Parties to Enterprise Agreements and Notional Agreements Preserving State Awards derived from state enterprise awards can apply to Fair Work Australia (“**FWA**”) to have their enterprise award included in the modern awards system;

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STEVENS & ASSOCIATES  
LAWYERS

### Change of Address

Stevens & Associates Lawyers has the pleasure in informing you it has relocated to new premises across the road in Pitt Street. We look forward to working with you at our new premises and celebrating the move.

Watch this space!

#### New Address:

Level 4, 74 Pitt St  
Sydney, NSW 2000

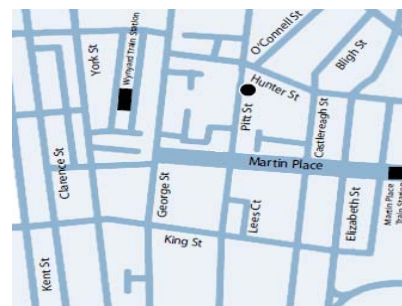
(All other contact details (including emails) have not changed, see below)

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- allows employees on individual agreements to enter a "conditional termination agreement" with their employer enabling them to partake in collective Bargaining, including voting for an Enterprise Bargaining Agreement ("**EBA**"). Their current individual agreement terminates upon the approval of the EBA;

- forms Fair Work Divisions in the Federal Court of Australia and Federal Magistrates Court of Australia;

- enables state registered organisations to participate in the new federal workplace relations system; and

- enables FWA to perform a "bedding-down" review

of Modern Awards two (2) years after their effect, ahead of the regular four (4) yearly review.

Ms. Gillard concluded that the Bill "*will ensure an orderly and fair transition to the new workplace relations system.*"

For more information in relation to the Bill's provisions and their effect in your workplace, please contact Nick Stevens or Alicia Mataere.

## **Proposed Amendments to the Fair Work Bill**

Julia Gillard, Deputy Prime Minister and Minister for Employment and Workplace Relations, Education and Social Inclusion has specified amendments to the *Fair Work Bill 2008* ("**the Bill**"). In a letter to Greens Senator, Bob Brown dated 9 March 2009, Gillard stated the amendments would improve the new workplace relations system "*by removing uncertainty or unintended consequences while ensuring consistency with the policy mandate.*"

Notably the amendments are in relation to:

1. **Right of Entry** – The introduction of heavy penalties for misusing information obtained when exercising right of entry. Amendments will also "*make it clear that the right of entry for discussions may only be exercised for the purpose of talking to employees and not contractors.*"

2. **Transfer of Business** – Following from present provisions enabling employers to apply to Fair Work Australia ("**FWA**") for orders, old industrial agreements will not transfer following a takeover and amendments allow FWA to modify any instrument that does transfer to better fit the operating needs of the new enterprise.

3. **The Right to Request Flexible Work Arrangements** – Where an enterprise agreement allows for flexible working arrangements and an employer refuses to impose, FWA (or another third party) will be able to review the refusal.

4. **Better-off Overall Test** – The Federal Government will keep the condition that each

employee is better off overall under the safety net but Gillard stated that FWA will assess the circumstances of "*classes*" of employees as opposed to inquiring "*into the circumstances of each individual*".

5. **The Bargaining System** – many amendments have been put forward in relation to bargaining systems including:

- a requirement for FWA to chose "*fairly*" the group of workers approving an enterprise agreement, ensuring they are "*geographically, operationally or organisationally distinct*";

- a "*clearer test*" for allowing FWA to suspend industrial action in the cases of "*harm*" to a third party, and clearer rules for pay deductions for industrial action;

- ability of FWA to aid employers and employees in negotiating enterprise agreements; and

- allowing variations to an agreement to be voted by a majority of employees without the need for union approval.

6. **The Safety Net** – new terms in Awards will require employers to consult with employees where significant workplace change is proposed.

We will keep you updated on the progress of the Bill. In the meantime, for any assistance and advice in preparing your business for the Bill please contact Nick Stevens or Alicia Mataere.

## **Employer Pays Damages to Union**

The Federal Magistrates Court ("**the Court**") has ordered an Employer to pay a \$3,300 penalty to a Union for breaching section 448 of the *Workplace Relations Act 1996 (Cth)* ("**the Act**") which prohibits an employer taking action against an employee for engaging in protected industrial action.

The Employer needed overtime performed on a Saturday and supervisors offered the same to three casual employees as opposed to offering it to three permanent workers. The three permanent employees were not offered the overtime because they had participated in protected industrial action two days before.

The Union claimed the Employer had breached section 448(1)(a) as it discriminated against employees because they were taking part in protected action. The Employer admitted the breach. Although Federal Magistrate Keith Wilson stated "*the breach of the Act was a narrow one in the sense that it occurred in respect of arguably three employees, on one occasion, and had very limited circumstances*", he imposed a civil penalty.

For advice and guidance in complying with the *Workplace Relations Act 1996 (Cth)* please do not hesitate to contact Nick Stevens or Alicia Mataere.

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