



## Labour Relations Newsletter

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### Passing of the Fair Work Bill 2008

The Federal Government's *Fair Work Bill 2008* (the Bill) was passed by Federal Parliament on 20 March 2009 after the Federal Government reached an agreement with Family First Senator, Steve Fielding, on phasing-in its definition of small business for unfair dismissal purposes.

The Bill was originally introduced into the House of Representatives on 25 November 2008.

The Bill was passed after 17 hours of debate, 231 amendments and a sitting of the Senate until 2.30am (AEDT).<sup>1</sup>

<sup>1</sup> The Sydney Morning Herald, 'No interest in changing IR law: Turnbull (2009)' smh.com.au <<http://news.smh.com.au/breaking-news->

The Bill was amended during debate to:

- limit access to non-union members' records;
- increase the lodgement period for an unfair dismissal claim from seven to 14 days after dismissal; and
- apply a two-phase definition to small business for unfair dismissal purposes.

The two-phase definition will be applied as follows:

- for the first 18 months of the operation of the new legislation the threshold used to define a small business will be fewer than 15 full-time equivalent employees; and

[national/no-interest-in-changing-ir-law-turnbull-20090322-958r.html](http://www.smh.com.au/national/no-interest-in-changing-ir-law-turnbull-20090322-958r.html)> at 22 March 2009

- following the 18 month period the threshold used to define a small business will be fewer than 15 employees (determined by a headcount) – meaning that regular casual employees will be included.

The Bill will become the *Fair Work Act* once it receives Royal Assent.

A copy of the Bill can be obtained from the Department of Education, Employment and Workplace Relations' [website](#)

## The Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009

The Federal Government also introduced the *Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009* (the Transitional Bill) into Federal Parliament on 19 March 2009.

The Transitional Bill principally deals with the transition from the existing federal industrial relations system (*Work Choices*) to the Federal Government's *Fair Work Bill 2008* (soon to be the *Fair Work Act*).

To do this the Transitional Bill will repeal most of the *Workplace Relations Act 1996*. The Federal Government intends that most parts of the *Fair Work Bill* will commence on 1 July 2009. Those parts of the *Fair Work Bill* dealing with modern awards, minimum wages and the National Employment Standards will not commence until January 2010. This six-month period is referred to as the "bridging period".

The Transitional Bill will:

- preserve existing federal instruments such as AWAs, awards and collective agreements ("transitional instruments");
- enable Fair Work Australia to make a "take-home pay order" if an employee (or class of employees) has suffered

a reduction in take-home pay because of the award modernisation process;

- preserve and amend Schedule 1 to the Workplace Relations Act dealing with registration and accountability of organisations (e.g. unions);
- enable Fair Work Australia to make a modern award to replace an enterprise award (i.e. an award that only applies to a particular enterprise);
- enable an employer and employee to "conditionally terminate" an individual transitional instrument (e.g. an AWA);
- terminate all existing ballot orders authorising protected industrial action;
- require Fair Work Australia to review modern awards two years after they commence; and
- create "Fair Work Divisions" of the Federal Court of Australia and the Federal Magistrate's Court – the Fair Work Divisions will deal with breaches of industrial instruments, penalties and remedies.

The Transitional Bill is the subject of a Senate Education, Employment and Workplace Relations Committee inquiry. The committee is due to report by 7 May 2009.

Click [here](#) to gain access to a summary of the progress and text of the Transitional Bill. A copy of the Transitional Bill can be obtained from the Department of Education, Employment and Workplace Relations' [website](#)

## Submissions to the 2009 federal minimum wage review

The Australian Fair Pay Commission (AFPC) is currently conducting the 2009 Federal Minimum Wage Review.

67 written submissions were received by the AFPC from individuals; employee, employer, community, education and professional organisations; and governments.<sup>2</sup>

In light of the current economic downturn, the Western Australian Government has submitted that the minimum wage should be increased in line with inflation, outlining the importance of maintaining the real wages for the state's lowest income earners while encouraging employment growth.

The AFPC has stated that "the decision will be the Commission's most difficult of all. It is a balancing act that is particularly challenging in these uncertain economic times"<sup>3</sup>.

The AFPC will announce its decision in July 2009. To view submissions and for further details about the 2009 AFPC Minimum Wage Review visit: [www.fairpay.gov.au](http://www.fairpay.gov.au)

## The wage determinations of the Salaries and Allowances Tribunal

The Salaries and Allowance Tribunal (SAT) is an independent state statutory body responsible for determining the

remuneration to be paid to a range of senior statutory and public office holders.

On 20 March 2009 the SAT handed down its determination on the remuneration payable to members of the Western Australian Industrial Relations Commission (WAIRC) and ordered that remuneration for members of the WAIRC be maintained at existing levels. This means that members of the WAIRC will continue to receive their current rates of remuneration.

The SAT's decision, not to provide a wage increase, was primarily based on the global economic crisis and the current uncertainty in the State and national economy. The SAT "believes that it would be reckless to determine an adjustment in the members' remuneration during deteriorating economic circumstances and in absence of a clear indication of a recovery"<sup>4</sup>.

In its decision the SAT noted that it had the discretion to make a new determination on remuneration for WAIRC members at any time over the following year.

Later this year the SAT will also make determinations and recommendations on rates of remuneration for the Governor, Members of Parliament, Judges, Magistrates, the Parliamentary Inspector of the Corruption and Crime Commission, Clerks of the Parliament, CEOs of local government areas, Members of the Special Division of the Public Service and Prescribed Office Holders.

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<sup>2</sup> Australia Fair Pay Commission, '2009 Minimum Wage Review submissions available online' (Media Release, 25 March 2009).

<sup>3</sup> Australia Fair Pay Commission, '2009 Minimum Wage Review submissions available online' (Media Release, 25 March 2009).

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<sup>4</sup> Salaries and Allowances Tribunal, 'Determination made on the remuneration of commissioners of the Western Australian Industrial Relations Commission' (2009) Government of Western Australia Salaries and Allowances Tribunal <<http://www.sat.wa.gov.au/index.cfm?event=waircltem20090320>> at 20 March 2009.

Visit [www.sat.wa.gov.au](http://www.sat.wa.gov.au) for further information about the tribunal and its determinations.

## Fresh Ideas for Work and Family Grants

The Federal Minister for Employment and Workplace Relations, Julia Gillard, launched the *Fresh Ideas for Work and Family Grants* program on 1 March 2009. The program aims to help small businesses put in place flexible work arrangements that help employees balance their work and family obligations and improve employee retention and productivity.

The program is aimed at small businesses across regional and metropolitan areas and is designed to support projects that benefit both the employer and employees, demonstrate long-term sustainable outcomes for the business and have the potential for wider application to other businesses.

Applications for grants of between \$5,000 and \$15,000 are invited from:

- small businesses in Australia with fewer than 15 employees;
- not for profit and non-government organisations;
- a consortium of small businesses; and
- sole traders and incorporated sole traders that employ between one and 14 employees.

In addition, the program supports small businesses by:

- developing and distributing business and industry specific information to assist in implementing family friendly work arrangements; and

- providing access to experts within Fair Work Australia from January 2010, to assist with setting up family friendly work arrangements.

The program is administered by the Department of Education, Employment and Workplace Relations (DEEWR). The opening and closing dates of each funding round, and further eligibility and application information are available by clicking [here](#), or by calling the Workplace Infoline on 1300 363 264.