

FAIR WORK ACT 2009

This is the fifth of a series of articles prepared by John Trew QC, Special Counsel to the Firm. The articles deal with the following areas:-

- (1) Overview;
- (2) Who is covered by the Fair Work Act;
- (3) Employment Conditions under the Fair Work Act;
- (4) Employment Protection; and
- (5) *Compliance and Enforcement and other matters (this article).*

Compliance and Enforcement - Chapter 4 (sections 537-678)

- Civil remedy provisions are scattered throughout the *Fair Work Act*. They are made enforceable by the provisions of Pt 4-1 (sections 537-559). Although any of the courts prescribed may impose a penalty and order the recovery of money, only the Federal Court and the Federal Magistrates Court may also grant injunctions and other appropriate remedies such as reinstatement in employment.
- Safety net contractual entitlements are entitlements under an employment contract that relate to any matter also covered by NES or a modern award: see the section 12 definition. The provisions in section 541-543 may permit the recovery of over-award remuneration or entitlements to annual leave or long service leave more favourable than NES or modern award entitlements.
- The jurisdictions of the Federal Court and Federal Magistrates Court are defined in sections 562-572.

Establishment and Functions of FWA and other statutory authorities - chapter 5 (sections 573-574)

- Ch 5 commenced operation on 26 May 2009.
- FWA is established and its functions described in sections 575-678. Those functions include making modern awards, setting minimum wages, approving enterprise agreements, resolving disputes and other functions conferred upon it by the *Act*: section 576.

- FWA's dispute resolution function (sections 378-740) permit it to arbitrate a dispute if the parties agree to that intervention in an enterprise agreement or another written agreement.
- The Fair Work Ombudsman is established and the functions of the office are described in sections 681-718. The Ombudsman's functions include monitoring compliance with the *Act* and enquiries about, and investigation of, contraventions. The Office of the Fair Work Ombudsman consists of the Fair Work Ombudsman and Fair Work Inspectors and staff.

Schedule 1 - Transitional Provisions

- The schedule deals with the transitional arrangements to apply to members of the AIRC who accept appointment to FWA. It deals also with other transitional matters to enable the FWA to function in place of the AIRC.

Conclusion

It is idle to speculate about the longevity of the system established by the *Fair Work Act*. Time and experience will determine its effectiveness and whether it becomes generally acceptable. For example, there probably will always be issues about the extent of the recognition of trade unions. Whether they are encouraged or merely tolerated is determined to a large extent by the political party or parties that control the Treasury bench in parliament. The present government has favoured trade unions but not to the extent that some would have wished.

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