



New Unfair Dismissal Laws may be too little, too late

With the economic downturn having intensified in Australia in the first half of 2009, it is increasingly clear that the Rudd Government's new unfair dismissal laws will arrive too late to soften the blow of redundancy for many of those affected.

The Fair Work Bill 2008 is currently before a Senate committee having already passed the House of Reps in November. However, assuming the unfair dismissal laws are passed in the Senate (and the Federal Opposition Leader, Malcolm Turnbull has signified they won't be opposed) they are not due to come into effect until 1 July 2009.

That means employees will have the cold comfort of Work Choices to mitigate the worst effects of redundancy and retrenchment for some time yet. Under Work Choices, employees of firms with 100 employees or fewer are totally excluded from the unfair dismissal jurisdiction of the Australian Industrial Relations Commission. It is little different for employees of larger firms who can lawfully claim employment was terminated for "genuine operational reasons" being reasons of an economic, technological, structural or similar nature relating to the employer's business and thereby put the redundancy process beyond the Commission's jurisdiction.

Under the Fair Work Bill, all employees not earning above approximately \$110,000 per annum will regain access to unfair dismissal laws provided they have served a qualifying period of 6 months or 12 months in the case of a small business employing less than 15 employees. There will be an exclusion for "genuine redundancy" but this will operate much more narrowly than is currently the position under Work Choices. A genuine redundancy will only occur if the employer no longer requires the job to be done by anyone because of changes in operational requirements of the enterprise, and has consulted about the redundancy as required under the award or any applicable enterprise agreement. The employer must also show that it was not reasonably possible to redeploy the redundant employee in the enterprise in all of the circumstances. In addition, the new national employment standards which come into effect on 1 January 2010 will require all employers to pay severance pay up to sixteen weeks depending on the length of service. However this will not apply to small business employing fewer than 15 employees.

Given the wide acknowledgment that Work Choices and, in particular, the removal of unfair dismissal played a significant part in the election of the Rudd Government, it will be interesting to see if the unexpectedly long time it has taken to introduce its own Forward with Fairness policy costs the Rudd Government at the next election due in 2010. In the meantime, those unlucky enough to lose their job through



redundancy in the first half of this year may be seriously questioning whether they are paying the price of a very extensive consultation process. That process was designed to get the fairness or the balance right between the employer and employee but perhaps paid insufficient regard to the need to bring it forward. For further information please contact Tim Greenall, Special Counsel on (03) 9242 4721 or at tim.greenall@madgwicks.com.au

▶ *Madgwicks' Workplace Relations Group*

The Madgwicks' Workplace Relations Group have an excellent understanding of the delicate issues surrounding employment law and are committed to negotiating difficult and complex employment issues in a strategic, cost effective and timely manner. Our team can offer solutions to issues in the area of employment agreements, HR policies, unfair dismissal and redundancy, discrimination and sexual harassment, and employment litigation in all courts, tribunals and commissions. With a wealth of experience across the Workplace Relations area, the Group also works in conjunction with Madgwicks' Commercial and Litigation Groups, Energy Group, Property and Construction Group, and the Financial Services Group enabling the provision of complete service solutions to the client.

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Tim Greenall is a recognised leader in Workplace Relations advising on all aspects of employment law, enterprise bargaining, equal opportunity and occupational health and safety. Tim has been quoted in Australasian Legal Business magazine on WorkChoices and the new Forward with Fairness legislation. Additionally Tim is a Senior Lecturer and a member of the Professional Advisory Board at the La Trobe University Law School.

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