

DowningsLEGAL

A PORTRAIT OF THE FAIR WORK ACT (Painted with a broad brush)

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Overview

- Constitutional basis – corporations
- *Workplace Relations Act 2006* (Cth)
- Main Changes
- Questions

Constitutional basis

- No reliance in IR power (article xxxv)
- External Affairs power (article xxix)
- Corporations power (article xx)
- Constitutional Corporations



Workplace Relations Act 1996 (Cth)

- Repealed with effect from 1 July 2009



Major Changes

- New institution(s)
- Unfair dismissal laws
- Revised safety net of minimum conditions
- Enterprise bargaining requirements



New Institution(s)

- Fair Work Australia (the 1-stop shop)
- “Replaces”
 - AIRC (and the registry)
 - AFPC
 - Workplace Authority
 - Workplace Ombudsman
 - ABCC (from Feb 2010)

New Institutions(s)

- Fair Work Australia (s576):
 - National Employment Standards
 - modern awards
 - Enterprise agreements and workplace determinations
 - Minimum wages (Minimum Wages Panel)
 - Equal remuneration
 - Transfer of business
 - General protections
 - Unfair and unlawful dismissals
 - Industrial Action
 - Right of Entry
 - Stand down

Unfair Dismissal Laws

- National System employees:
 - Minimum employment period (6 mths); +
 - A modern award applies; or
 - An agreement applies; or
 - annual rate of earnings is below the high income threshold.

Unfair Dismissal Laws

- Small businesses exempted:
 - 15 FTE (until 31 Dec 2010);
 - 15 headcount (from 1 Jan 2011);
 - 12 month qualifying period;
 - Fair Dismissal Code (performance):
 - Warn (employment at risk)
 - Provide valid reasons for warning
 - Reasonable opportunity to improve
 - Give reasons for dismissal

Unfair Dismissal Laws

- Requirements:
 - Dismissal (initiative of the employer)
 - Dismissal is harsh, unjust or unreasonable
 - Breaches the Code
 - Not a genuine redundancy.

Unfair Dismissal Laws

- Criteria (s387)
 - Valid reason (capacity or conduct);
 - Notification of the reason;
 - Opportunity to respond;
 - Failure to allow a support person to assist
 - Warnings (for performance dismissals)
 - Size of the employer's enterprise (HR support)

Safety Net

- National Employment Standard:
 - Maximum weekly hours
 - Request for flexible working arrangements
 - Parental leave, Annual leave, Personal leave, Compassionate leave, Community Service leave, Long Service Leave
 - Public Holidays
 - Notice of termination and redundancy
 - Fair Work Information Statement
- Modern Awards
 - Industry based
 - Operating by common rule

Enterprise Bargaining

- Abolition of AWAs and ITEAs
- Collective bargaining only
- Good faith bargaining
- Workplace determinations

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THANKYOU

Questions?


