



Tim Capelin

Fair Work Act cutting through the spin

The Federal Government's second phase IR restructure has polarised the business community. Nationally, almost 4000 awards and industrial instruments have been reduced to what the Rudd Government calls 122 'modern, simple awards'.

Research by the government-commissioned Access Economics estimates that the system will save the Australian economy around \$4.8 billion over the next decade. But what will be the impact on small business? Australian Business Lawyers partner Tim Capelin sheds some light on the issue.

FOR smaller enterprises, the Fair Work Act and the bureaucracy surrounding it essentially means that:

- The chances of being caught if an employer is in breach of workplace laws have substantially increased.
- Hiring, managing and firing employees is much more regulated.
- The minimum conditions relevant to employees have changed and expanded;
- The ability to introduce compliant arrangements that depart from awards has arguably become simpler.

A case can be made that laments the introduction of the Fair Work Act and catalogues its various impacts upon employers. However, that will not assist in achieving compliance with a regime that is here for at least this calendar year and quite likely for four plus years.

The Gold Coast is a haven for smaller enterprises and therefore its businesses will be as heavily impacted as any in the country by the Fair Work Act.

A lot of attention has been focused on the increased powers granted to unions under the Fair Work Act. Undoubtedly, unions and their members have been provided with more supportive laws. However, traditionally, unions have not focused their resources on smaller businesses and, up until the last few years, government industrial inspectors have been thin on the ground. Government industrial inspectors (officers of the Fair Work Ombudsman) are now in abundance and with a mandate to achieve compliance with the laws by all businesses.

A little discussed legacy of WorkChoices was the growth in industrial inspectors

within the Fair Work Ombudsman to around 300. Therefore, where smaller businesses may have been able in the past to enter informal practical arrangements which were possibly in breach of the workplace laws, it will now be much harder to do.

At least 10,000 small businesses in Queensland will be visited by the Fair Work Ombudsman this year as part of their small business focus. This will be on top of investigations conducted by the Fair Work Ombudsman relating to individual complaints.

The increased scrutiny comes when workplace laws are changing and when increased benefits and rights have been granted to employees. As of January 1 this year, minimum conditions for all employees changed via the introduction of modern awards and the national employment standards.

New restrictions upon what employers can't do came into force on July 1 2009, along with new avenues for employees to make claims — most notably reintroduction of unfair dismissal laws for employees of 100 or less employees. That is, all employers are now subject to unfair dismissal laws. In addition, the Fair Work Act has brought in new avenues for employees to claim discrimination and the like.

Despite all of the above, compliance with the Fair Work Act is achievable and, through wisely chosen support, employers can get on with their businesses without undue fear of stumbling into workplace law pitfalls.

Tim Capelin is a guest speaker at the Surfers Paradise Broadbeach Chamber of Commerce IR breakfast seminar on February 16 at the Courtyard Marriott Surfers Paradise.