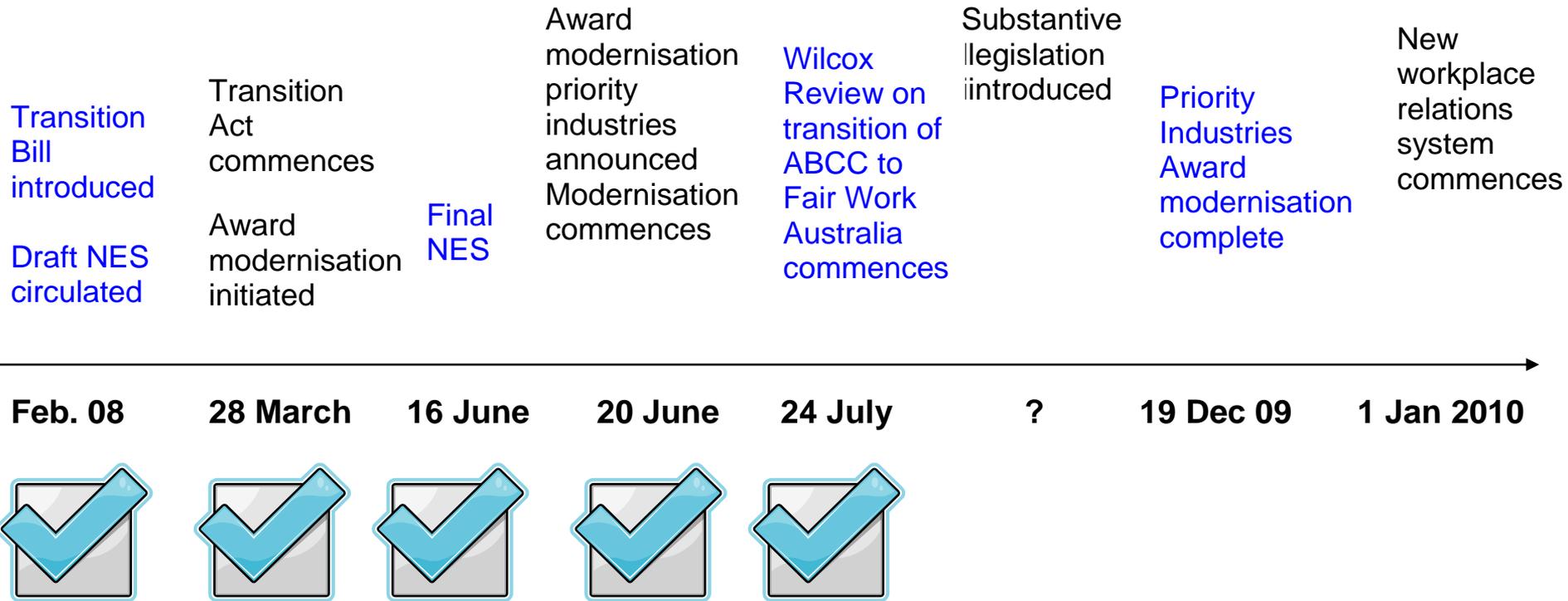




**Member Forum**

**Forward with Fairness**  
**What's happened so far?**

# FWF Reform Timeline



# NES Issues

Interaction with FWF enterprise agreements

Impact of existing agreements

Ensuring that modern awards provide access to flexibility

- Averaging of ordinary hours
- Cash out of annual leave
- Rostering of annual leave
- Flexible leave arrangements
- Definition of shift work to determine access to additional annual leave

How do persons not covered by modern awards access NES flexibility?



# Award Modernisation

Presents as an opportunity to lock in a flexible safety net standard for the future.

AIRC currently processing priority stage 1 awards including coal, Metalliferous mining, metal industry and catering industry

AMMA represented mining industry and presented completely new modern flexible safety net award – only industry to do so.



## **Next Stages...**

Maritime and Construction Industry - Stage 2 (Oct 2008)

Oil & Gas and Aluminum Industry- Stage 3 (Jan 2009)

Modern Awards take effect from 1 Jan 2010.



The background of the image shows a construction site at dusk or dawn. A large tower crane is silhouetted against the sky, with its long jib extending across the top. Below it, the skeletal frame of a multi-story building is visible, with numerous vertical rebar rods protruding from the top. The sky is a gradient of light colors, suggesting the time is either early morning or late evening. The overall scene is industrial and captures a moment of active construction.

**“Fair Work Australia’s  
Inspectorate will have  
specialist divisions that can  
focus on persistent or  
pervasive unlawful  
behaviour”**

**Forward With Fairness**

# Building Industry Compliance Arrangements

- 2002 Tasman Economic Report reveals drop in productivity in construction sector
- 2002 Building Industry Taskforce created
- 2003 Cole Royal Commission reveals lawless culture
- 2005 ABCC replaces Taskforce
- 2007 Disputation at historical lows, productivity escalates
- 2007 ALP Policy to abolish ABCC



# A Tough Cop or Toothless Tiger...

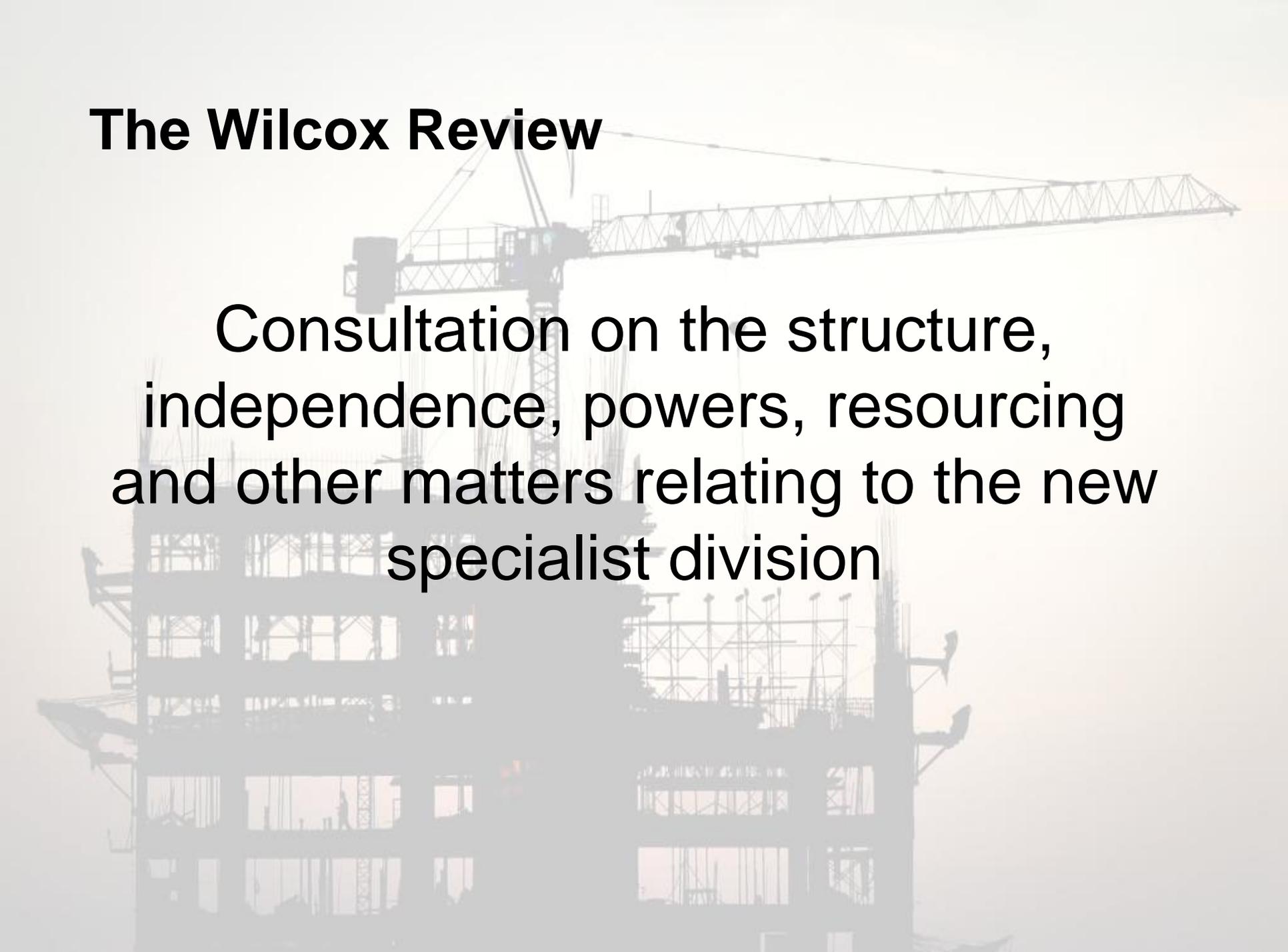
Cole Royal Commission found widespread disregard of

- the rule of law
- freedom of association provisions
- the terms of agreements
- AIRC and court orders

The statistics are good but has the culture changed?

Tough enforcement and compliance powers are still necessary

# The Wilcox Review

The background of the slide is a faded, grayscale image of a construction site. A large tower crane is visible in the upper half, with its long jib extending across the top. Below it, the skeletal steel frame of a multi-story building is under construction, showing various levels and structural elements. The overall tone is professional and industrial.

Consultation on the structure,  
independence, powers, resourcing  
and other matters relating to the new  
specialist division

# **Legislative Reform Phase II**

## **When and what to expect**

# Substantive Workplace Relations Reform Bill...

Expect introduction to Parliament “Later this year”

Expect a completely new WR Act? Simplified?

## Then?....

Consultation with stakeholders – COIL/NWRCC

Senate Inquiry

Bill passed next year?



# January 2010 commencement?

“New arrangements will be fully operational by 1  
January 2010”

Gillard, presentation to AWU Conference 8 August 2008

Some in place beforehand? Union lobbying for  
unfair dismissal changes sooner.

# Major reform measures...

Majority rules collective bargaining

Good faith bargaining

Common law agreements \$100k plus

Unfair dismissal small business changes

Fair Work Australia



# Maintaining the status quo?

Strong industrial action compliance measures?

impact of 'open slather' bargaining

Continuation of current right of entry rules?

impact of removal of AWAs/ITEAs



# **News Flash!**

**Labour Force Outlook in the  
Australian Mineral's Sector:  
2008 to 2020**

# Skills shortages in the resources sector continues...

86,000 more operational workers required by 2020 – 68% more!

Largest number needed in WA – 47,700

Largest increase in coal (53%) and iron ore (iron ore 106%)

Tradespersons and semi-skilled accounting for largest increase



# So you want to be an *Employer of Choice?*



# What is an Employer of Choice?

*“An employer who has explicit and transparent processes for all aspects and operations of the business that confirms for an employee that this is **the type of employer I want to work for**”*

Judged from the perspective of existing employee, potential employee and community in general



# Why be an Employer of Choice?

## Attraction:

- Labour market constraints: it's a job-seekers market
- Changing aspirations of employees
- Recruiting best & brightest

## Retention:

- Reduce turnover
- Hang on to talent

## Productivity:

- Engagement of employees
- Making your employees your “reputation champions”



## Related Concepts:

Corporate Social Responsibility (CSR)

Triple bottom line reporting or *Profit, People, Planet*

Corporate governance

Sustainability

Social Responsible Investment (SRI)

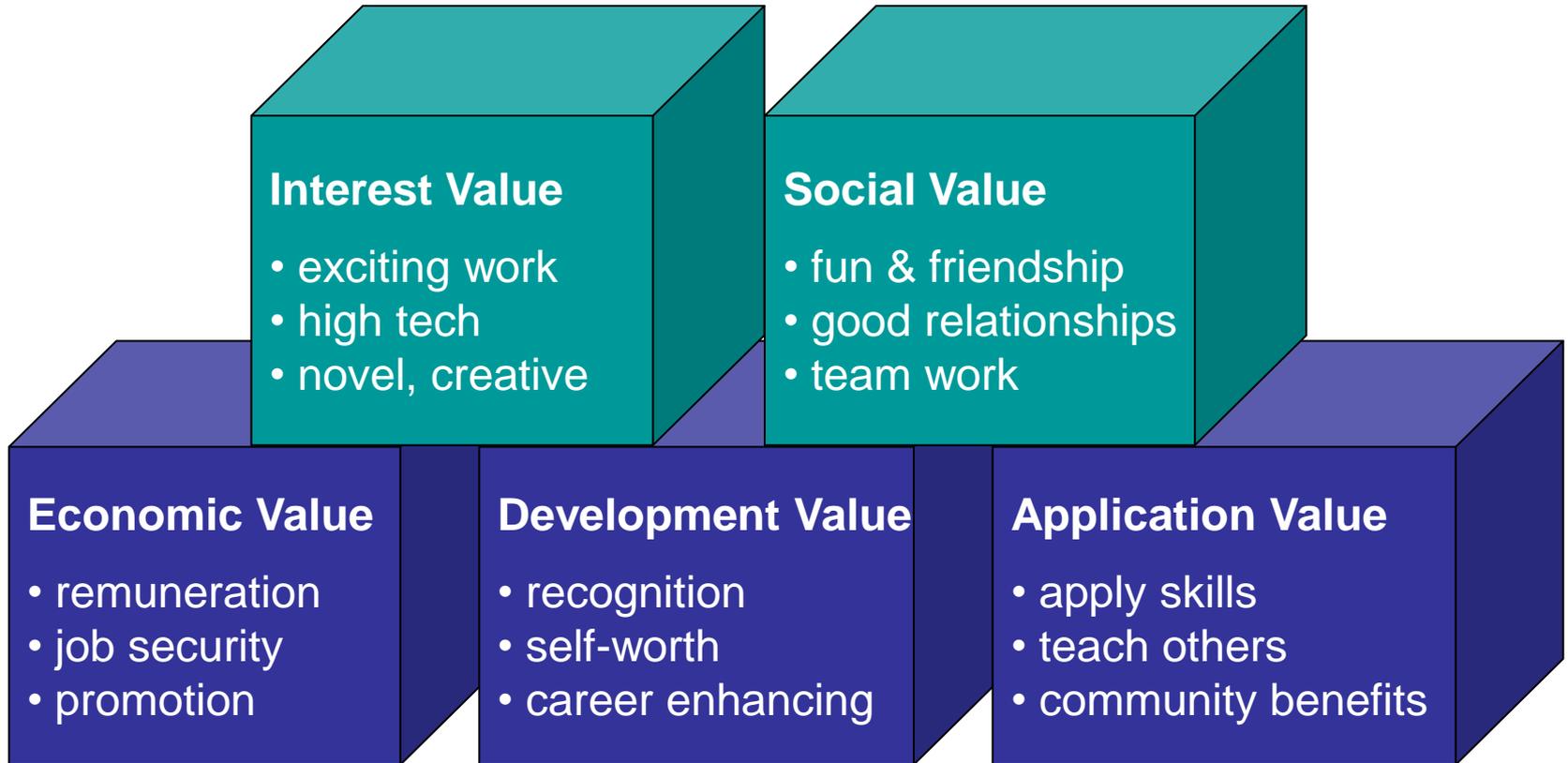
Your “employer brand” and business reputation

The Employee (or Employer) Value Proposition

Employer Marketing Managers



# What makes an employer attractive?



## ***Five Factor Employer Attractiveness Model***

*Source: Prof Mike Ewing, Head of Research, Department of Marketing, Monash University*



# Employer of Choice strategy involves...

Policies, practices and values addressing:

Leadership

Employee Wellbeing

Diversity

Work/Life balance

Employee Relations

Career Opportunities

Safety

Learning and Development

Sustainability

Work Environment

Corporate Social Responsibility

Recognition & Rewards

# Typical Initiatives...

Flexible work arrangements

Practices supporting families to balance work / caring responsibilities

Professional development or study leave

Providing inspiring leadership and an innovative work environment

Providing regular and constructive feedback

Wellness/health programmes

Support for employees participating in volunteering activities

Opportunities for employees to learn new skills



# EOWA Employer of Choice for Women

Minimum requirements:

EO for Women is a standing agenda item on a Committee chaired by the CEO or his/her direct report
Female managers can work part-time
Paid maternity leave – minimum of 6 weeks' paid leave after 12 months service
Sex-based harassment training is conducted at Induction for all staff (including management, contract staff and casual staff), and refresher education OR updates are received by all staff (including management, contract staff and casual staff) at least every 2 years
Pay Equity gap at each level of the organisation is less than 15.6% The organisation's overall pay gap is less than the industry average <b>currently 20.8% for Mining</b>
At least 28% of managers are women OR The organisation's percentage of female managers is greater than the industry sector's percentage of female managers (refer p 13 for Managers by Industry data – <b>currently 10.2% for Mining</b>

# Australian HR Awards

## Essential

Evidence of a good reputation/status within the broader industry and business community

A clear link between HR and business strategy

Evidence of talent and skill being a corporate priority

Broad-based personal and professional career/development

Clearly articulated and lived values hardwired into a performance management and measurement system

Evidence of ongoing measurement (and positive results) of employee engagement



## **Desirable**

Strong leadership and an inclusive management style

Flexible work practices and demonstrable work/life integration

Performance-linked competitive reward and recognition

A clearly articulated value/employment proposition linked to the brand

Vacant positions filled relatively easily and in short timeframe



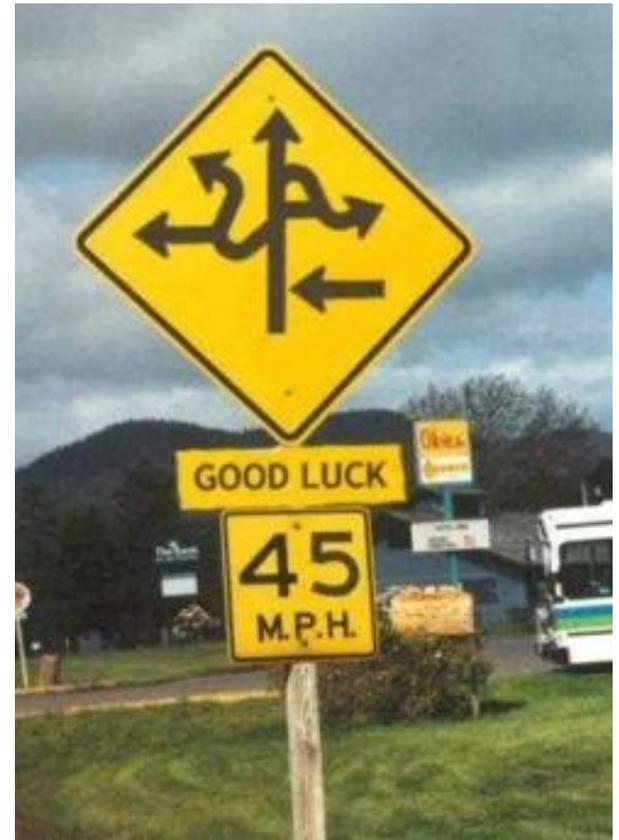
# Where do you want to go?

To the place where your  
*existing employees* say:

***This is a great place to work!***

And where your  
*potential employees* say:

***This is where I want to work!***



# **News Flash!**

## **Recent HR and IR Decisions**

# Union right of entry

“employer might reasonably request particulars of suspected breach”

*(Appeal by ASU (2008) AIRCCFB 96)*



## Section 747 – Union entry to...

Investigate a suspected breach of the Act, an ITEA (if requested in writing), an award or other industrial instrument

Union must have '**reasonable**' grounds for the suspicion

**Entry notice must specify “particulars of the suspected breach or breaches”**



## Content of entry notice....

‘inadequate administrative time, inadequate time for team meetings, pressure to reduce average handling time, inadequate coaching opportunities and the call back strategy.’

Entry notice did not disclose any provision of the Agreement that could have been breached

Full Bench found “no reasonable grounds” for suspicion



# Union must prove existence of reasonable grounds for suspected breach....

Union must provide sufficient detail of alleged breach

Employers might reasonably request further particulars if there is ambiguity or uncertainty *before* unions enter a workplace

Employers *may* be able to validly refuse entry

But exercise caution...!



# Caution!

Unjustified refusal may render an employer liable

Know your dispute resolution procedure

If in doubt - seek advice



# Abandonment of employment

“distinguish between absences with some notice of the circumstances and those which are unexplained”

*J Searle v Moly Mines Ltd (2008) AIRCFB 1088*



# Background

Failure to report for work for 3 days 'abandonment' under agreement

Refused to communicate directly with employer

Solicitor informed employer that employee was on sick leave, workers compensation

Employer sent letter declaring abandonment



# Injury a barrier to abandonment of employment

Employee must intend to no longer be bound by the employment (*Body v Godfrey Hirst Australia IRCA 30 Jan 1995*)

Absence was not “unexplained”

Termination at the initiative of the employer

Application for relief under s 643 upheld (to proceed to conciliation)



# Caution!

*“conduct may have been reasonable, but that is...not relevant”*

Contract not a determining factor

Carefully consider the circumstances of each particular case

Do not misinterpret communications from absent employees



# Superannuation

## What's changed?

# SUPERANNUATION UPDATE

- 1974 High Court Kezich decision (Workers Compensation Act)  
“Ordinary Hours” means regular & normal.
- 1986 ACTU claim for 3% super in lieu of wage increase in NWC.
- 1991 Similar claim by ACTU to NWC (application adjourned).
- 1992 *Superannuation Guarantee (Administration) Act* based on ordinary time earnings.
- 1994 ATO Ruling – Overtime not included.
- 2002 Federal Court Quest decision – Interpretation of ordinary hours of work in Superannuation (Administration) Act Kezich followed.”

# SUPERANNUATION UPDATE

- 2003 High Court ACX Ltd decision - interpretation of “ordinary working hours” in an award.
- 2004 *Superannuation Laws Amendments (2004 Measures No. 2) Act 1994*
- 2007 ATO ruling ordinary hours of work – followed Quest no reference to 1994 ruling.
- 1 July 2008 2004 Superannuation Amendment Act operative.



# **Visa 457**

## **What's changed?**

# 457 UPDATE

April 2007	Council of Australian Governments (COAG) Discussion Paper
July 2007	Migration Amendment (Sponsorship Obligations Bill 2007)
July 2007	Standing Committee on Legal & Constitutional Affairs Report
July 2007	English Language Testing
August 2007	Report of Joint Standing Committee on Migration



# 457 UPDATE

September 2007	Frequently Asked Questions Information Sheet
October 2007	Labour Hire Companies & Labour Agreements
January 2008	Maritime Amendment (Maritime Crew) Act
April 2008	External Reference Group Report
July 2008	Deegan Review – Issues Paper
July 2008	DIAC Discussion Paper





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