Updated on 7 December 2015

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STATUS OF KEY WR BILLS IN FEDERAL PARLIAMENT

Several important pieces of WR legislation are currently before the federal parliament, with the final sitting day of the year having been on 3 December 2015. Both houses of parliament will resume on 2 February 2016.

Following is an update on the status of key Bills in the current parliament in order of the date they were tabled (most recently-tabled first).

Fair Work Amendment (Remaining 2014 Measures) Bill 2015

The Federal Government tabled this Bill in parliament on 3 December 2015. It is currently before the House of Representatives.

The Bill picks up six areas of proposed amendments that were removed from the Fair Work Amendment Act 2015 in order to get that Bill through the Senate (see later in this document for details of that Bill).

The new Bill picks up the deleted provisions from the previous Bill in exactly the same form which are:

Annual leave loading on termination

- Requiring the amount paid for untaken annual leave upon termination to be at the employee's base rate of pay rather than having leave loading applied even if leave loading would have been paid on leave taken during employment. This means annual leave loading would not be paid on untaken leave at termination unless the payment of it was expressly provided for in an award or agreement.

- If and when the Bill passes into law, these provisions apply to terminations where the end of employment occurs after the commencement date (which will be the day after the Bill receives Royal Assent).

Accrual of leave while on workers' comp

- Removing the ability to accrue any leave for a period during which employees are absent from work and in receipt of workers' compensation payments. This includes annual leave and all other types of leave.

- If and when the Bill passes into law, these provisions will take effect where the compensation period begins after the commencement date (which will be the day after the Bill receives Royal Assent).

Individual flexibility arrangements

- Requiring mandatory flexibility clauses in both modern awards and enterprise agreements to allow flexibility in relation to all areas covered by the "model" flexibility clause. This would allow for flexibility in relation to instrument clauses covering: arrangements about when work is performed; overtime rates; penalty rates; allowances; and leave loading if terms about those matters are included in awards or agreements.

- Extending the notice period for terminating an IFA by either party from the current 28 days to 13 weeks.

- Confirming that non-monetary benefits can be taken into account when determining whether an IFA leaves an employee better off overall.

- Providing that an employer does not contravene a flexibility term if they "reasonably believe" they have complied with the term.

  If and when the Bill passes into law, the above provisions will take effect on a date to be proclaimed but within six months and one day of Royal Assent. The changes relating to IFAs under modern awards will apply to awards that are in place after the commencement date (the FWC will vary awards to reflect this). Provisions relating to enterprise agreements will apply to enterprise agreements made after the commencement date.

- Requiring employees, upon entering into an IFA under a flexibility clause, to lodge a written statement explaining why the IFA meets their genuine needs and leaves them better off overall. If and when the Bill passes into law, this provision will take effect exactly six months and one day after the legislation receives Royal Assent for flexibility clauses under modern awards and on a date to be proclaimed for flexibility clauses under enterprise agreements.

Transfer of business

- Providing that a transferring employee's old industrial instrument ceases to apply to them in their new employment with a "related entity" of the old employer if the transfer was at employees' own initiative. This would apply whether the old employer was a private sector company or a state public

sector organisation considered a "related entity" of the new employer as defined by the Corporations Act 2001.

- If and when the Bill passes into law, these particular provisions will take effect the day after the legislation receives Royal Assent.

Union access to workplaces / right of entry

- Removing entirely the 1 January 2014 requirements for employers / occupiers to facilitate union access to remote worksites by providing them with transport and accommodation.

- Removing the 1 January 2014 provisions giving unions "default" access to employee lunch rooms for discussion purposes in the absence of agreement between the parties on an alternative location.

- Amending the basis of entry for discussion purposes according to whether the union is covered by an enterprise agreement onsite. If a union is covered by an enterprise agreement, they continue to enter sites based on the current Fair Work Act rules as they stand. If a union is not covered by an enterprise agreement onsite, its officials can still enter to hold discussions with members or eligible members but must be invited in by a member or prospective member, with a new system of "invitation certificates" coming into effect when an invitation is in doubt.

- Providing the FWC with greater powers to resolve disputes over union right of entry. In this case, the changes will apply where the FWC commences to deal with a dispute after the commencement date outlined below.

- If and when the Bill passes into law, the above provisions will take effect on a date to be proclaimed but within six months and one day of Royal Assent. They will apply to interviews conducted or discussions held after the commencement date.

Unfair dismissal hearings and conferences

- Removing the requirement for the FWC to hold hearings to set aside unfair dismissal claims in particular circumstances, such as where the applicant has failed to comply with FWC instructions.

- If and when the Bill passes into law, these particular provisions will take effect the day after the legislation receives Royal Assent and will apply to unfair dismissal applications made after the commencement date.

The Bill has been referred to a Senate committee inquiry which is due to report on 4 February 2016. Submissions to the inquiry are due by 22 December 2015.

To view the Bill and its progress through parliament, click here.

Fair Work Amendment (Prohibiting Discrimination Based on Location) Bill 2015

This Private Members' Bill was tabled in federal parliament on 19 October 2015 by Nationals MP George Christensen.

It seeks to amend the Fair Work Act to make it unlawful for an employer to take adverse action against an employee or potential employee based on where they live.

The policy intent is to ensure that employers cannot discriminate when choosing employees based upon their geographical location. According to the Explanatory Memorandum to the Bill, during times of high resource demand, a number of mines have recruited employees based upon their geographic proximity to airports.

The EM says that as demand for mining employees has decreased, this requirement has continued, leading to a situation where locally based employees cannot apply for advertised jobs. The effect of the Bill, if passed, would be aimed at ensuring that Central Queenslanders, and other Queenslanders, will not be excluded from employment in their local area.

The Bill has not yet passed through the House of Representatives and were last debated on 19 October 2015.

To view the Bill and its Explanatory Memorandum, click here.

Shipping Legislation Amendment Bill 2015

This government Bill was voted down in the Senate on 26 November 2015 and will not be proceeding further. It remains to be seen whether the Federal Government will re-table a new version of the Bill.

The Bill, if passed, would have replaced the existing three-tiered licensing system for coastal trading with a single permit system and a new IR framework for seafarers on foreign vessels.

The Bill's proposed amendments to the Coastal Trading (Revitalising Australian Shipping) Act 2012 would have renamed the Act the Coastal Shipping Act 2015. The Bill would also have replaced the reference to "coastal trading" with "coastal shipping" under a revised definition.

The proposed single permit system would have been available to Australian and foreign vessels and would have seen a permit apply to a vessel rather than a voyage or number of voyages.

Under the proposed legislation, unlimited transport of passengers and goods would have been available during the 12-month permit period.

Permits would also have protected vessels from importation under the Customs Act 1901.

Coverage of the proposed Act, had it passed into law, would have been expanded to apply for the first time to ships carrying petroleum products from Australian offshore facilities to the mainland, and to ships engaged in "dry docking".

Industrial relations changes proposed in the Bill

Under the proposals, Part A of the Seagoing Industry Award would have continued to apply to Australian ships. However, Part B would only have applied if a foreign ship traded for more than 183 days – at which time the vessel would have needed to pay Part B Australian wages from day one of the 12-month permit period.

If a vessel spent 183 days or less in coastal shipping, their existing onboard WR arrangements would have continued to apply under the proposals.

At present, Part B wages are required to be paid when a foreign vessel under a temporary licence makes its third voyage in 12 months.

The Bill had also proposed to remove the requirement that a vessel be predominantly engaged in international trade to register on the Australian International Shipping Register (AISR). Instead, the requirement would have been for a vessel to undertake at least 90 days of international trading a year to be on the register.

Entry into a collective agreement with the seafarers' bargaining unit (ie the MUA) would no longer have been a pre-requisite for registering on the AISR.

Majority of cross-benchers voted against the legislation

In a vote on the legislation in the Senate on 26 November 2015, Senate cross-benchers that supported the Bill were Family First Senator Bob Day and Liberal Democratic Party Senator David Leyonhjelm.

Senate cross-benchers who opposed the Bill on the day were Independents Jacqui Lambie, Nick Xenophon and Glenn Lazarus plus Australian Motoring Enthusiast Party Senator Ricky Muir and Palmer United Party (PUP) Senator Dio Wang.

It remains to be seen whether the Federal Government will re-table the Bill.

To view the negatived Bill and its journey through parliament, click here.

Fairer Paid Parental Leave Bill 2015

The government tabled the Fairer Paid Parental Leave Bill 2015 in federal parliament on 25 June 2015 and it is yet to pass through the Lower House. It was last debated on 25 June 2015.

Under the Bill, parents would no longer be able to receive employer-provided primary carer leave payments as well as the full amount of nationally-funded paid parental leave.

Parents who are entitled to employer-provided payments in excess of the total amount of parental leave payable under the national government-funded scheme would not receive any payments from the government if and when the legislation takes effect.

Parents who are entitled to employer-funded payments of less than the total amount of government-funded leave could receive a "top-up" from the government to reach the total of $11,536.20 before tax (based on 18 weeks' pay at the minimum wage which is currently set at $640.90 a week).

Currently, full 18-week payments under the government-funded scheme are made to primary carers irrespective of what they also receive from their employer.

Under the Bill, a person must inform the Department of Human Services of any primary carer pay they are entitled to from their employer. However, there is some confusion over exactly how "primary carer pay" has been defined and what it will include.

If enacted, the above provisions would take effect from 1 July 2016.

The Bill also seeks to reduce the administrative burden on businesses by removing the current requirement for employers to act as "paymaster" in administering government-funded payments to employees.

If and when the Bill passes, employees will be paid directly by the Department of Human Services unless an employer "opts in" to provide government payments directly to employees, and the employee consents.

That measure is proposed to take effect from 1 April 2016 if and when the Bill passes into law.

The Bill was referred to a Senate committee inquiry which reported on 15 September 2015. The committee's recommendations included that a comprehensive consultation process be established to ensure concerns about primary carer pay and primary carer leave were resolved to provide clarity, but that the Senate pass the Bill.

The Bill has not yet passed through the House of Representatives.

To view the Bill and its progress through parliament, click here.

Tax and Superannuation Laws Amendment (Employee Share Schemes) Act 2015

The Tax and Superannuation Laws Amendment (Employee Share Schemes) Act 2015 passed through both houses of parliament on 25 June 2015 and received Royal Assent on 30 June 2015.

The legislation now applies to employee share scheme interests acquired on or after 1 July 2015.

The Act amends the Income Tax Assessment Act 1997, reversing some of the changes made in 2009 regarding the taxing point for employee share options.

The former rules applying to interests acquired after 30 June 2009 meant employees often had to pay tax on their shares or options before they received a financial benefit from them, ie before they had converted them into shares and / or sold them.

The key changes in the Act which have now taken effect are:

- Employees issued with options under employee share schemes will generally be able to defer tax until they exercise those options rather than having to pay tax when they first receive them. This will benefit employees by deferring their tax liability until they actually receive a financial benefit.
- The maximum time for tax deferral will be extended from seven to 15 years, giving companies more time to build their business and succeed.
- Employees of eligible start-up companies can receive options or shares at a small discount, and if they hold the shares or options for at least three years they will not be subject to up-front tax.

To view the Act and its explanatory memorandum, click here.

Construction Industry Amendment (Protecting Witnesses) Act 2015

This Act has passed through federal parliament and received Royal Assent on 20 May 2015. Its provisions are now in effect.

The Act extends the duration of operation of the compulsory interview powers of the building industry watchdog, currently Fair Work Building & Construction (FWBC).

The legislation amends the Fair Work (Building Industry) Act 2012 to extend for a further two years the period during which the director of FWBC can apply to a nominated Administrative Appeals Tribunal presidential member for an examination notice.

The director has the power to require witnesses to attend interviews with the FWBC following an application to the AAT for an examination notice. The examination notice can require a person to provide information or documents or attend to answer questions.

That power under the current s.45 of the Fair Work (Building Industry) Act 2012 was due to "sunset" (expire) on 1 June 2015 as per s.46. Now that this legislation has taken effect, the examination powers have been extended until 1 June 2017.

To view the Act and its associated documents, click here.

- **Meanwhile,** separate legislation was voted down in parliament in August 2015 in the form of the Building & Construction Industry (Improving Productivity) Bill 2014 that sought to reinstate all the former powers of the Australian Building & Construction Commission (ABCC) before it became FWBC. This would have included reinstating the stronger compulsory interview powers that existed prior to 1 June 2012 (*see later in this document for full details of the defeated Bill*). It is understood that re-tabling and passing that Bill remains a priority for the Coalition Government.

Fair Work (Registered Organisations) Amendment Bill 2014 (No 2)

A third version of the Fair Work (Registered Organisations) Amendment Bill was voted down in the Senate on 17 August 2015.

The Fair Work (Registered Organisations) Amendment Bill 2014 (No 2) would have, if not voted down, as per the previous two versions of the Bill, amended the Fair Work Act 2009 and the Fair Work (Registered Organisations) Act 2009 to:

- **Establish** a Registered Organisations Commission and provide it with investigation and information-gathering powers to monitor and regulate registered organisations (replacing the Fair Work Commission in relation to this function only);
- **Change** the requirements on officers' disclosure of material personal interests; and
- **Increase** financial accounting and disclosure obligations for registered organisations and their officers.

The second version of the Bill was voted down in the Senate on 2 March 2015 following the original Bill being voted down on 14 May 2014.

The latest version of the Bill incorporated government amendments moved and passed as part of the Fair Work (Registered Organisations) Amendment Bill 2014 in

July 2014 to take into account the recommendations of a Senate committee inquiry's report.

The third version of the Bill was defeated in the Senate on 17 August 2015. However, it is understood that the re-tabling and passing of this Bill remains a priority for the Coalition Government.

To view the unsuccessful Bill and further details, click here.

Fair Work Amendment (Bargaining Processes) Bill 2014

The Federal Government tabled the Fair Work Amendment (Bargaining Processes) Bill 2014 in parliament on 27 November 2014. It passed through the Lower House on 9 February 2015 and is currently before the Senate. It was last debated on 10 February 2015.

The Bill was subject to a Senate committee inquiry that reported on 13 April 2015, with majority Senators recommending the Bill pass without amendment.

The Bill proposes a small number of changes to the Fair Work Act 2009, including in relation to:

Protected action ballot applications

- The Bill would require the Fair Work Commission (FWC) to refuse to approve a union's protected action ballot application if its claims were "manifestly excessive" or would have a "significant adverse impact on productivity at the enterprise".
- The Bill would require the FWC, before approving a protected action ballot application, to take into account the following new considerations in determining whether the applicant had met the test of "genuinely trying to reach an agreement":
    - The steps taken by each applicant to try to reach an agreement;
    - The extent to which bargaining for the agreement had progressed;
    - The extent to which each applicant had communicated its claims; and
    - Whether each applicant had provided a considered response to proposals by the employer.

Enterprise agreement approval

- The Bill would require the FWC, before approving an enterprise agreement, to ensure the parties having discussed ways to improve productivity at the enterprise.

To view the Bill and its progress through parliament, click here.

Fair Entitlements Guarantee Amendment Bill 2014

The Federal Government tabled this Bill in parliament on 4 September 2014. It has passed through the Lower House but is yet to pass through the Senate. It was last debated on 1 October 2014.

It seeks to give effect to a 2014-15 Budget measure to assist the financial sustainability of the Fair Entitlements Guarantee scheme by capping redundancy pay entitlements under s23 of the Fair Entitlements Guarantee Act 2012 at 16 weeks in line with the Fair Work Act 2009.

It is understood that cross bench senators do not support the Bill and its cap on redundancy pay.

The Fair Entitlements Guarantee Act 2012, which the Bill seeks to amend, replaced the General Employee Entitlements and Redundancy Scheme (GEERS) by establishing a legislative framework for advances to be paid to former employees of insolvent or bankrupt employers for unpaid entitlements that cannot be obtained from another source.

The Act protects redundancy entitlements up to four weeks' pay per year of service on an uncapped basis if the relevant current industrial instrument provides for it.

Redundancy protections under GEERS were previously capped at 16 weeks' pay, which is what this Amendment Bill seeks to reinstate.

To view the Bill and its progress through parliament, click here.

Fair Work Amendment Act 2015

The Federal Government tabled the Fair Work Amendment Bill 2014 in parliament on 27 February 2014. The Bill passed through the Senate with amendments on 13 October 2015 and through the House of Representatives on 11 November 2015. It received Royal Assent on 26 November 2015, with the vast bulk of its provisions taking effect the day after Royal Assent (ie on 27 November 2015).

The government had to agree to comprehensive cross-bench amendments /deletions to the original Bill to get it through the Senate.

Successful amendments to the Bill

A sheet of successful amendments put forward by cross-bench Senators Muir, Day, Lazarus and Madigan, also supported by the Opposition, the Government and the Greens, were passed and have been included in the final Bill. Those amendments removed the following sections of the Fair Work Amendment Bill in their entirety, including **ALL** proposed amendments to the Fair Work Act relating to:

- Annual leave loading on termination
- Accrual of leave while on workers' compensation
- Individual flexibility arrangements (IFAs)
- Transfer of business
- Union access to workplaces (right of entry)
- Unfair dismissal hearings and conferences.

However, the above areas have been re-packaged in a new Bill called the Fair Work Amendment (Remaining 2014 Measures) Bill 2015 (see earlier in this document for details of that Bill).

The only four areas that remained in the Fair Work Amendment Act 2015 following the cross-bench amendments were those relating to:

- Unpaid parental leave;
- Greenfields agreements (with some amendments to the government's originally tabled provisions);
- Protected action ballot orders; and
- Unclaimed money.

Successful greenfields amendments

In a separate sheet of successful amendments put forward by cross-bench Senators Muir, Day, Lazarus, Madigan, Xenophon and Wang, the greenfields agreement negotiation deadline was extended from the three months proposed in the original Bill to six months. After that time, a business can take its offer to the FWC for endorsement without union approval subject to meeting the required tests.

Independent Senator Glenn Lazarus proposed an amendment that the Bill's greenfields provisions be reviewed two years after implementation (ie in 2017) which also succeeded.

What was in the final Act?

After the agreed amendments by cross-bench Senators were made, the Bill passed through the Senate on 13 October 2015 before going back to the House of Representatives and later passing into law. The Act's final provisions are those relating to:

Unpaid parental leave (Part 1 of Schedule 1 of the Bill)

- Requiring employers, when refusing requests for an extra 12 months of unpaid parental leave (after an initial 12 months has been taken), to give the employee a "reasonable opportunity" to discuss the request. A phone or skype discussion would fulfil this obligation although a text or email would not.

- The unpaid parental leave provisions took effect the day after the Bill received Royal Assent (ie on 27 November 2015). They apply to requests for extra unpaid parental leave made after the commencement date.

Greenfields agreement making (Part 5 of Schedule 1 of the Bill)

- Applying good faith bargaining principles to greenfields agreements for the first time.

- Enabling an employer to take a proposed agreement to the FWC for approval after a notified **six-month** negotiation period without union approval (up from the original Bill's three-month notified negotiation period).

- Applying an additional test for greenfields agreements approved by the FWC without union consent – known as the "prevailing industry standards" test. This test would require agreements to meet the prevailing terms and conditions in the industry for equivalent work, taking into account geographical location.

- The greenfields agreement-making provisions took effect the day after Royal Assent (ie on 27 November 2015). However, they only apply where an employer agrees to bargain for a greenfields agreement after the commencement date. Pre-existing negotiations continue under the former greenfields rules.

- Following a successful amendment by Independent Senator Glenn Lazarus, the Act's greenfields provisions will be reviewed two years after implementation (ie in 2017).

Protected action ballot orders (Part 7 of Schedule 1 of the Bill)

- Allowing applications for protected industrial action ballot orders to be made only after bargaining has commenced. Bargaining for this purpose would only commence when the employer agrees to or initiates bargaining or a union obtains a majority support determination from the FWC proving that the

majority of employees at the enterprise want to bargain collectively with their employer.

- The protected action ballot order provisions took effect the day after the Act received Royal Assent (ie on 27 November 2015). They apply to applications for a protected action ballot order made after the commencement date.

Unclaimed money (Part 10 of Schedule 1 of the Bill)

- Clarifying that where the Fair Work Ombudsman has collected unpaid or underpaid moneys on employees' behalf, where amounts exceed $100 and have been unclaimed for more than six months, the FWO must pay interest to the employee.

- The unclaimed money provisions apply to money received by the Commonwealth after these particular provisions commence, which is on a date to be proclaimed.

To view the final legislation, click here.

Building & Construction Industry (Improving Productivity) Bill 2013

The Federal Government tabled this Bill in parliament on 14 November 2013. It was voted down in the Senate on 17 August 2015.

The Bill had sought to reinstate the former powers of the Australian Building & Construction Commission (ABCC) along with the former provisions of the Building & Construction Industry Improvement Act (BCII Act), with some modifications.

In particular, it sought to restore those parts of the BCII Act that provided for:

- higher penalties for unlawful conduct by building industry participants;

- stronger prosecutorial powers for the inspectorate and its director;

- a broader definition of building work;

- greater scope for injunctions to stop unlawful industrial action;

- stronger anti-coercion measures;

- more effective compulsory information gathering powers; and

- greater independence of the inspectorate.

Brand new provisions in the Bill sought for:

- its regulation to be extended to some offshore construction projects;
- strict rules around unlawful picketing;
- bolstered rules around taking industrial action that would seek to hold unions more accountable for their members' conduct; and
- a reverse onus of proof applied to some coercive and unlawful activities as well as to individuals seeking to stop work on alleged health and safety grounds.

The legislation would have repealed and replaced the Fair Work (Building Industry) Act 2012 as well as regulating various aspects of building industry conduct that are currently regulated by the Fair Work Act 2009 (which were formerly regulated by the BCII Act).

The government had also drafted a sheet of proposed amendments to its original Bill that were yet to be tabled but if adopted would have:

- Removed the requirement for a resource platform to "form part of land" or be "attached to the seabed" to be covered by the Bill and the ABCC.
- Introduced a definition of "ship" which was previously omitted, using the same definition as the Fair Work Act.
- Included the transport of building employees to construction projects under the coverage of the Bill, as well as the transport of building goods which was included in the original Bill as drafted.

To view the government's proposed amendments, click here.

It is understood that re-tabling and passing this Bill remains a priority for the Coalition Government.

To view the defeated Bill, click here.