

Key changes to the *Fair Work Act 2009*

Workplace Relations Update

The *Fair Work Amendment Act 2012* (“**the FWA Act**”), which will amend the *Fair Work Act 2009* (“**the FW Act**”), received Royal Assent on 4 December 2012. Most of the amendments will commence on 1 January 2013, while those changes relating to superannuation funds will commence on 1 January 2014.

Amendments to the national workplace framework include:

- changing the tribunal’s name from Fair Work Australia to the Fair Work Commission (“**the FWC**”);

Awards

- increasing the range of parties that can seek award variations to remove ambiguity, uncertainty or to correct an error;
- introducing a new requirement to review modern award terms about default superannuation;

Agreements

- clarifying that enterprise agreements can not be made with a single employee;
- prohibiting union officials from being a bargaining representative of an employee outside of the union’s coverage;
- prohibiting the inclusion of ‘opt-out’ clauses in enterprise agreements;
- relaxing the requirement for scope orders to notify all other bargaining representatives, by introducing a “reasonable steps” test;
- requiring section 174 bargaining notices to include only specified matters;
- allowing for protected industrial action ballots to be conducted via electronic voting;
- permitting bargaining representatives who are also union members to vote;

Who does this affect?

All employers and employees in the federal system.



- providing for ballots to be conducted expeditiously;

General protections and unfair dismissal

- decreasing the time within which an employee can bring a general protections claim in cases involving dismissal from 60 to 21 days;
- increasing the time within which an employee can bring an unfair dismissal claim period from 14 to 21 days;
- providing the tribunal with discretion to dismiss unfair dismissal applications where the FWC is satisfied that the applicant unreasonably failed to:
 - attend a conference or hearing,
 - comply with a direction or order,
 - discontinue the application after a settlement agreement has been concluded;

Costs

- expanding the power to award costs against parties, lawyers and other agents in unfair dismissal proceedings if the FWC can be satisfied:
 - in the case of a party, that the costs were incurred by an unreasonable act or omission, or
 - in the case of a lawyer etc, where he or she knew a claim had no reasonable prospect of success;
- clarifying that the FW Act is generally a 'no costs' jurisdiction; and

Other

- introducing an expert panel to conduct the annual minimum wage review and assess the eligibility of MySuper products for nomination as default super funds in modern awards.

Disclaimer: This publication is intended to provide general information only and should not be relied upon as legal advice. If you require legal advice on a matter please contact us.

Contact Us

t +61 8 9426 6611 **f** +61 8 9321 2002 **e** jacmac@jacmac.com.au
a Level 25, 140 St Georges Terrace, Perth, Western Australia 6000
GPO Box M971, Perth, Western Australia 6843

www.jacmac.com.au

For further information or assistance in dealing with The *Fair Work Act 2009*,

Contact



Stephen Kemp

PARTNER

t: +61 8 9426 6633

e: skemp@jacmac.com.au



Renae Harding

SENIOR ASSOCIATE

t: +61 8 9426 6802

e: rharding@jacmac.com.au