

# MONTHLY UPDATE—AUSTRALIAN LABOUR & EMPLOYMENT



## MESSAGE FROM THE EDITOR

Happy New Year! We start the new year with a brief update on the new bullying jurisdiction, potential changes to the paid parental scheme and an interesting decision from the Fair Work Commission upholding an employer’s decision to terminate an employee. We also highlight recent developments in Australian industrial relations policy to watch in 2014.

**Adam Salter**, Partner

## IN THE PIPELINE—HIGHLIGHTING CHANGES OF INTEREST TO EMPLOYERS IN AUSTRALIA

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### ■ PAID PARENTAL SCHEME OVERHAUL EXPECTED

As reported in our [August 2013 update](#), the Federal Government is proposing to displace existing paid parental leave awards, agreements and company policies in favour of its own national scheme. Prime Minister Tony Abbott appears keen to secure legislation giving effect to his new scheme before the new senators take their seats on 1 July 2014 (the rationale being that after such time it may be more difficult for the legislation to pass through Parliament).

The purpose of the new policy is to prevent employees from “double-dipping” into both the Government’s paid parental leave scheme and their own employer’s

arrangements. Relevantly, the Abbott Government plans to exercise its social welfare power, under section 51 (xxiiiA) of the Constitution, to override all such employer arrangements to achieve this goal.

The new paid parental scheme will provide eligible women with the higher of the national minimum wage, or their replacement wage (capped at \$150,000) for 26 weeks, in addition to superannuation. Mothers will be allowed to take up to six weeks of paid parental leave before their baby is due, and the fathers will have the choice to take two weeks' leave. According to Treasurer Joe Hockey, the 1.5% levy on companies with annual taxable incomes in excess of \$5 million will cover the scheme's net costs for the four-year forward estimates period.

**What does this mean for employers?** If the legislation implementing the new scheme passes through both Houses of Parliament, employers will need to review their policies to remove paid parental leave arrangements in preparation for commencement of the new scheme on 1 July 2015. For those employers who used paid parental leave as a means of attracting and retaining employees, the changes will mean additional family-friendly benefits such as childcare, and flexible work agreements may be more viable options in the absence of being able to provide paid parental leave. We will keep you updated on the progress of this legislation through Parliament.

#### ■ MINISTER FOR EMPLOYMENT WARNS EMPLOYERS ABOUT A WAGES EXPLOSION IN AUSTRALIA

Employment Minister Eric Abetz is bound to cause a stir amongst employers following his strong criticism against what he called "weak-kneed" employers giving into unsustainable demands at the bargaining table.

In an address to the Sydney Institute, Mr Abetz warned of a wages explosion in Australia attributable to past "cave-ins" from employers when bargaining with unions. He questioned why employers have not been willing to "band together and just say 'no'".

Consistent with his tough stance on unreasonable bargains, Mr Abetz said he will intervene to support Toyota in its Federal Court appeal seeking an employee vote to change an enterprise agreement that has "uncompetitive" provisions. It remains to be seen whether the support from the Minister

of Employment will lead to a noticeable shift in Australia's industrial relations culture.

## NEW AND NOTEWORTHY IDENTIFYING KEY DEVELOPMENTS IN AUSTRALIAN LABOUR REGULATION

### ■ BULLYING JURISDICTION NOW IN PLAY—NEW CHALLENGES EXPECTED

The Fair Work Commission (FWC) has started receiving bullying claims under the new bullying jurisdiction which came into effect on 1 January 2014. As reported in our [November 2013 edition](#), the FWC is not able to impose any pecuniary penalties or make an order for the payment of compensation to an employee; instead, workers are able to apply to the FWC for a "stop bullying" order.

The FWC has confirmed that it has received a small number of bullying claims since January 1 but will not reveal the precise figures. Nonetheless, Commission President Justice Iain Ross has stated that he expects a "significant" number of anti-bullying applications will be made.

Now is the time for employers to ensure that they have an anti-bullying policy in place, the policy is complied with and is applied equally and consistently to workers of all categories. Employers should also ensure to act swiftly in relation to any bullying complaints or issues that may arise in the workplace.

## HOT OFF THE BENCH—DECISIONS OF INTEREST FROM THE AUSTRALIAN COURTS

### ■ Party Over for Worker Testing Positive to Party Drugs

The Fair Work Commission (FWC) has upheld the summary dismissal of a worker who was dismissed due to his dishonesty surrounding a positive drug test. The worker, who tested positive for methamphetamines in a random drug and alcohol screening, displayed dishonesty in his responses to queries about what drugs he had consumed. Initially the worker insisted that he had only consumed cold and flu medication prior to taking the test; however, when confronted with the positive test results, he admitted to taking an unknown capsule at a party the previous weekend.

In the worker's unfair dismissal claim, he argued that he should have received a warning instead of being dismissed because the company's drug and alcohol policy did not provide for dismissal for a first-time drug test failure.

The FWC found that the employer's right to summarily dismiss the worker was maintained, despite the fact that the company's disciplinary policy provided for a warning as a first step. The FWC agreed that the company was entitled to seek an explanation of the positive drug test from the worker and the policy was not found to prevent the company from investigating the incident. The worker's lack of openness and honesty was held to be a serious breach of the relationship of trust and confidence, which justified summary dismissal and the finding that the dismissal was not harsh, unjust or unreasonable.

*Stephen Vaughan v Anglo Coal (Drayton Management) Pty Ltd* [2013] FWC 10101

**Key lesson for employers.** This decision serves as a timely reminder to employers to ensure that they have an up-to-date drug and alcohol policy and that this policy is being effectively implemented.

## DID YOU KNOW?

The Fair Work Commission (FWC) is required to review all modern awards every four years, which is due to start this year. A draft statement issued by the FWC proposes that the review will consist of an initial stage which considers the legislative framework under which the review will be undertaken, followed by an award stage which reviews the awards in four groups. Watch this space for updates as the review of the current 122 modern awards progresses.

## BREAKING NEWS

### ■ THE UNION ABC—ARROGANCE, BRIBERY AND CORRUPTION

Allegations surfaced this week that various local building and construction unions are being bribed by corrupt companies that need their support to win multimillion-dollar contracts.

Fairfax Media has reported that corruption in the construction industry involves labour hire, traffic management, scaffolding, crane and building companies, several of which are connected to organised crime figures. The investigation has identified several key figures in the Construction, Forestry, Mining and Energy Union who have allegedly taken bribes and received other benefits from the companies.

With a judicial inquiry into the Australian Workers Union already on the cards as a pre-election commitment, the Federal Government has seized on the recent revelations with Prime Minister, Tony Abbott announcing that he is seriously considering establishing a wide-ranging Royal Commission to investigate corruption in the industry. The Prime Minister also encouraged all political parties to support the re-establishment of the Australian Building and Construction Commission (ABCC), with legislation currently before the Parliament.

Employers in the affected industries are encouraged to keep abreast of developments in this continuing saga, particularly in relation to the establishment of the ABCC and/or a Royal Commission, as this may have a considerable effect on the composition of the industry in the medium to long term.

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## QUESTIONS

If you have any questions arising out of the contents of this *Update*, please do not hesitate to contact the author, **Adam Salter**, Partner.

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## JONES DAY GLOBAL LOCATIONS

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ALKHOBAR	COLUMBUS	IRVINE	MOSCOW	SÃO PAULO
AMSTERDAM	DALLAS	JEDDAH	MUNICH	SHANGHAI
ATLANTA	DUBAI	LONDON	NEW YORK	SILICON VALLEY
BEIJING	DÜSSELDORF	LOS ANGELES	PARIS	SINGAPORE
BOSTON	FRANKFURT	MADRID	PITTSBURGH	SYDNEY
BRUSSELS	HONG KONG	MEXICO CITY	RIYADH	TAIPEI
CHICAGO	HOUSTON	MIAMI	SAN DIEGO	TOKYO
CLEVELAND	INDIA	MILAN	SAN FRANCISCO	WASHINGTON

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