

On Friday 20 March the Fair Work Bill 2008 passed through the Parliament. This is the most important step in the implementation of the Government's *Forward with Fairness* industrial relations policies.

Important Dates

Parts of the legislation that regulate agreement making, unfair dismissal, general protections, transfer of business, right of entry and industrial action will commence operation on **1 July 2009**.

The sections of the legislation that deal with the National Employment Standards and Modern Awards - which combine to form the new safety net of employee entitlements - will commence operation on **1 January 2010**.

Important Changes

The Fair Work legislation significantly changes the laws that regulate the employer-employee relationship. Some of the key changes are summarised below. NSW Business Chamber will provide further information over the coming weeks.

The New Safety Net - National Employment Standards (NES) and Modern Awards

The safety net consists of the NES, and the new Modern Awards. The NES are the 10 new minimum entitlements that will apply to all employees in the federal system employees regardless of seniority or rate of pay, and can never be bargained away. Modern Awards will cover most employees, and are currently the subject of the award modernisation process (for more information go to www.awardmodernisation.com.au). Both the NES and Modern Awards commence operation on **1 January 2010**.

Agreement Making

Individual statutory agreement making will not be part of the new system. ITEAs will no longer be able to be made after 31 December 2009. From **1 July 2009**, collective bargaining will be actively promoted with the introduction of 'good faith bargaining'. Where a majority of employees wish to bargain collectively, an employer must comply, and bargain in good faith.

Unfair Dismissal

There will be major changes to unfair dismissal from **1 July 2009**. The current unfair dismissal exemption for businesses with 100 employees or fewer will be abolished.

Exclusions based on genuine redundancies will remain. There will also be exclusions based on a new system of qualifying periods. A qualifying period is the amount of time an employee must have been employed before they are able

to lodge an unfair dismissal claim if terminated. If a business has fewer than 15 employees (full-time equivalent including casuals who have regular and systematic employment) – a ‘small business’ – there is a 12 month qualifying period. If a business has 15 employees or more, there is a 6 month qualifying period.

If an employee is terminated after the qualifying period by a small business and it can demonstrate to have followed the Fair Dismissal Code, the dismissal will not be considered unfair.

Fair Work Australia

From **1 July 2009**, Fair Work Australia (FWA) will be the new industrial relations ‘super agency’ and will replace the Australian Industrial Relations Commission and the Workplace Authority. The Workplace Ombudsman will become the Fair Work Ombudsman.

Union Right of Entry

The key change to union right of entry is which union/s can enter your workplace to

- Investigate a suspected breach of an award/agreement or the act if a member is affected by the suspected breach;
- Hold discussions with employees who are member or eligible to be members; and
- Exercise a right under a state occupational health and safety law.

From **1 July 2009**, unions will be able to enter based on their coverage rules rather than whether they are party to an award or agreement operating at your workplace. This may mean that more and different unions have right of entry into your workplace.

The official must have a federal permit and give at least 24 hours notice of entry. He or she can only inspect non-member records with their permission or a certificate from FWA.

Transfer of Business

From **1 July 2009**, If an employer transfers work to another business by outsourcing, or selling a business or part of it, and this action results in one or more of its employees being terminated and going to work for the new employer within three months of termination, the employee retains the coverage of the modern award or agreement which applied with the first employer.