

The recent federal election has seen a slow-down in legislative reform, although the first piece of legislation under the new Turnbull government was recently passed. This update looks at this recent change, along some selected recent decisions that may be of interest to clients.

### First Fair Work Act Amendment by new government

Last night, the [\*Fair Work Amendment \(Respect for Emergency Services Volunteers\) Bill 2016\*](#) was passed unamended by the Senate. This is the first piece of industrial relations legislation passed by the new Turnbull government. The legislation itself is designed to prevent enterprise agreements imposing requirements on volunteer organisations in response to a [major dispute](#) involving Victorian firefighters.

While this may not impact directly on clients, it does show that the Senate can pass controversial legislation, with all eyes now turning to the legislation to reinstate the [Australian Building and Construction Commission](#).

### Checking contracts for salaried clerical workers

A recent [decision](#) of the WAIRC has cast doubt on a long-standing contractual practice about how salaries are expressed for clerical employees. The [Clerks – Private Sector Award 2010](#) contains a provision permitting [annualised salaries](#).

It has always been understood that an employer could enter into a salaried arrangement with an award-covered employee provided that they earned at least as much under the terms of that arrangement as they would have been entitled to under the award. In making modern awards, the Commission [recognised this](#), noting:

when safety net entitlements are at issue employers would be required to keep a record of hours in any event to ensure that the annualised pay was sufficient to meet those entitlements. Finally, in some industries employers may be able to implement annualised pay arrangements without breaching the award

The effect of the recent decision is that a generic clause may not be sufficient to meet the award's obligations. Employers who have salary arrangements with clerical staff, or other staff who are covered by awards with annual salary provisions should check these contracts to avoid risks.

### Notice of representational rights

In order to make a valid enterprise agreement, all employees must be given a [notice of employee representational rights](#). The ballot for the agreement cannot be held until at least the [22<sup>nd</sup> day](#) after the last employee has received the Notice. However, a recent [decision](#) of the Commission has found that an enterprise agreement is unable to be approved if the employer fails to issue the Notice of Representational Rights within 14 days of [bargaining commencing](#).

Employers who are considering making a new enterprise agreement or who are currently negotiating an agreement and are concerned that they may not have met this requirement, should seek legal advice promptly.

### Communicating dismissals

Ordinarily, an unfair dismissal application must be lodged within [21 days](#) of the date of dismissal.



A recent [decision](#) of the Commission has clarified that due to this strict and short timeframe, the 21-day limit should not start until the termination is actually communicated to the worker, or the worker had a reasonable opportunity to actually read a document sent to them.

While this decision relates to the unfair dismissal time limit, the decision refers to whether a termination has taken effect, and could have more wide-reaching implications for terminations, especially because [notice of termination](#) cannot commence until a person has actually been given notice. It is not clear whether this decision will override the traditional method of service of such documents, although employers should be careful about communicating decisions to their employees.

### Consulting during redundancy processes

Fair Work Lawyers have had several queries recently about redundancy processes. Under the *Fair Work Act 2009*, an employer is able to defend an unfair dismissal application if it is a '[genuine redundancy](#)'. One of the three parts to this test is to ensure that the consultation process in any applicable award or enterprise agreement is met. All awards have a consultation process that is largely similar to the [model consultation term](#).

The model process has several formal steps, including requirements in relation to the timing of consultation and the provision notice containing certain information. Failing to follow these steps may render a consultation process null and void, and even expose an employer to a financial penalty for breach of an award. Due to the complex nature of redundancy processes, it is recommended that employers seek advice in relation to redundancy processes prior to making a definite decision.

### Need more information

If you would like further information about any of the above issues, or require advice in relation to workplace matters, please contact the team at Fair Work Lawyers.



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