

Federal Review of Australian Workplace Laws



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Wednesday, July 17, 2019

Although industrial relations did not heavily feature in the Coalition's election campaign, now that the dust has settled on its re-election the Government has announced a Review of industrial relations laws. The areas to be targeted include:

Casual employment

Industrial Relations Minister Christian Porter has confirmed that he does not believe casual employment in itself to be problematic. However, he has acknowledged the popular view that the definition of casual employment requires clarity. The issue has been a hot topic in Australia for some time, particularly following a 2018 Federal Court decision which reviewed the definition of "casual employment" and the offset between casual loadings and permanent employee entitlements and the subsequent introduction of the *Fair Work Amendment (Casual Loading Offset) Regulations 2018*, to prevent casual employees' "double dipping" entitlements (that is, to be paid casual loadings, but upon being correctly reclassified as a permanent employee, then also being paid permanent employee entitlements such as annual leave). The Minister has made it clear he will first be seeking submissions in this area to understand what, if any, problems really exist before launching any reform.

Unfair Dismissals

The unfair dismissals jurisdiction will be included in the Review amid concerns for the amount of time and money lost to businesses dealing with these claims – of which 15,000 were brought last year. Criticism has been levelled at the number of unfounded claims being made and the complexity of the Small Business Fair Dismissal Code – applying to those employers with less than 15 employees.

Enterprise Agreement Approvals

Concern has been raised over the delays caused by holdups in the current approval process in enterprise bargaining. The Review will examine the enterprise bargaining system and “better off overall” test (which enterprise agreements must meet before the Fair Work Commission approves them). The Review will consider if changes can be made to speed up approvals with a number of industry groups preferring the previous “no-disadvantage” test and querying the need to assess each individual employee impacted under the current “better off overall” test.

Unions

The role of unions will also be reviewed. The Minister has confirmed that one priority for him is passing previously failed legislation that allows for easier deregistration of unions and banning individual officials. The *Ensuring Integrity Bill* provides for minimum standards of behaviour and accountability from registered organisations and their officials. This Bill has been given considerable media attention in the wake of Secretary of the Victorian branch of CFMMEU, John Setka, being called upon to step down following a number of criminal charges relating to the harassment of anti-violence campaigner Rosie Batty.

More information is expected to follow over the coming months in relation to the process the Minister will adopt and further detail on the Review subjects. For now the Minister has confirmed he will issue discussion papers, consult stakeholders and review evidence and proposals over the next 6 to 9 months.

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