

# Blake Dawson

## Employment Alert

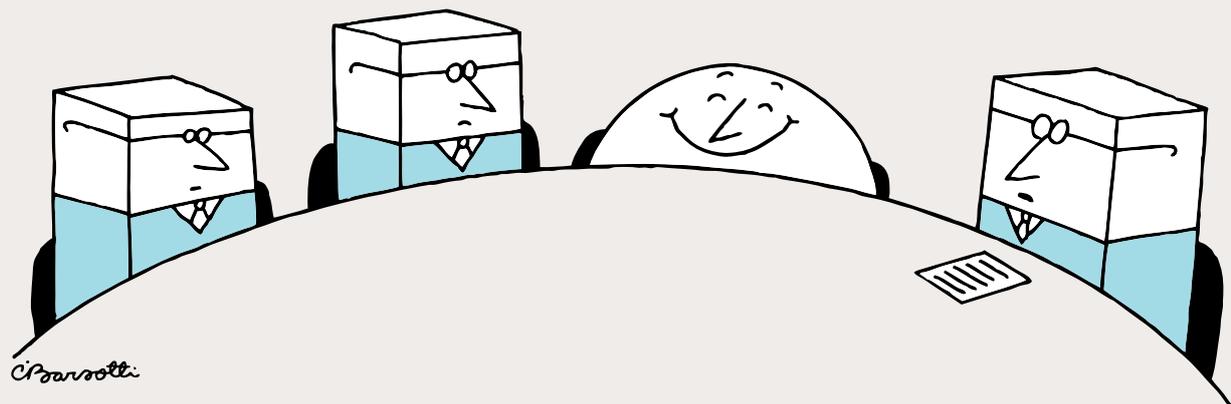
NOVEMBER 2007

# Australian Labor Party wins government – New workplace laws proposed

A RUDD LABOR GOVERNMENT WAS ELECTED ON 24 NOVEMBER, CAMPAIGNING ON THE KEY PLANK OF SUBSTANTIALLY AMENDING THE WORKPLACE LAWS OF THE FORMER LIBERAL AND NATIONAL COALITION GOVERNMENT, INCLUDING WORK CHOICES.

As examined in our May and August *Employment Alerts* ALP Leader Kevin Rudd and Deputy Leader Julia Gillard previously announced Labor's plan for a new workplace relations system (called "Forward with Fairness") and a process and timetable for its implementation.

The plan proposed to retain the current general structure of a unitary national system with a legislated safety net of minimum conditions and revamped awards able to be overlaid with collectively bargained agreements at an enterprise level.



## KEY REFORMS

- The new system will operate generally from 1 January 2010. A Transition Bill will operate from early in 2008 until 31 December 2009.
- Once the Transition Bill is passed, Labor proposes to draft the substantive legislation and consult with stakeholders. An exposure draft of the legislation will be released in 2008/09 for public comment.
- The Transition Bill will contain the safety net of 10 national employment standards (operative from 1 January 2010) – hours of work; parental leave; flexible work for parents; annual leave; personal, carers and compassionate leave; community service leave; public holidays; information in the workplace; termination of employment and redundancy; long service leave.
- Awards will be reinvigorated and will supplement the legislated safety net. The Australian Industrial Relations Commission will be given the task of modernising and simplifying awards by 31 December 2009.
- The new award system will be confined to employees who earn less than \$100,000 per annum (guaranteed ordinary earnings). Where an employee earning more than \$100,000 per annum (as at 1 January 2010) is covered by an award, the employee will be able to choose whether to stay under the award or negotiate with the employer and effectively opt-out of the award.
- Collective union, collective employee and union greenfields enterprise agreements will be retained. Collective agreements will operate for up to four years. Agreements will not be limited by the current rules around prohibited content. Parties will be able to be compelled to bargain in good faith for a collective agreement.
- AWAs will be abolished. AWAs made prior to the commencement of the Transition Bill will be able to continue to operate for their full term (last possible expiry date is 31 December 2012). For workplaces regulated by AWAs (as at 1 December 2007), there will be a facility for Individual Transitional Employment Agreements to operate with an expiry date no later than 31 December 2009.
- The current regime relating to industrial action will broadly continue. Industrial action will remain lawful where associated with enterprise bargaining (subject to a secret ballot) but will otherwise not be permitted. Intractable disputes will be able to be settled by compulsory arbitration.
- A new regulatory body called Fair Work Australia will be established to replace each of the current regulatory bodies and offices and the AIRC.
- Unfair dismissal rights will be available across the board (subject to a minimum qualifying periods – six months for employers who employ 15 or more employees, and 12 months for employers who employ fewer than 15 employees). Speedy remedies of reinstatement or monetary compensation, with no formal hearings, will be introduced.
- The existing right of entry laws will remain largely as they presently are.
- Union representation, organising and bargaining rights will be enhanced.

# B

## COMPOSITION OF THE SENATE

The Coalition continues to hold a one seat majority in the Senate until July 2008 when the newly elected Senators will commence their terms. After this time and depending on the final ballot count, the Coalition will have 37 seats and Labor 32. It seems likely that five senators from The Greens, a senator from the Family First Party and an independent South Australian senator will then hold the balance of power in the Senate.

The Greens and the other two senators can be expected to seek to influence the content of the Labor Government's intended legislation. The Greens campaigned for the abolition of the Work Choices laws, and their workplace policies seem more radical than Labor's.

The Labor Government may seek to press its "mandate" for workplace reforms by trying to pass laws like its Transition Bill before July 2008, including at an early sitting of Parliament.

## REGULATIONS

Crucial aspects of the current workplace laws depend on the content of the Workplace Relations Regulations. For example, the Regulations set out what matters are prohibited content and therefore cannot be included in workplace agreements. If the new Labor Government amended the Regulations (including in a piecemeal way), the Coalition controlled Senate (until 30 June 2008) could pass a resolution disallowing the amendments. (Amended regulations are required to be tabled before each House of Parliament and may be disallowed by either House within specified statutory timeframes.)

## EXECUTIVE ADMINISTRATION AND ENFORCEMENT

Until its legislation is passed the Labor Government may seek to influence the administration of the existing Work Choices laws, through the functioning of the Workplace Authority, Workplace Ombudsman and Department of Employment and Workplace Relations. There may be changed policies and priorities, for example, in applying the fairness test to new workplace agreements or in the enforcement of the existing laws.

The Minister for Employment and Workplace Relations also retains important discretions in the exercise of executive power in workplace matters.

While Labor has said it will retain the current legislative regime affecting the building and construction industry (until 2010), major change in the industry has resulted from the terms and enforcement of the National Code of Practice for the Construction Industry. This Code is determined solely by executive policy and its amendment can be made by the Labor Government without the necessity for legislation or amended regulations.

## KEY POINTS FOR EMPLOYERS

- The new Labor Government will seek to make significant legislative changes to give effect to its plan for a new workplace relations system. As a first step the Labor Government is expected to introduce a Transition Bill that will govern the implementation of Labor's workplace policy, including transitional arrangements for individual employment agreements.
- The progress of the Labor Government's legislation will depend on the positions taken by the Coalition and minor parties/independents in the Senate. The Transition Bill may not be passed until after 1 July 2008.
- The operation of the existing workplace laws may be affected by amendments to the Workplace Relations Regulations and the manner in which the existing laws are administered and enforced under the new Labor Government.
- Employers need to consider the impact of the Labor Government's intended workplace laws:
  - on their workplace relations and people strategies;
  - on their existing industrial instruments and workplace agreements;
  - when making new workplace agreements; and
  - in implementing workplace change programmes and restructuring.

### BLAKE DAWSON CONTACT DETAILS

<i>Sydney</i>	Lea Constantine	+61 2 9258 6446
	Jan Dransfield	+61 2 9258 6533
	David Lloyd	+61 2 9258 6442
	Jennie Mansfield	+61 2 9258 6400
	Helen McKenzie	+61 2 9258 6096
	Adrian Morris	+61 2 9258 6025
	Stephen Nettleton	+61 2 9258 6026
	Stephen Woodbury	+61 2 9258 6444
<i>Melbourne</i>	Steven Amendola	+61 3 9679 3628
	Richard Bunting	+61 3 9679 3597
	Vince Rogers	+61 3 9679 3522
<i>Brisbane</i>	Steve Bennett	+61 7 3259 7015
	Ian Humphreys	+61 7 3259 7180
<i>Perth</i>	Tony Davies	+61 8 9366 8767
	David Parker	+61 8 9366 8019
<i>Canberra</i>	Paul Vane-Tempest	+61 2 6234 4036

This publication is authorised by Blake Dawson. The firm can be contacted by emailing [marketing@blakedawson.com](mailto:marketing@blakedawson.com)  
Subscription Maintenance – If you would like to unsubscribe or modify your electronic subscription please go to <https://www.marketing.blakedawson.com>  
Privacy Policy – You can find our Privacy Policy on our website at [www.blakedawson.com](http://www.blakedawson.com)

This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to render legal advice. No reader should act on the basis of any matter contained in this publication without first obtaining specific professional advice.

© 2007 Blake Dawson