

## 'PROPOSED CHANGES TO FAIR WORK LAWS' WHAT YOU NEED TO KNOW

### **What you need to know:**

- The Federal Government has recently introduced to the Parliament the Industrial Relations Omnibus Bill that proposes a series of changes to the Fair Work Act and related laws.
- Some of the proposed changes include:
  - a new definition of casual employment,
  - improvements to Enterprise Agreement making and approval processes,
  - Greenfields Agreements being able to apply for to 8 years on major projects;
  - greater flexibilities for some Modern Awards (but not including Construction Awards) and
  - a new criminal offence for underpayments that are dishonest and systematic.
- The proposed Bill will be considered by Parliament in early 2021 at the earliest.
- Until then, the existing laws continue to apply. Employers do not need to make any changes at this time. Master Builders will continue their advocacy efforts and will provide updates as needed.

### **Background:**

- In May 2020, the Government announced it would form five working groups with an intention to examine and make improvements to the industrial relations framework to help businesses and workers get through the economic downturn resulting from COVID-19 and to speed up economic recovery.
- Master Builders was asked to participate in the groups to represent building and construction employers.
- The working groups made various recommendations for change to the Government.
- The Government considered the recommendations and have responded by tabling the Industrial Relations Omnibus Bill on Wednesday 9<sup>th</sup> December 2020.

### **What are the proposed changes?**

- Amongst a myriad of changes, the following are the main ones:
  - A new definition of 'casual employee', a uniform process for casuals to convert to permanent employment after 12 months and offsetting provisions that stop "double dipping";
  - Changes to simplify and improve the way Enterprise Agreements are made and approved and a quicker, less technical process that does not include unrealistic hypothetical scenarios for approval by the Fair Work Commission;
  - Standard flexibilities, such as part time employee's agreed overtime hours being payable at the ordinary rate of pay, in some specific Modern Awards (this does not include Construction Awards); and
  - Higher fines and penalties for businesses who underpay workers, including the introduction of a new Federal offence for underpayments that are dishonest and systematic with a maximum imprisonment of four years. Providing the FWC with powers to dismiss vexatious litigation that are timely and costly to the businesses and to deal with underpayments claims.

### **Do I have to do anything now?**

- No – the changes are only proposals and will not come into effect until they have passed the Parliament, which will be in March 2021 at the very earliest.

### **How will the employers benefit from those changes?**

- ✓ Changes to clarify casual employment will provide much needed certainty and ensure employers don't have to rely on the courts and tribunals to establish the definition of who is a casual employee.
- ✓ Changes to EBA making process will make it much quicker and easier to have the agreement approved.
- ✗ Unfortunately, changes to Modern Awards will not extend to Construction Awards.
- ✗ Increasing penalties for employers and making threats with jail time is not the best approach to stop underpayments. Creating a system that is clear and simple and providing education to businesses on their obligations should be the first step

### **Did Master Builders support all the proposed changes during the working groups?**

- No – we argued against a number of changes that were driven by the Unions (such as higher employer penalties) but supported the changes that ultimately grow the businesses and create jobs (such the EBA changes).

### **Questions? More information?**

Please contact our Industrial Relations department on: 02 8586 3555