

same classification, rather than treating all employees as individuals under an agreement.

Industrial Action

Protected industrial action remains available after the nominal expiry date of a collective the agreement and during the period of re-negotiation. A secret ballot of employees to approve the proposed action must be held before any protected action can occur. There remain steps which the FWA may take in the event that significant economic harm is being felt by an employer, employee or third party, to suspend or terminate protected action.

Even if the industrial action is protected, it will remain unlawful for an employer to pay, and for an employee to receive, strike pay. For unprotected industrial action the employer must make a minimum 4 hour deduction for time lost. If the lost time is due to protected action, the deduction or non payment is limited to the actual time lost.

Redundancy and Transfer of business

There have been significant changes to the redundancy requirements, where if a restructure is occurring, then redeployment must be considered across all parts of the business, as a first option.

It is essential that thorough planning of required manning levels, backed up by good paper trails are able to demonstrate where genuine redundancies have occurred. Implementing redundancies, combined with the unions ability to seek injunctions (see below) will be a lot tougher under this new Act.

The transfer of business includes outsourcing and in-sourcing. If any employee transfers to another employer due to transmission of business arrangements the industrial instruments will also transfer (and may not apply only to transmitting employees) and be in place until they are terminated or replaced. Under WorkChoices the instruments were only valid for 12 months from the transfer date. Under the new Act there is a greater focus on transferring work and employees - not transferring business.

Injunctions

There are currently no avenues for an injunction to be brought for a breach of a workplace agreement. One of the very significant changes in the Fair Work Act is that Injunctions will be available from Federal Court or Federal Magistrates Courts where a breach of consultation obligations under an agreement occurs. An employee or union could seek to injunct an employer to prevent redundancies or the dismissal of an employee.

Injunctions will not be available to enforce pre-Fair Work Act industrial instruments (such as collective and certified agreements)