



## Appendix D: The Fair Work Bill 2008

This Appendix provides a synopsis of the workplace protective provisions contained in recently introduced workplace legislation, the Fair Work Bill 2008.

### **Protection**

The Fair Work Bill sets out a range of workplace protections for fairness and representation at the workplace, a right to freedom of association and provisions related to preventing discrimination and other unfair treatment.

Chapter 3 of the Bill sets out rights and responsibilities of employees, employers, organisations. The Bill creates workplace rights (cl. 341) and defines adverse treatment (cl. 342) (see the extract below). A range of other safeguards in the workplace include protection (cl. 340) and prohibitions on coercion and undue influence (cl. 343, 344).

The definition of adverse action limits the action that will give rise to liability in relation to workplace rights to specified action taken by specified persons against other specified persons. What is adverse action in any particular case depends on the nature of the relationship between the relevant persons.

The scope of the conduct captured by the concept of adverse action is based on conduct that is prohibited by the freedom of association, unlawful termination and other provisions in the *Workplace Relations Act 1996* that have been incorporated into the protections.

An important concept in the public interest disclosure legislation proposed in this report is that making a public interest disclosure be a workplace right. As

well, the provision in the public interest disclosure legislation that creates the right would be a workplace law for the purposes of the Fair Work Bill.

Extract from Clause 342 of the Fair Work Bill 2008

### 342 Meaning of *adverse action*

(1) The following table sets out circumstances in which a person takes *adverse action* against another person.

| <b>Meaning of <i>adverse action</i></b> |  |  |
|---|--|--|
| <b>Item</b>                             | <b>Column 1</b>  | <b>Column 2</b>  |
|   | <b><i>Adverse action is taken by ...</i></b>   | <b><i>if ...</i></b>   |
| 1                                       | an employer against an employee  | the employer:<br>(a) dismisses the employee; or<br>(b) injures the employee in his or her employment; or<br>(c) alters the position of the employee to the employee's prejudice; or<br>(d) discriminates between the employee and other employees of the employer.   |
| 2                                       | a prospective employer against a prospective employee  | the prospective employer:<br>(a) refuses to employ the prospective employee; or<br>(b) discriminates against the prospective employee in the terms or conditions on which the prospective employer offers to employ the prospective employee.  |
| 3                                       | a person (the <i>principal</i> ) who has entered into a contract for services with an independent contractor against the independent contractor, or a person employed or engaged by the independent contractor | the principal:<br>(a) terminates the contract; or<br>(b) injures the independent contractor in relation to the terms and conditions of the contract; or<br>(c) alters the position of the independent contractor to the independent contractor's prejudice; or<br>(d) refuses to make use of, or agree to make |

Source Fair Work Bill 2008, Clause 342

## Regulation

The Bill establishes a statutory authority, the Fair Work Authority, with powers including dealing with unfair dismissal claims and settling workplace disputes.

The position of Fair Work Ombudsman (FWO) has the roles of promoting harmonious and cooperative workplace relations and compliance with the law through education, assistance and advice and, where necessary, undertaking enforcement activities, such as investigation, issuing compliance notices and initiating court proceedings. The FWO is to visit workplaces to offer assistance and resolve issues quickly and informally. The FWO replaces the Workplace Ombudsman, a statutory agency responsible for promoting and monitoring compliance with, and investigating suspected contraventions of, federal workplace relations laws, awards and agreements.

