

QUARTERLY NEWSLETTER

MARCH 2013

Changes to Employment Law

The *Fair Work Amendment Act 2012* (Cth) which came into operation on 1 January 2013 makes changes to the *Fair Work Act 2009* (Cth).

Fair Work Australia is now called the Fair Work Commission ("the Commission") and the Commission now has further powers. In particular, the Commission has the power to dismiss unfair dismissal applications and make cost orders against parties, lawyers and paid agents in unfair dismissal cases, in cases where one party acted unreasonably or failed to act in a reasonable manner. This includes a failure by one party to discontinue the proceedings or one party causing the other party to incur costs unnecessarily.

There are also changes regarding unfair dismissals, general protections and enterprise agreements.

Prior to 1 January 2013, employees had only 14 days from the date of dismissal to file an unfair dismissal claim and employees with a general protection claim arising from termination had 60 days to file a claim. Employees who have been unfairly dismissed on or after 1 January 2013 will have 21 days from the date of dismissal to lodge an unfair dismissal. However, the time for filing a general protections application arising from termination has been reduced to 21 days.

There are changes to making an enterprise agreement including, terms allowing an employee to opt out of an enterprise agreement are prohibited and enterprise agreements cannot be made with a single employee.

For employees who failed to nominate a superannuation fund and are covered by a

modern award, the modern award is required to specify a default fund.

For further information or advice on the changes, please contact MLB Lawyers & Associates.

Legal Action against Harvey Norman Franchisees

The ACCC commenced Federal Court proceedings against 11 Harvey Norman franchisees in Sydney for misleading customers who purchased faulty mobile phones, laptops, refrigerators and espresso machine about their consumer rights between April 2011 to mid 2012. The franchisees advised their customers as follows:

1. That they had no obligation to offer any remedy for damaged goods to customers, unless a customer complained within a specified time frame (e.g. 24 hours or 14 days);
2. They were under no obligation to offer a remedy to customers for goods still covered by the manufacturer's warranty;
3. They were under no obligation to offer a refund or replacement to customers for certain products (including large appliances or products below a certain price); and
4. The customer must pay a fee for the repair and return of faulty products.

For goods purchased on or after 1 January 2011:

- With a major fault, suppliers have an obligation to provide a replacement or refund of the goods to customers;
- With a minor fault, suppliers should offer to remedy the goods within a reasonable time. If the supplier fails to do so, the consumer can reject the goods and get a refund or

repair the goods and recover reasonable costs associated with doing so from the supplier.

The ACCC stated that under Australian Consumer Law, consumer's rights "cannot be excluded, restricted or modified". Consumers have the right to request repairs, replacement or a refund of goods in the event the goods are faulty, unsafe, appear unacceptable or fail to perform their intended purpose.

Each breach of the Australian Consumer Law carries a fine of \$6,600 or penalties of up to \$1.1 million.

Suppliers of goods should be familiar with Australian Consumer Law and seek legal advice if they are unfamiliar with the current law, in order to prevent possible breaches of the law.

Changes to Privacy Laws

The *Privacy Amendment (Enhancing Privacy Protection) Bill 2012* was passed on 29 November 2012 and will significantly change Australian privacy law.

From March 2014, both public and private sector organisations must comply with the changes which include personal information may not be used for direct marketing unless certain requirements are satisfied.

Individuals will be entitled to request that organisations inform them on how their personal information was acquired. This would require organisations to maintain records on the manner they acquire personal information. Individuals can also request an organisation not to use or

disclose their personal information to other organisations for direct marketing purposes.

In relation to personal information being disclosed to overseas organisations, Australian organisations will remain liable for any breach by the overseas recipient. This ongoing responsibility may lead to greater scrutiny and improved data protection procedures being required by Australian entities before sending their data offshore.

Credit reporting bodies (CRBs, previously credit reporting agencies) and credit providers (CPs) are also subjected to certain requirements regarding collection, disclosure and use of credit related information.

Individuals have improved access to and the ability to correct credit information. A publicly available policy about management of credit information must be maintained and a duty to notify an individual if a default payment is to be listed with a CRB.

Companies need to be aware of the penalties for noncompliance, including civil penalties of up to \$220,000 for individuals and \$1.1 million for companies in the case of a serious or repeated interference with the privacy of an individual.

The changes to privacy law will not commence until March 2014. However, businesses should review their current privacy policies and processes beforehand to ensure compliance.

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