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EMPLOYMENT LAW

There are few other areas of law in Australia that have undergone such radical and constant change than that of Workplace laws. Further changes came into operation on 1 January 2013, including:

- changing the tribunal's name to the Fair Work Commission,
- aligning the time limits for lodging unfair dismissal applications and general protections applications to 21 days (from 14 days and 60 days respectively), and
- enterprise agreement-related processes and a requirement that agreements cannot be made with a single employee.

On 21 March 2013, the *Fair Work Amendment Bill 2013* was introduced into Parliament. If enacted, the workplace bullying provisions will likely commence on 1 July 2013. The right of entry, family friendly measures and modern award provisions 1 January 2014.

ARBITRATION UPDATE

The High Court has upheld the constitutional validity of the *International Arbitration Act 1974* (Cth) in its recent decision in the case of *TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia*.

This litigation involved one of China's most successful state-owned enterprises, TCL. TCL produced a wide range of electronic products and signed an exclusive deal with a major Australian distribution house, Castel Electronics to sell its air conditioners within Australia. Castel claimed that TCL had breached the deal, which provided for recourse through international commercial arbitration.

After a ten day hearing, a panel of 3 arbitrators in Melbourne awarded Castel around 3.5 million dollars. In a final effort to avoid this liability TCL challenged the constitutional validity of certain amendments to the IA Act. The High Court rejected the TCL claim and confirmed the final and binding nature of arbitral awards.

This was a significant decision that Arbitrators have waited on with bated breath. Had TCL been successful this would have destroyed Australia's nascent arbitration industry. Fortunately, this decision will improve Australia's standing as an attractive seat for cross-border disputes. It is estimated that every such arbitration contributes around $1 million dollars into the economy, beyond any awards being made.

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TIPS – ARBITRATING WITH CHINESE CLIENTS

Firstly, Chinese companies prefer to enter contracts that have English & Chinese versions. Before the dispute occurs, review the dispute resolution clauses in your transactional documents. Ensure parity in English and Chinese versions, also ensure that dispute resolution clauses in separate but related contracts, which your internal client expects to be resolved in the same way should disputes occur, have consistency to them. A common problem is objection to arbitration because a related contract has a litigation clause.

Secondly, work out the costs of the arbitration. Chinese arbitral centres ask the Claimant to pay the arbitration costs up front in full, under the Australian Rules (ACICA) the arbitral panel, is different and requires each party to deposit an equal amount as an advance for the costs and can request supplementary deposits from time to time. The Claimant is however responsible for the registration fee.

Thirdly, be clear on what language the arbitration will be conducted in, English or Chinese or both with daily translations. There should be a clause specifying which language is to take precedence in the event of conflict of languages. There can be differences in interpretation Chinese is a very word efficient language but can lack precision. These tips are based on a longer article on the website of the Singapore International Arbitration Centre (SIAC) by Mr Arvin Lee which is well worth reading.

INSERT YOUR NAME HERE

NEW PRACTICE NOTE

A new Practice Note: Supreme Court Eq 7 commenced on 1 March 2013 in respect of family provision applications which will now be managed by the Family Provision List Judge (Hallen J) (rather than the Registrar) in the Family Provision List each Friday. There are substantial changes and new requirements for filing of affidavits which will affect solicitors commencing new claims.

Upcoming Seminars

Jennifer is giving a seminar on Estate Litigation and the new practice note for the Inner West Solicitors in May 2013.

Clients wishing Jennifer to provide seminars in the workplace on the new Employment Reforms or on other topics should not hesitate to contact Jennifer.

OTHER NEWS

The Federal Magistrates Court has been renamed the **'Federal Circuit Court of Australia'** and changed the title of the Chief Federal Magistrate to 'Chief Judge' and Federal Magistrates to 'Judge'. There is no change to the jurisdiction of the court.