



### STATES REFER IR POWERS –ALL EMPLOYERS MAY NOW BE COVERED BY THE NEW WORKPLACE LAWS (except in WA).

#### Who was to be covered by the new workplace laws and how does this alter employer coverage?

You will recollect that in previous articles we have informed you that the new workplace legislation (the Fair Work Act) applies to the following employers:

- All Constitutional corporations
  - Pty Ltd's
  - trust with a company as trustee – where the trust employs the employees
- Employers in Australian territories (ACT and NT)
- The Commonwealth public service; and
- Employers in Victoria (as Victoria has handed over its IR powers to the Federal government)

Also that if your business is a partnership for instance (and not in Victoria, the ACT or NT – where all employers are covered by the new laws) you will not be covered by this legislation; instead that the relevant state workplace legislation will apply to you unless the State governments refer their IR powers to the Commonwealth Government (as Victoria has done).

All States (except for Western Australia) have now passed legislation handing over their powers in respect to Industrial Relations to the Commonwealth Government (subject to specific conditions in each case, such as exempting public service and local government employees) as follows:

- Tasmania on 13 October 2009
- Queensland on 11 November 2009
- South Australia on 17 November 2009
- New South Wales on 18 November 2009

**Subject to the Commonwealth Government passing legislation to give effect to this referral - *the effect of this referral of powers is that all employers - including partnerships and unincorporated entities - will be bound by the new Fair Work Act in all States and Territories except for Western Australia.***

## ANTA IR ASSIST UPDATE – NOVEMBER 2009

As Victoria has already referred its IR powers, and the NT and ACT are already covered by the new workplace laws by application of section 122 of the Constitution, this means all States and Territories but for the State Government of Western Australia (which has indicated it will not refer its IR powers) will be covered by the new Workplace Laws from 1 January 2010 if the government can get its referrals legislation through the parliament.

While the opposition appear to support the referral of IR powers in general, they have indicated they will not support some of the conditions placed on the referrals by the State Governments. This means the referrals may not actually become lawful on 1 January 2010, although it is likely that if they do not apply from that date they will apply shortly thereafter.

### What can employers who will now be covered do to prepare for these changes?

Employers who are:

- Unincorporated Associations
- Partnerships
- Sole Traders

should now familiarise themselves with the new legislation. Until the referrals become law, all such employers remain covered by the State IR legislation and State Awards so they should not apply altered industrial instruments (contracts, agreements, policies or procedures) at this time.

However, we advise all such employers to investigate the new workplace laws as they will shortly apply and will necessitate:

- Redrafting or applying new employment agreements
- Determining and applying a new 'Modern' Award and differing rates of pay
- Revising policies, practices and procedures for compliance
- Implementing the new National Employment Standards

**ANTA members can commence this process by reviewing the Association IR Assist home page – accessible from the Members Centre on the ANTA website – which will refer you to IR Fact sheets which provide a summary of the new legislation and by contacting Indigo Fields to request an IR compliance diagnostic 'tick-a-box' document, which will provide a review of your current compliance and specific actions you will need to take.**



*IR Assist (a division of Indigo Field Industrial Relations) are the Industrial Relations and Human resource providers to ANTA and its members. Indigo Field Managing Director Andrew Jones has degrees in law and politics and has lectured in Employment Relations at the University of Southern Queensland. He has represented employers in all States and Territories for over 12 years and is a respected Trainer and Commentator.*

**If members have any questions regarding the new Workplace Laws and your obligations as an employer log onto the Members Centre on the ANTA website to access the compliance diagnostic tick-a-box document or to contact Indigo Fields**