This is the published version

Lambropoulos, Victoria, Rinaldi, Mark and Millar, Rohan 2013, Year in review 2012-2013, in Fair work legislation 2013, Thomson Reuters, Pyrmont, N.S.W., pp.1-11.

Available from Deakin Research Online

http://hdl.handle.net/10536/DRO/DU:30056183


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INTRODUCTION

[1.10] It has been less than a year since we wrote the last review. However in this period, some of the most significant legislative changes have been made to the Fair Work Act 2009 (FW Act) since its commencement on 1 July 2009. The most important changes were the amendments introduced in response to the recommendations made by the panel undertaking the Fair Work Act Review (the panel report). The actual changes in the legislation are relatively modest in light of the keen anticipation of employer and employee groups about what reforms the Federal Government would make. Perhaps in order to differentiate itself from the previous “Work Choices” era, the present government has been determined to pursue widespread community consultation before introducing wholesale changes to the legislation.

However, despite this consultation, only approximately a third of the review’s recommendations have been acted upon. A second round of more substantive amendments in the Fair Work Amendment Act 2013 has recently been introduced into Parliament. The enacted amendments deal with various unpaid parental leave issues, expand access to the right to request flexible working arrangements, require employer consultation with employees about roster and work hours changes, changes to the right of entry laws to give the Fair Work Commission power to deal with disputes regarding the frequency of visits by union officials and, perhaps most importantly, to enable employees who claim to have been bullied at work to apply to the Fair Work Commission for orders to stop the bullying.

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SIGNIFICANT LEGISLATIVE AMENDMENTS 24 JULY 2012 – 30 JUNE 2013

April 30

Four major amending Acts have been passed since last year’s review, namely:

- Fair Work Amendment Act 2012;
- Fair Work Amendment (Transfer of Business) Act 2012;
- Fair Work Entitlements Guarantee Act 2012; and
- Fair Work Amendment Act 2013.

The third Act establishes a new version of the previous GEERS system. The GEERS system was previously an administrative, rather than legislative, arrangement at Federal Government level that allowed certain employees to make a claim to the Department of Education, Employment and Workplace Relations for unpaid wages and entitlements due to the insolvency of their employer. The new Act establishes a legislative basis for the arrangement. The three amending Acts to the FW Act require more detailed analysis.

FAIR WORK AMENDMENT ACT 2012

The Fair Work Amendment Act 2012 (Cth) was the legislative response to the Fair Work Act Review. Most of the amendments follow the recommendations made by the panel in the report. The amendments (with some exceptions) commenced on 1 January 2013. We summarise the changes below, some of which we discuss in further detail in the later part of the review:

- Change of Name The name of the industrial tribunal was changed from Fair Work Australia to the Fair Work Commission (FWC). This change has been welcomed by those working and writing in the area of workplace and industrial relations given the historical association with the previous Conciliation and Arbitration Commission and Australian Industrial Relations Commission, as well as being less prone to confusion with the Fair Work Ombudsman. Warren v Walton [2013] FCA 291.
- Default Superannuation Funds The changes to the default superannuation laws will commence on the date of establishment of the Expert Panel) and 1 January 2014 (changes to modern award provisions). The changes are mainly contained in Part 2.3 of the FW Act as they impact on the content of modern awards and Part 5-1 concerning the organisation of the new Expert Panel. The changes give power to the FWC to review default superannuation fund terms every four years. The first review must be conducted as soon as practicable after 1 January 2014. It also provides for the establishment of a new Expert Panel constituted under s 620 of the FW Act, which will determine the functions of the Minimum Wage Panel. This new Expert Panel will include members with expertise in superannuation and the Expert Panel will develop a "Default Superannuation List" that will be included in standard superannuation funds for each of the modern awards. Only funds on this list can be included in standard superannuation funds for each modern award. The FWC must be satisfied that the fund is in the "best interests of the default fund employees". Sections 156E and 156F detail the process which the FWC must follow in making a decision as to which funds are included in the list. The fund must however offer a generic MySuper product to be considered for the list, and be open to anyone. This will mean that some superannuation funds, such as corporate funds which are generally only open to company employees and their families will not be eligible for the default list.
- Modern Awards Employer and employee organisations entitled to represent the interests of those covered by a modern award have been expressly given standing in relation to applications for variation of an award. The Commission is now able to strike out applications to vary, revoke or make a modern award that are considered vexatious or frivolous or have no real prospect of success: see at the end of s 158(1).
- General Protections Perhaps the most significant practical change is that the time limit for lodging a general protections application has been reduced from 60 days to 21 days, see s 366C(3)(a). This is so it aligns with the new unfair dismissal time limit.
- Unfair Dismissal The time limit for lodging an unfair dismissal claim has been extended from 14 days to 21 days, see s 394(2)(a). There is now an additional power given to the FWC to dismiss an application where the FWC is satisfied that a party has unreasonably refused to make or do something that the FWC requires by the end of the 21 day period. That this power is in addition to s 587. There is also a new power given to the FWC in s 400A which will allow costs to be awarded against a party who has acted unreasonably. A costs order of this nature may follow a decision to dismiss an application under s 399A(2). This power is in addition to s 61(1). However, the new costs power is only exercisable upon application by a party, with a 14 day time limit to make this application: s 402. There is also a new provision relating to costs orders against lawyers and paid agents, which will no longer be dependent on whether the FWC has given permission for leave to appear under s 596. Costs orders can now be made against lawyers and/or paid agents who are not formally appearing or otherwise on the record, who may be nevertheless advising clients to pursue claims which have no reasonable prospect of success: s 401(1)(A).
- Enterprise Agreements The amendments dealt with a number of technical but important matters which otherwise would have remained as a result of the Fair Work Act review. Most of the amendments adopt recommendations made by the panel. Employers must now serve the notice of representational rights only in the form contained in Sch 2.1 of the Fair Work Regulations 2009 (Cth) s 174(1A) and (1B). This provision was introduced in response to cases in which employers were not informing employees of their right to have their union act as a default bargaining representative, such as Re Galintel Rolling Mills Pty Ltd [2011] 214 IR 258; [2011] FWAFB 6772; Oswald Bros Pty Ltd v Construction, Forestry, Mining and Energy Union (2012) 2012 1174; [2011] FWAFB 9512; Veda Environmental Services (Australia) Pty Ltd v Australian Workers’ Union (2013) 269 FWC 269. Further, s 172(6) has been introduced, which prohibits the making of enterprise agreements with one employee. This amendment addresses conflicting decisions on this issue: see Re Fourth Parlong Moto Enterprise Agreement 2011 [2011] FWA 3256 (where Gooley C refused to approve an agreement made with one employee), Australian Manufacturing Workers’ Union v Inghams Enterprises Pty Ltd [2011] 212 IR 351; [2011] FWAFB 6106 (in which a full bench accepted that an enterprise agreement can be made with one employee as long as the agreement refers to a group of employees, at [34]), Re Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union [2012] FWA 9552 (where Gooley C refused to approve an agreement which would cover an employee who was also the director of the employer company, following the recommendation of the Conciliation, Construction, Forestry, Mining and Energy Union v Queensland Bulk Handling Pty Ltd [2012] FWAFB 7551, being that Parliament’s legislative intention is to ensure enterprise-level collective bargaining over individual agreement-making). The amendment resolves the issue by making it clear that enterprise agreements cannot be made with a single employee. The panel also recommended that opt-out clauses in enterprise agreements be prohibited (recommendation 23). Parliament adopted this recommendation by making opt-out clauses an unlawful term in s 194A(ba). Such clauses controversially permitted employees to choose to opt-out of an enterprise agreement and instead be governed by common law contracts. A full bench in Construction, Forestry, Mining, and Energy Union v Queensland Bulk Handling Pty Ltd [2012] 269 FWC 269, however, held that the provisions prohibited the approval of enterprise agreements with opt-out clauses, soon after the panel’s recommendation, on the basis that it would defeat the intention of Parliament to promote collective bargaining over individual agreement-making. Further changes include a new provision in s 176(3) preventing a union official who is not entitled to represent the interests of the employees to be appointed separately as a bargaining representative by an individual employee. Further, it is now sufficient that the bargaining representative only take "reasonable steps" to “give a written notice setting out their concerns” before making an application for a scope order under s 236(3)(a). This significantly relaxes the requirements for applicants seeking scope orders, as previously, mandatory notification of all other bargaining representatives was required before being able to apply for such an order.
- Industrial Action There have also been some minor amendments made to the industrial action provisions in Part 3-3 of the FW Act. The changes allow employees who are union members and have appointed themselves as bargaining representatives to be included in the ballot for a protected action ballot order under s 437. The amendments also allow voting in ballots to be conducted electronically.
- Costs on Appeal The power under s 570 relating to costs orders following appeals has been revised, so that it is clear that the prima facie no costs jurisdiction of the FWC is maintained during appeals and judicial reviews before a court. The costs power in s 570 remains relevant to proceedings in a court “in relation to a matter arising under this Act” (FW Act) replacing the previous phrase “exercising jurisdiction under this Act”. This effectively takes the position back to the less restrictive “arising under” test that pre-existed the PW Act, with the likely result that
FAIR WORK AMENDMENT (TRANSFER OF BUSINESS) ACT 2012

The second amending act was introduced in response to state public sector redundancies in Queensland and New South Wales. The purpose of the changes was to ensure that state public sector employee entitlements were maintained if employees were effectively transferred from the public sector to the private sector. The amendments create a new Pt 6.3A in the FW Act. The changes commenced on 5 December 2012.

FAIR WORK AMENDMENT ACT 2013

The Fair Work Amendment Act 2013 represents the second round of amendments introduced in response to the Fair Work Act review. The changes include the following:

- New measures to assist workers balance family and carer responsibilities with work; most of these changes affect the NES (see further below).
- A new obligation imposed upon employers to consult with employees when changing regular rosters or hours of work; the new express obligation to consult will be included in modern awards and enterprise agreements: see new ss 145A and 205(1A). The purpose of the consultation is to invite employees to give their views about the impact of the changes on their lives including their family and carer responsibilities. The obligation to consult does not apply to award-free employees or employees who are not subject to an enterprise agreement.
- Amendment of the modern award objective to expressly require the FWCC to take into account the need to provide additional remuneration for work during public holidays and night shifts; irregular or unpredictable hours. See new s 141(1)(b).
- Changes to the right of entry laws to give the FWCC power to deal with disputes regarding the frequency of visits by union officials; provide for discussions to be held in rooms agreed to by the occupier and the permit holder and if there is no agreement meetings must take place in meal areas or break areas; facilitate the accommodation and transport of permit holders in remote areas; agreement cannot be reached.
- New powers to permit consent arbitration by the FWCC in relation to General Protection applications. See new ss 368-370.
- A new power granted to "workers" (as defined under the Work Health and Safety Act 2011 (Cth)) to apply to the FWCC for the making of an order to prevent bullying at work. A worker who reasonably believes they are being bullied may apply to the FWCC for an order under s 789FF to stop the bullying. A worker is bullied at work if an individual or a group of individuals repeatedly behave unreasonably towards them and it creates a risk to health and safety: s 789FD. However this does not apply to "reasonable management action carried out in a reasonable manner": s 789FD(2). These laws will not operate until 1 January 2014. See new Pt 5.4A: ss 789FA-789FL.
- A new function given to the FWCC to promote cooperative and productive workplace relations and for the prevention of disputes. This appears to strengthen the capacity of the FWCC to implement the objects of the FW Act at s 3. See s 579(2)(a).

NATIONAL EMPLOYMENT STANDARDS

The most significant changes to the National Employment Standards since their introduction were announced in February 2013 by the Federal Government. Many of these changes are in response to the recommendations made by the review panel in the panel report. They include extending the right to request flexible working arrangements in s 65 to more employees such as carers, workers with disabilities, mature age workers and workers experiencing domestic violence. See new s 65(1), (1A). The Government has also improved the unpaid parental leave entitlements by extending the time that both parents can take unpaid parental leave concurrently from three weeks to eight weeks (s 725(b)(a)). Parents will be allowed to choose when they want to take this leave. There are also increased protections for pregnant employees who need special maternity leave (s 80), and pregnant women who require a transfer to a safe job (s 81).


MODERN AWARDS

The recently retired President of Fair Work Australia, the Hon Geoffrey Giudice, has commented that in spite of increased cost burdens for some industries, award modernisation has produced "benefits overall from a simpler, uniform and less prescriptive award system." He referred to an Access Economics report which assessed "the value of the national system to the economy at around half a billion dollars a year over the next 10 years." 1


MO Modern Awards Review 2012 – Award Flexibility [2013] FWCFB 2170. The HWCCC refused to broaden the content which can be negotiated under IPAs. At present the only content which can be the subject of an IPA are arrangements for when work is performed; overtime rates; penalty rates; allowances and leave loading.

1. Australian Government, "Submission in relation to applications to vary penalty rates in the retail, hospitality, fast food, restaurant and hair and beauty awards (AM2012/8 and others)": 2, 6-7.

2. As part of the Modern Award Review a full bench of the FWCC extended the notice period for terminating an Individual Flexibility Arrangement (IFA) under a modern award from 28 to 90 days. See Modern Awards Review 2012 – Award Flexibility [2013] FWCFB 2170. The HWCCC refused to broaden the content which can be negotiated under IPAs. At present the only content which can be the subject of an IPA are arrangements for when work is performed; overtime rates; penalty rates; allowances and leave loading.

1. Australian Government, "Submission in relation to applications to vary penalty rates in the retail, hospitality, fast food, restaurant and hair and beauty awards (AM2012/8 and others)": 2, 6-7.
enterprises bargaining and agreement-making agreements over the last three years is because the agreement has not met the requirement that it was “generously agreed to by the employees” under ss 186(2)(a) and 188.


1.50] A full Federal Court in the Australian Industry Group v Fair Work Australia (2012) 205 FCA 339; [2012] FCATC 108 (the ADJ contracting case), unanimously upheld the validity of clauses in the Employee Collective Agreement (Brisbane)’s (ETU) pattern agreement concerning the use of contractors and the payment of wages and conditions for union officials and union promotion. Justices North, McKerracher and Reeves rejected the ADJ’s challenges to the clauses. The contractor clause required ADJ to only engage contractors who applied wages and conditions that were no less favourable than in the ADJ agreement. This type of clause could be said to arise from job security concerns of employees, which is a matter that directly pertains to the employment relationship under s 172(1)(a), at [61]. The ADJ argued in the appeal that the clause was an “objectionable term” under s 12 for the reason that it breached the “workplace rights” provisions in ss 340 and 341. The Full Court rejected the notion that an employer (in this case a contractor) could have “workplace rights” inherent in the meaning of the FW Act: [13]-[15], [62]. The employees of independent contractors however do have “workplace rights”: Bromberg J in Construction, Forestry, Mining and Energy Union v Victoria [2013] FCA 445 found that the employees of Land Lease (a contractor) had “workplace rights” in accordance with the table in s 342(1). At the time of writing, the Victorian State Government has lodged an appeal of the decision. See also Laing O’Rourke Australia Pty Ltd v Construction, Forestry, Mining and Energy Union [2013] FCA 133 where Collier J in an interlocutory decision) was prepared to accept that Laing O’Rourke Australia as head contractor had “workplace rights”.

In any event there was no evidence that the clause would result in adverse action, at [62]-[67]. The right of entry clause, which gave the ETU entry for the purpose of representing employees under the dispute resolution procedures, was also not in breach of s 194(1). The right of entry clause satisfied the requirements of theFW Act contemplated entry for these purposes, at [81]-[84]. The third clause was also permitted as promotion of union membership was not the equivalent of inducing employees into becoming union members (see [350]).

In another full bench decision concerning the interaction between the general protections under the FW Act and the content of enterprise agreements, an argument was rejected that would have used the general protections as a means of safeguarding the terms of state vocational training laws: Construction, Forestry, Mining and Energy Union v Victorian Government [2012] FCA 1411. The Full Bench rejected the submission that the FW Act needed to incorporate terms to allow for state vocational training laws to have some effect. The Full Bench said the FW Act permits the substitution of terms from other sources, such as state training requirements, subject to the limitations imposed on content by the FW Act, such as the “better off overall test”.

There have been few significant developments in the good faith bargaining requirements since last year’s full bench decision in Endeavour Coal Pty Ltd v Association of Professional Engineers, Scientists and Managers, Australia (2012) 217 IR 131; [2012] FWAFB 1891 (Endeavour Coal). The Full Bench decision was taken by Endeavour Coal to the Federal Court: see Endeavour Coal Pty Ltd v Association of Professional Engineers, Scientists and Managers, Australia (2012) 206 FCR 576; 217 IR 134; [2012] FCA 764. Hick J upheld the full bench’s finding that Endeavour Coal had breached the good faith bargaining requirements. However, his Honour overturned three of the four orders made by the full bench on the basis that they were beyond power because they contravened ss 226(2), 230D and 351 at [77]. The only order which survived the challenge prohibited the taking of any further action by Endeavour Coal to unilaterally determine the terms of a new standard contract for its staff, or alter standard terms contained in staff contracts of employment, outside of the enterprise bargaining process, at [67]-[71]. The other orders fell outside the provisions of the FW Act as they required the company to make concessions, which is specifically prohibited under the Act.

The decision has highlighted the limitations of the good faith bargaining regime in the FW Act. The decision highlights the difficulties in the current system of enterprise agreements in that the enterprise agreements lodged with the Fair Work Australia are not the same for the purposes of the Enterprise Agreement-making, Agreement-making to the aim of unions and employees who are facing protracted negotiations with employers, such as has happened with Cochlear and the ANMU. A concluded agreement has still not been reached three years after a majority support determination under s 237 was made at Automotive, Food, Metals, Engineering, Commodities, Construction, Electrical and Kindred Industries Union v Cochlear Limited (2009) 186 IR 120; [2009] FCA 67. This is because there is no express requirement in the FW Act that parties reach a concluded agreement. The panel however did not recommend lowering the threshold for compulsory arbitration so that disputes such as this could be dealt with by the FWC.

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entitlement as providing an entitlement to paid annual leave not just annual leave. This meant that the elements of payment and the taking of the leave were inseparable.

[1.220] There have been no major developments in relation to the understanding of "matters pertaining" under s 172(1), however the concept is still the source of unnecessary complexity. For example, an income protection scheme for fire fighters in Metropolitan Fire and Emergency Services Board v United Firefighters' Union of Australia — Victorian Branch [2012] FWA 955 was considered not to be pursuant to the employment relationship under s 172(1)(a) and therefore was unenforceable. This was because the clause imposed obligations on a third party in order to operate. The ability to control a third party, such as an insurer, is outside the power of the Commission/Tribunal and thus the operation of the FW Act. This latest income protection case sits uncomfortably with an earlier decision of the Full Federal Court where the inclusion of an income protection scheme was upheld in Australian Maritime Officers' Union v Sydney Ferries Corporation (2009) 190 IR 193; [2009] FCAFC 145 (Sydney Ferries). In the Sydney Ferries case the drafting of the clause meant that it did directly pertain to the employment relationship and therefore survived the legal challenge based on the Full Federal Court's decision. The clause was not found to be a matter that pertains to the employment relationship as it does not prevent employers from establishing such a scheme for the benefit of their employees. However, employers do not have the ability to enforce the terms if an employer decides later to abandon the scheme. The panel did not recommend the abandonment of the "matters pertaining" formula in s 172(1)(a).

INDUSTRIAL ACTION

[1.230] The number of days lost to strike action still remains at historically low levels. However the number of industrial disputes has increased slightly, according to the most recent statistics released by the Australian Bureau of Statistics.1 Perhaps the most high profile industrial dispute in Melbourne over the last 12 months has been the Grocon dispute with the Construction, Forestry, Mining and Energy Union at the My Empire site. The dispute appeared to be over occupational health safety clauses in the Grocon agreement and the role of union delegates on occupational health and safety committees. It led to a 16 day lockout at the My Empire site in Melbourne’s CBD which allegedly cost the company up to $10 million in revenue. The only important outcome from the dispute was the decision to appeal the outcome in favour of Grocon. Dick Cavanagh J found the Victorian Division of the Construction, Forestry, Mining and Energy Union guilty of five counts of contempt. See Grocon v Construction, Forestry, Mining and Energy Union (2013) VICSC 275. The FWC has also released an interim decision on the case, but this has not been finalised. The FWC is currently hearing the case.

GENERAL PROTECTIONS

[1.240] A more detailed discussion of developments in the Part 3-1 General protections by Victoria Lennox-Young is located in the next chapter of this volume. However we also highlight some of the important cases here. Unfair dismissal claims still represent the vast majority of claims made; however, there has been a steady increase of general protections claims since the FW Act was introduced in 2009. There were 2,303 general protections claims involving discrimination made to FWA in the 2011–2012 period of which 2,226 were finalised. There were also 586 claims lodged which did not involve dismissal.

[1.250] The first High Court decision concerning the general protections provisions of the FW Act, and specifically, the operation of the "adverse action" provisions, in Board of Bendigo Regional Institute of Technical and Further Education v Barclay [2012] 80 ALR 1044; 290 ALR 647; [2012] HCA 32 was delivered in late 2012. The six-member High Court bench unanimously overturned the Full Federal Court's decision and upheld the decision at first instance by Tracey J in Barclay v Board of Bendigo Regional Institute of Technical and Further Education (2010) 193 IR 251; [2010] FCA 284, finding that BRI had not committed an adverse action. The High Court adopted Tracey J’s view (at [11]–[32]) that "the correct approach is to determine why the employer took the adverse action against the employee. In answering this question evidence from the decision-maker which explains why the adverse action was taken is relevant...[if there is... evidence] which persuades the court that it acted solely
for a reason other than one or more of the impermissible reasons... then it will make a good defence." The primary judge concluded that Dr Harvey, who was the primary decision-maker, was a credible witness in this regard and accepted her explanation for the reason why she suspended Mr Barclay which did not fit the meaning or the interpretation of the word "because" to include any of the prescribed reasons in ss 346 or 347. It was the interpretation of the word "because" that the High Court rejected the s 346 of the FW Act which was fundamental to the High Court decision. The High Court rejected the s 346 of the FW Act which was fundamental to the High Court decision. The High Court rejected the s 346 of the FW Act which was fundamental to the High Court decision.

[1.260] The "workplace right" protection based on complaints or inquiries made in relation to one's employment in s 341(c)(ii) was interpreted broadly by Katzmann J in Construction, Forestry, Mining & Energy Union v Pilbara Iron Company (Services) Pty Ltd (No 3) [2012] FCA 697 at [60]-[64]. Her Honour at [61] stated "phrases like "related to", "relating to" or "in relation to" are prima facie, at least, extremely wide."

Her Honour accepted a complaint or inquiry with the employee's employment may be direct or indirect. Her Honour accepted that a complaint made by the employee at the request of another employee could still be caught by the protection as the complaint related to conditions which also impacted the first employee's conditions of employment at [70]. The fourth limb to discrimination in the "adverse action" category in s 342(1) was also given in-depth consideration by Gordon J in Klein v Metropolitan Fire and Emergency Services Board [2012] FCA 1402, at [88]-[102].

Her Honour did not consider the phrase a sub-section (d) "discriminates between the employee and other employees of the workplace" to be limited to direct discrimination: the phrase may include claims based on indirect discrimination: at [97].

UNFAIR DISMISSAL

[1.270] Unfair dismissal cases continue to constitute a very large portion of the workload of the newly renamed Fair Work Commission. The jurisprudence in this area remains largely settled, with variations in some cases as a result of the application by individual members of the Commission of the discretion "unfair, unjust or unreasonable" test. Remedies in a particular case can be tailored in an unexpected and unusual ways: see for example Colson v Barwon Health [2013] FWC 766 (Roe J) in which an employee found to have been guilty of misconduct but not serious misconduct was reinstated but not awarded any lost remuneration. This was the first decision the subject of a decision summary published on the Commission's website as part of a pilot program of decision summaries in matters of importance or public interest launched by the President, Justice Ross, in early 2013.

[1.280] The question of whether a termination for redundancy does not constitute a "genuine redundancy" under s 389 (for example, because of a failure to consult in accordance with the provisions of an applicable modern award) may nevertheless be not harsh, unjust or unreasonable, came before a full bench in UES (Int'l) Pty Ltd v Harvey [2012] 215 IR 263, [2012] EWAFB 5241. The problem arises because the concept of "valid reason" under s 387 only refers to a reason related to "the person's capacity or conduct", and makes no reference to operational requirements. In a split decision, the majority (Acton SDP and Bissett C) considered the failure to consult, required under the applicable Award, meant that the termination of employment was harsh, unjust or unreasonable, but limited the compensation to the earnings for the likely duration of the consultation process, of two weeks. Kaufman SDP disagreed, holding that the operational reason for the redundancy meant the termination was not unfair, even though the concept of "genuine redundancy" was not made out. In the period from 1 July 2012 to 31 January 2013, 81% (4,341) of the 5,077 unfair dismissal cases that were the subject of conciliation conferences were resolved at conciliation by agreement. Of these, 3,681 were resolved by way of a monetary settlement. Fifty-one per cent of those monetary settlements were less than $4000, and 80% were less than $5000. Of the unfair dismissal cases, 24 resulting in a finding of unfairness, 60% resulted in a compensation order being made, 6% in reinstatement only, 7% in reinstatement with lost remuneration being ordered, and 7% having no remedy ordered despite the unfairness found.