



## **Labour Relations Reforms**

The Government launched a range of proposed reforms at the National Party conference in July. The initial reaction to the proposed reforms was a flurry of noise from the Unions and considerable publicity. Among the reforms are the following key elements:

### **90 Day Trial – extension to all workplaces**

The proposed changes are to extend the 90 day rule for new employees to all workplaces, not just those with less than 20 staff. If the change becomes law, the current provisions for smaller businesses are likely to apply. The 90 day trial will need to be agreed upon prior to the employee commencing employment with the employer, and documented in the employee's employment agreement. In the case of a dismissal within the trial period, the law relating to good faith, discrimination, sexual or racial harassment applies.

There are the predictable comments about the 90 day trial, heralding abuse and mayhem, but most employers, at some stage, have experienced employees who simply do not work out and 90 days is long enough to know someone is patently unsuitable for a role. The key for employers is that they need to manage this time frame and ensure their paperwork is in good order.

### **Test to determine whether an employer's actions are justified**

In our view the most far reaching change is the proposed change to the test to determine whether the employer's actions were justified in the case of dismissal.

Currently the test is what a reasonable employer "**would**" do. This test only allows for one reasonable action open to the employer.

The proposed reforms will change the test to what a reasonable employer "**could**" do which will provide a range of options open to the employer.

There will be consideration of whether or not the process has been fair and reasonable, whether a proper investigation has been conducted, whether the matters at hand have been properly communicated to the employee, that there has been reasonable opportunity for the employee to respond to the matters raised, and that the employer has considered the reasons given by the employee with an open mind.

### **Consideration of the resources of the employer**

Importantly for small to medium businesses the resources of the employer will be considered in any decision. Currently, it is a very blunt instrument, with our largest companies facing the same level of penalties as our smallest.

The changes mooted in the Government's proposals will go through the Select Committee process before the Bill is drafted and brought into law. Commentators suggest this may be in early 2011.