

By Rob Guthrie

**T**his edition of *Precedent* features a range of articles addressing the newly enacted provisions of the *Fair Work Act 2009*. These contributions are extremely timely, given that this legislation commenced operation only in July 2009.

Practitioners in the area will be aware that, under the previous *WorkChoices* regime, the Howard Coalition promulgated a range of provisions that limited the power and operations of trade unions, attempted to dismantle the Australian Industrial Relations Commission (by a thousand cuts), reduce the range of matters that could be bargained collectively, and promoted individual agreements in preference to collective agreements. This trend has been reversed by the enactment of the *Fair Work Act 2009*.

Articles in this edition explain the operations of the National Employment Standards (by Steven Penning), the implementation of the paid parental leave provisions (Sian Ryan) and the complex laws relating to the right to take industrial action (Mark Gibian).

Ian Latham provides an excellent overview of the Fair Work provisions, drawing attention to the requirements for enterprise bargaining and, in particular, the requirement of good faith. Joellen Riley expands upon the topic of good faith bargaining in her article, which highlights the fact that previous attempts to introduce this principle into the

industrial relations arena have not been long-lived. The changes to the unfair dismissal laws are explained (by Giri Sivaraman), drawing the attention of practitioners particularly to the protection that is now provided to employees of small businesses, and the changes relating to the repeal of the laws that allowed for termination on 'operational grounds'.

This edition provides a useful overview of the sometimes complex industrial laws. The authors of these papers have taken particular care to provide easy-to-read and succinct accounts of the new laws. Of significant interest is the novel action highlighted in her article by Terri Butler, who draws attention to the remedies available to employees who have been affected by an *adverse action* of their employers. This new provision may pave the way for a range of legal actions, not the least of which would appear to be actions for workplace bullying, discrimination and victimisation. It will certainly be interesting to see where this area of law develops, an area that will be of considerable interest to members of the Australian Lawyers Alliance. ■

**Rob Guthrie** is Professor of Workers' Compensation and Workplace Laws at Curtin University, WA.

PHONE (08) 9266 7626 EMAIL [rob.guthrie@chs.curtin.edu.au](mailto:rob.guthrie@chs.curtin.edu.au)

**NATIONAL COUNCIL** National President Mark Blumer President-Elect Brian Hilliard  
**DIRECTORS** ACT Andrew Freer NSW Anthony Scarcella NT Clifton Baker QLD Laura Neil  
 SA Anthony Kerin TAS Greg Barns VIC Geraldine Collins WA Tom Percy QC

**BRANCH PRESIDENTS** ACT Amy Burr NSW Jnana Gumbert NT Clifton Baker  
 QLD Justin Harper SA Anthony Kerin TAS Robert Phillips VIC Geraldine Collins WA Tom Percy QC

**STAFF** General Manager Michel Geurts [michel@lawyersalliance.com.au](mailto:michel@lawyersalliance.com.au)

Conference Manager Maja Maunic [maja@lawyersalliance.com.au](mailto:maja@lawyersalliance.com.au)

Public Affairs Manager Mandy Wyer [Mandy@lawyersalliance.com.au](mailto:Mandy@lawyersalliance.com.au)

Member Services Officer Nancy Sowah [nancy@lawyersalliance.com.au](mailto:nancy@lawyersalliance.com.au)

Publications Officer Renée Harris [renee@lawyersalliance.com.au](mailto:renee@lawyersalliance.com.au)

Legal and Policy Officer Patrick Coetsee [patrick@lawyersalliance.com.au](mailto:patrick@lawyersalliance.com.au)

Event Co-ordinator Jessica Younan [jessica@lawyersalliance.com.au](mailto:jessica@lawyersalliance.com.au)

**PRECEDENT Editorial Committee** Sue Bence, Liat Blacher, Toni Emanuele, Tatiana Gavrilyk, Jnana Gumbert, Rob Guthrie, Michal Horvath, Patrick Mugliston, Jennifer Newman, Morgan O'Brien-Powell, Emma White, Ben Zipser

**Editor and Production Manager** Renée Harris [renee@lawyersalliance.com.au](mailto:renee@lawyersalliance.com.au) Phone: (02) 9258 7721

**Locum Editor** Vicky Fisher [vicky@lawyersalliance.com.au](mailto:vicky@lawyersalliance.com.au) **Legal Editor** David Bolton [davidb@lawyersalliance.com.au](mailto:davidb@lawyersalliance.com.au)

**Design** Tianli Zu [tianli@artstudiozz.com.au](mailto:tianli@artstudiozz.com.au)

This issue of *Precedent* is cited as (2009) 94 PRECEDENT. ISSN 1449-7719 © 2009 Australian Lawyers Alliance, ABN 96 086 880 499  
 Trading as the Australian Lawyers Alliance, GPO Box 7052, Sydney 2001, DX 10126, Sydney Stock Exchange Phone: (02) 9258 7700 Fax: (02) 9258 7777  
 Email: [enquiries@lawyersalliance.com.au](mailto:enquiries@lawyersalliance.com.au) Website: <http://www.lawyersalliance.com.au>

**PRECEDENT** is published bi-monthly by the Australian Lawyers Alliance Ltd. Contributors and advertisers should submit their copy and/or artwork in electronic form by the agreed deadline.

**Disclaimer:** Views expressed by the contributors are not necessarily endorsed by the Australian Lawyers Alliance Ltd. No responsibility is accepted by the company, the editor or the contributors for the accuracy of the information contained in the text and advertisements. The Alliance does not necessarily endorse any of the products or services advertised. Copyright in this material is retained by the publisher, the Australian Lawyers Alliance Ltd. No part of this material may be reproduced or transmitted in any form or by any means, electronic or mechanical, without permission in writing from the publisher, the Australian Lawyers Alliance Ltd. Enquiries should be directed to [enquiries@lawyersalliance.com.au](mailto:enquiries@lawyersalliance.com.au).

Lawyers



for the People

*Precedent* is now being produced in a more ecologically sustainable manner. For details, see <http://www.lawyersalliance.com.au/precedent.php>