

## TRANSFERS OF BUSINESS

The *Fair Work Act* deals with the transfer of rights and obligations under enterprise agreements, a workplace determination, a named employer award and other instruments where there is a transfer of business from one employer to another.

There are criteria in the Act for assessing whether a transfer of business and consequent transfer of employment conditions occurs however a couple of less known features of the provisions are:-

- A prospective employer to whom a business is transferring may seek relief from the application of enterprise agreements by applying to Fair Work Australia for an order that they will not apply.
- This could be a useful device for any prospective purchaser of a business to adopt if concerned as to whether or not to offer employees continued employment in the transferring business.
- If a prospective employer does not want to offer employment to employees of the business being transferred, the *Act* also provides protection against any adverse action claim that might be brought against the purchaser who acquires the business but does not offer employment to existing staff because he does not want to continue the transferring employees terms and conditions of employment under an agreement, award or instrument.
- Depending on the particular entitlement concerned, there are different requirements for new employers in relation to transferring employees' accrued entitlements.

If you wish to discuss any of these issues please call Richard Pegg or Will Ward.