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INTRODUCTION

We are delighted to provide our Asia-Pacific Employment Law Guide 2013 to you, our valued clients. This publication has been prepared as a quick reference guide to assist human resources managers and in-house counsel who have a regional responsibility across the Asia-Pacific. It contains a brief overview of the key employment law principles across 18 jurisdictions in the region.

I hope that this guide helps you to navigate through the complexity that inevitably comes from managing a workforce across the region. After all, employment law regimes, attitudes and practices vary significantly from one jurisdiction to another, as do cultures, languages and history.

The publication of this guide is an exciting milestone for our team of lawyers across the Asia-Pacific region who were brought together by the merger of Herbert Smith and Freehills on 1 October 2012, and who have worked together to create the guide. We have taken what we consider to be the best parts of the legacy Herbert Smith and legacy Freehills guides to create an exceptional reference tool for you.

It is an exciting time to be part of a truly international employment practice which enables us to service the needs of our clients throughout not just Asia-Pacific but all over the world. Our lawyers continue to be involved in many of the most significant employment matters throughout the Asia-Pacific region, and as such we are uniquely qualified to provide the insights and guidance included here.

While this publication provides useful high-level guidance, it is not legal advice, and employers should always seek professional advice on specific matters. The guide is current to 1 February 2013 and the law is subject to change.

Please enjoy the 2013 edition of the guide. I encourage you to refer to the contacts section, and to get in touch with us at any time you need our assistance with a specific query.

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April 2013
The management of a workforce across the Asia-Pacific region can be difficult and demanding. The legal regimes, attitudes and practices in the field of workplace law vary considerably from one country to another, as do the cultures, languages and history.

The guide provides an overview of the employment law framework in each of these jurisdictions across the Asia-Pacific.
AUSTRALIA

MINIMUM STATUTORY TERMS

Key statutes

Australia has laws at both state and federal levels that cover minimum terms and conditions, occupational health and safety, privacy, discrimination, superannuation, long service leave and other employment related matters.

The federal Fair Work Act 2009 (Cth) (FW Act) is the most important piece of legislation governing employment in Australia. The FW Act, as a federal piece of legislation, effectively overrides state and territory laws that deal with the same subject matter. Significantly, the FW Act gives legally binding effect to industrial instruments which play a significant role in establishing employment terms and conditions in Australia, in particular:

- “awards”, which set minimum terms and conditions for particular industries or occupations, and
- enterprise agreements, discussed further under “Industrial relations” below.

Certain matters are specifically excluded from the scope of the FW Act, including:

- workers compensation
- occupational health and safety
- matters relating to outworkers
- long service leave, and
- equal opportunity and discrimination.

Most employers are covered by the federal system, including employers who are “constitutional corporations” (e.g. trading, financial and foreign corporations) and Australian federal government bodies. However, some employers are not covered by the FW Act and will be regulated by state and territory industry laws.

Other relevant federal statutes include:

- the Privacy Act 1988 (Cth)
- the Sex Discrimination Act 1984 (Cth), Racial Discrimination Act 1975 (Cth), Disability Discrimination Act 1992 (Cth), and the Age Discrimination Act 2004 (Cth)
- the Workplace Gender Equality Act 2012 (Cth), and

Employers and employees in the building and construction industry are also subject to industry-specific regulation, the two key sources being:

- the Fair Work (Building Industry) Act 2012 (Cth), and
- the National Code of Practice for the Construction Industry and the associated Guidelines which apply to companies tendering for or performing construction activities funded by the Australian federal government.

Employer work rules

There is no legal requirement in Australia for an employer to establish work rules. However, it is common practice for an employer to establish company policies and other similar documents. An employer may choose to incorporate some or all of their company policies into employees’ contracts of employment. However, in doing so, employee consent may be required for any amendment to such rules and policies. Many employers therefore ensure that company policies are expressed not to form part of the contract of employment, but employees are nevertheless still required to comply.

Forms of employment

In Australia, there are three primary forms of employment: full-time, part-time and casual. Fixed-term and maximum-term employment is also recognised. Whether it is written, oral, express or implied, every employee in Australia is considered to have an employment contract with their employer.

Probationary period

At common law, an employer and employee are free to agree on the terms of the contract of employment, including the duration and effect of any probationary period. It is quite common for contracts to provide for an initial probationary period of three to six months.

An industrial instrument binding on an employer may contain restrictions with respect to probationary periods.

Minimum wage

Minimum wages in Australia, including casual loadings, are set and adjusted by the Minimum Wage Panel of the Fair Work Commission.
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