

### “VISION IN THE WORKPLACE”

Issue Twenty Nine, November 2007

In this edition of “Vision in the Workplace” we look at the final stages of “the race to the Lodge”, culminating in our post election breakfast seminar on Friday 7 December 2007 at the Sheraton on the Park (remember to RSVP now to avoid disappointment). We also remind employers of the importance of their policies and procedures in the lead up to the “silly season” as highlighted by a recent decision of the Australian Industrial Relations Commission and a recent judgment of the New South Wales Court of Appeal regarding the payment of superannuation when notice is paid in lieu.

#### The Race is almost over...

“The race to the Lodge” is almost over with Australia going to the polls on 24 November 2007 and Stevens & Associates post-election Breakfast Seminar following the finish on Friday 7 December. The race has seen many new policies introduced by both parties, with numerous “clarifications” included.

Recently, the Federal Minister for Workplace Relations Mr. Joe Hockey MP revealed that a new Federal Coalition Government would make prohibited content in common law side deals unenforceable (which we assume would also cover IRC of NSW s.146A Agreements). This is in addition to current provisions relating to an employer’s ability to tender for government work, where such agreements exist. Mr. Hockey also announced that Unions will also have to notify the Australian Building and Construction Commissioner, in addition to notifying the employer/site occupier if they wish to enter building sites.

Meanwhile, Deputy Opposition Leader Ms. Julia Gillard MP has announced that current right of entry laws will remain in addition to reiterating that his Honour President Geoffrey Guidance would be asked to head up Fair Work Australia. Additionally, Ms. Gillard guaranteed that all appointments to Fair Work Australia would be “*bi-partisian and meritorious*” and “*not affected by political bias*”.

For an analysis and discussion of Industrial Relations following “the race to the Lodge”, book now for our free Breakfast Seminar.

## STEVENS & ASSOCIATES

LAWYERS

invites you to a special breakfast seminar at the Sheraton on the Park, Sydney on 7 December 2007.

### “Industrial Relations after the Federal Election ?”

#### Free Breakfast Seminar

for our clients to discuss and review Industrial Relations Policy following the Federal Election.

**Where:** The Beaumont Room  
Sheraton on the Park Hotel  
161 Elizabeth Street, Sydney

**When:** Friday, 7 December 2007

**Time:** 7.00am for 7.30am – 8.45am  
Breakfast included

**Please contact David Wells on (02) 9222 1691 or email [dww@salaw.com.au](mailto:dww@salaw.com.au) by Monday, 3 December 2007 to book your seat.**

**Bookings Essential as seats are filling fast!**

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## **Tis the Season, to Review your Company's Policies and Procedures**

The “silly season” of office and client Christmas functions is upon us and a recent decision of the Australian Industrial Relations Commission (**AIRC**) provided a timely reminder to all employers about their policies and procedures and alcohol consumption at work.

The AIRC upheld a Company's decision to summarily dismiss an employee who consumed alcohol during his lunch break, contrary to specific terms of his contract of employment. However, the AIRC rejected the Company's claims that the employee also breached the Company's policies regarding alcohol consumption, because the terms of the policies differed.

Specifically, the AIRC denied the Company's arguments regarding it's policy *“due to the lack of precision and clarity in the various statements of that policy... Where a respondent wants to rely on the strict enforcement of a policy it would be well-advised to ensure the clarity and precision of that policy wherever it appears in its policies and codes of conduct”*. The Company's lack of clarity, precision and certainty lead to it's inability to rely upon its policies and procedures where employee's breached those terms and conditions.

Accordingly, employers should be mindful moving into the “silly season” to ensure that policies and procedures are up to date and unambiguous on what is expected from employees.

For more information or assistance in reviewing your policies and procedures please contact Nick Stevens or Alicia Mataere.

## **Employer's to Pay Superannuation on Payments in Lieu of Notice**

The New South Wales Court of Appeal (**the Court**) has held that an employer is obliged to make superannuation contributions when they pay an employee in lieu of notice.

The case involved an executive employee whose contract provided for six (6) months notice and a total fixed remuneration package, comprising base pay of \$209,000.00 and superannuation entitlements of \$18,800.00. The employee was terminated and commenced proceedings seeking redundancy payments and in addition to his contractual notice, superannuation payments on those monies paid in lieu of notice.

At first instance both claims were denied, however on appeal the Court held that the employee was entitled to superannuation. Specifically the Court held that the employer was obliged, pursuant to the terms of the contract of employment, to pay superannuation payments as part of the payments in lieu of notice because it was a contractual right. Justice Tobias, in the leading judgment, stated *“there is no question that the [employee's] remuneration included a superannuation contribution which exceeded that mandated by the Act... if he had worked out [the notice period] .... there is no doubt he would have earned six months salary and six months superannuation”*. Accordingly the employee received superannuation on those monies paid in lieu of notice.

For more information or advice on your employments contracts and superannuation please contact Nick Stevens or Alicia Mataere.

*If you would prefer not to receive further newsletters from us, please either email [dww@salaw.com.au](mailto:dww@salaw.com.au) with “unsubscribe” in the heading, or telephone the number below and speak to Dave Wells and we will remove you from our mailing list. This publication is intended only as a general overview of legal issues currently of interest to clients and practitioners. It is not intended as legal advice and should only be used for information purposes only. Please seek legal advice from Stevens & Associates Lawyers before taking any action based on material published in this Newsletter.*

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