

“VISION IN THE WORKPLACE”

Issue Twenty Eight, October 2007

In this edition of “Vision in the Workplace” we look at “the race to the Lodge”, ending on 24 November 2007 and announce our post election breakfast seminar on Friday 7 December 2007 at the Sheraton on the Park. We also look at a recent decision of the Australian Industrial Relations Commission where an employer changed its industrial instrument from a NAPSA to a Federal Agreement and a judgment of the Industrial Court of New South Wales where an employer was fined for failing to consult with its’ employees on occupational health and safety issues.

The Federal Election will be held on Saturday 24 November 2007, ending the race to the Lodge

Prime Minister John Howard has now confirmed that “the race to the Lodge” will end on Saturday 24 November 2007 when Australia goes to the polls.

The announcement of the election date saw both Prime Minister John Howard and leader of the opposition Mr. Kevin Rudd MP addressing industrial relations policies and issues.

The Prime Minister warned the public that if a Rudd Labor Government was elected that Australians would face a government dominated by former Union Officials that would reintroduce unfair dismissal laws and drive up unemployment. Additionally, Mr. Howard warned of wall-to-wall Labor governments which Mr. Howard argued would remove one of the checks and balances a federal system provided.

Mr. Rudd’s first media conference was also dominated by industrial relations. Mr. Rudd announced that he would abolish Work Choices, describing it as the “harshest workplace laws Australia had even seen”. Mr. Rudd attributed the laws to the Government’s abuse of its power in the Senate.

For more elections analysis see our next edition of Vision in the Workplace and for a post-election overview book now for our Breakfast Seminar on Friday 7 December 2007.

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
by Monday, 3 December 2007
to book your seat.**

Bookings Essential as seats are filling fast!

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Employer Fined for Failing to Consult

In a recent case, an Employer was convicted for failing to ensure the health, safety and welfare at work of all its employees and a failure to consult employees, pursuant to the *Occupational Health & Safety Act 2000 (NSW)* (**'the Act'**), by the Industrial Court of New South Wales (**'the Court'**). Consequently the employer was fined \$95,000 for failing to ensure employee safety and \$12,000 for failing to consult. Charges were also brought against the sole director for failing to ensure the health safety and welfare at work of all its employees, which resulted in a penalty of \$9,500.

The Employer's failure to consult with its employees, for example participating in risk assessments, consultation in relation to decisions to eliminate and control identified risks and/or not having the opportunity to discuss the systems of work to be performed, led to the breach, conviction and consequential fine. Specifically, His Honour Justice Marks of the Court stated *"The obligation extends to all employers no matter what industry in which they are engaged. This will include industries which are obviously more likely to create risks to health and safety... as well as industries which are not regarded as inherently dangerous... This would appear to be a most comprehensive code to be undertaken in a thorough manner designed, obviously, to ensure that all employees ... fully comprehend and are able to apply all of the matters... to comply with obligations under the Act."*

This judgment demonstrates the absolute obligation of employee consultation on occupational health and safety matters in the workplace.

For more information or assistance in workplace consultation, contact Nick Stevens or Alicia Mataere.

Employer Prevented from Tendering for Government Work Transfers from a NAPSA to a Federal Award

In one of the first successful decisions of its kind, the Australian Industrial Relations Commission (**'AIRC'**) has allowed an employer who was prevented from tendering for Federal Government contracts on account of its Notional Agreement Preserving a State Award (**'NAPSA'**) not complying with the National Code of Practice for the Construction Industry (**'the Code'**), to become bound by a Federal Award.

The Department of Employment and Workplace Relations had advised the Employer in writing that the governing NAPSA was not compliant with the Code, because of provisions relating to juniors and dispute resolution. Armed with that written advice, written approval forms from nearly every employee and evidence that no employee's entitlements would be reduced under the Federal Agreement, the Company made an application to the AIRC, pursuant to the *Workplace Relations Act 1996 (Cth)* (**'the Act'**) for an order changing its governing industrial instrument.

The AIRC held that one of the threshold requirements under the Act, specifically that the employer not already be bound by another award, was met on the basis that the NAPSA would cease to operate when the order making the change was made.

For more information or to discuss your industrial instruments and their impact on your business contact Nick Stevens or Alicia Mataere, or come along to our breakfast seminar on 7 December 2007 to find out what will happen to your agreements.

If you would prefer not to receive further newsletters from us, please either email 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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