

“VISION IN THE WORKPLACE”

Issue Thirty, December / January 2008

In this edition of “Vision in the Workplace” we look at the results of “the race to the Lodge” which has delivered Australia’s first Labor Government in ten (10) years and the impact and changes this will have on Australia’s Industrial Relations landscape. We also look at the most recent wage figures in enterprise agreements, a Victorian discrimination decision where an employee was awarded damages of \$19,685.00 and the recent appeal which has been lodged by a constitutional employer who was ordered to calculate annual leave pursuant to State legislation as opposed to the *Workplace Relations Act 1996(Cth)*.

The Results are well and truly in...

The results of “the race to the Lodge” are in and Australia has its first Labor Government in over ten (10) years. So what does this mean for Work Choices and Australia’s Industrial Relations landscape? In one word, change.

For all of those lucky enough to attend our breakfast seminar last month you would be aware that the new Rudd Labor Government (according to its policies) has earmarked some significant changes for Australia’s Industrial Relations System, such as the changes to the legislated minimum standards of employment with the introduction of the National Employment Standards, the creation of Fair Work Australia (to replace the AIRC) and the introduction of an Award modernisation and simplification process with a timeline for the same. However, these changes will not occur overnight.

Deputy Prime Minister and Minister for Workplace Relations Ms. Julia Gillard MP has recently announced that Cabinet has approved plans for the Government’s transitional bill which will prevent new Australian Workplace Agreements being made, create the new Interim Transitional Employment Agreements, abolish the Fact Sheet requirements imposed by Work Choices, introduce a new no-disadvantage test for new agreements and enable the Australian Industrial Relations Commission to commence the Award modernisation process.

Ms. Gillard stated that to pass the new no-disadvantage test collective agreements will not

be able to disadvantage employees when assessed against the Australian Fair Pay and Conditions Standard and relevant award.

The First sitting of Parliament next month will also see the introduction of an exposure draft of the substantive legislative amendments. It is expected that this bill will contain the new National Employment Standards. Ms. Gillard stated that *“comments on the exposure draft will be sought by April 2008, with a view to settling the content of the National Employment Standards by June 2008. This will provide sufficient time for the AIRC to take the National Employment Standards into account when undertaking the award modernisation process.”* It is also expected that this bill will contain the changes to unfair dismissal laws outlined in the Federal Government’s pre-election policies, most significantly reducing the unfair dismissal exemption from 100 employees to 15.

Whilst the change in Federal Government will inevitably result in changes, it appears as though such changes will be undertaken in stages with the full implementation not being seen until 1 January 2010. Ms Gillard has stated *“that’s when awards will be modernised, that’s when our new industrial umpire, Fair Work Australia, will come into operation.”*

We will keep you informed of all developments and changes as they become available. So watch this space... In the meantime, if you have any questions or would like advice on how these changes will impact your business and how to manage the same please contact Nick Stevens or Alicia Mataere.

STEVENS & ASSOCIATES LAWYERS

LEVEL 14, 14 MARTIN PLACE SYDNEY NSW 2000

GPO BOX 1925, SYDNEY NSW 2001

TELEPHONE: 02 9222 1691 | FACSIMILE: 02 9232 5388



District Court Judgment Re NAPSA and the Annual Holidays Act 1944 (NSW) appealed

Our June 2007 Vision in the Workplace reported on the landmark judgment in the District Court of New South Wales (“**the Court**”) regarding an employee who had his annual leave entitlements calculated pursuant to the *Annual Holidays Act 1944 (NSW)* (“**the AHA Act**”) as opposed to the *Workplace Relations Act 1996 (Cth)* (“**the WR Act**”). This resulted in the Company being required to calculate the employee’s annual leave entitlements on his package of over \$300,000.00, which included bonuses, as opposed to his base salary of \$50,000.00.

The Employer has now lodged an appeal in the Federal Court of Australia appealing the Court’s decision to apply the AHA Act as opposed to the WR Act. The outcome of this appeal will have significant ramifications for employers who remunerate their employees wholly or partly by commission and who are covered by NAPSA’s.

We will keep you informed of all developments of the appeal proceedings. In the meantime, to discuss this case or your employees’ entitlements further please contact Nick Stevens or Alicia Mataere.

September Quarter Wage Results

The new Department of Education, Employment and Workplace Relations (DEEWR) has released the September 2007 Quarter report on trends in Federal Enterprise bargaining (“**the Report**”). The Report notes that overall wages have increased but wage growth has slowed in agreements lodged during the September Quarter.

Non-union collective deals received paid wage increases of 3.3% a year, below the 3.7% paid in the previous quarter. Public Sector deals also dropped to 4.2%, the lowest level since March 2006. Private sector wages increases grew by an average of 3.8% with Union Collective deals delivering an average of 4.1% wage increases a year.

The Victorian Civil & Administrative Tribunal awards \$19,685 in damages

The Victorian Civil & Administrative Tribunal (“**the Tribunal**”) has awarded damages of \$19,685.00 to an employee on the basis that she was discriminated against because of her parental responsibilities.

The Tribunal considered the provisions of the Victorian legislation (of which there are similar NSW and Federal provision) and held that the employee was discriminated against when she returned from maternity leave and was only offered a more junior role, as her previous role had been split into two. The Company argued that the senior aspects of the employee’s now split role had been given to a better candidate. However the Tribunal rejected these arguments and found that the employee had not been appointed because of her childcare responsibilities and the effect her employer thought these might have upon her performance. The Tribunal stated that the employee “*was not appointed because of her childcare responsibilities and the effect [the employer] thought these might have upon her performance in a role [the employer] considered highly demanding*”

The Tribunal also found that it was apparent that the employer considered the employee’s childcare responsibilities to be significant, given the concern expressed in relation to how working women managed their time and comments that her priority should be her child. The employer also sent what the Tribunal described as a “*patronising*” email to the international Company’s Australian, New Zealand and Pacific Island divisions asking all employees to be patient with the new parent.

For more information on this decision or for assistance in understanding an employer’s responsibilities in the relation to employees who are parents please contact Nick Stevens or Alicia Mataere.

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STEVENS & ASSOCIATES LAWYERS

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