

“VISION IN THE WORKPLACE”

Issue Thirty-Seven, October 2008

In this edition of Vision in the Workplace, we look at the Productivity Commission’s Draft Report recommending 18 weeks paid parental leave with an additional 2 weeks paternity leave for fathers or same sex partners. We also update you on a recent judgment of the Federal Court of Australia (overturning an earlier judgment of Federal Magistrates Court) that held WorkCover NSW was not a “person or body” seeking compliance with industrial law and the passage of the *Safe Work Australia Bill 2008* as it attempts to safely navigate the Senate.

18 Weeks Paid Parental Leave

The Productivity Commission (“**the Commission**”) has now released its draft report on Paid Parental Leave (“**the Report**”) which recommends the Government introduce a taxpayer-funded paid parental leave scheme. The Scheme would consist of 18 weeks paid parental leave, with an additional 2 weeks paternity leave for the father or same sex partner, to be paid at the Federal Minimum Wage, currently \$543.78 (“**the Scheme**”). The 18 weeks may be shared between both parents, although not taken concurrently, whilst the two (2) additional weeks may be taken concurrently with the 18 weeks.

It is proposed that the Scheme be available to an employed parent (including self-employed and contractors) who are the primary carer of their baby and works an average of at least 10 hours a week on a continuous basis for 12 months or more prior to the expected birth date of the baby. The Scheme also extends to mothers of stillborn babies, adoptions, and custodians of surrogate children.

The funding for the Scheme is to be paid by the Federal Government. However, Employers are obliged to make superannuation contributions to mothers who take paid parental leave if they qualify for unpaid maternity leave under the National Employment Standards and are entitled to be paid parental leave under the Scheme. The Commission estimates that after tax cost to employers of providing superannuation entitlements would be around \$75 million a year.

Ms. Angela MacRae, a Productivity Commissioner stated the Commission wanted to enable “*mothers to stay at home for at least the first six months of their baby’s life...the most crucial time for the nurturing of a new born.*”

For further information on how the Scheme may affect your business please do not hesitate to contact Nick Stevens or Alicia Mataere.

STEVENS & ASSOCIATES

LAWYERS

invites you to a special breakfast seminar
at The Grace Hotel, Sydney on
28 November 2008.

“Where to now with Forward with Fairness?”

Free Breakfast Seminar

for our clients to discuss and review the latest
amendments to the Workplace
Relations Act by the Rudd Government.

Where: The Wilarra Room
The Grace Hotel
Level 2
77 York Street, Sydney

When: Friday, 28 November 2008

Time: 7:00am for 7:30am – 9:00am
Breakfast included

**Please contact David Wells on (02) 9222 1691
or email dww@salaw.com.au
by Friday, 21 November 2008
to book your seat.**

Bookings Essential as seats are filling up!

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Beware of Safety Issues Raised by Employees

In the July edition of *Vision in the Workplace* we looked at a judgment of Federal Magistrate Cameron which held that the Freedom of Association provisions in the Workplace Relations Act 1996 (Cth) (“**the Act**”) did not extend to WorkCover NSW, as it was not an industrial association as contemplated by s.793 of the Act (“**the Previous Decision**”). Section 793 of the Act prohibits termination of an employee because they have made or are intending to make an inquiry or complaint to “*a person or body having the capacity under an industrial law to seek compliance with that law or the observance of a person’s rights under an industrial instrument.*”

The Previous Decision has now been overturned by Her Honour Justice Jagot of the Federal Court of Australia. Justice Jagot held the language of s.793 of the Act gave it a broader application than just trade unions or industrial organisations and that WorkCover NSW was part of the broader interpretation. Her Honour held that the words “*person or body*” in the s. 793 confirms that it is not confined to unions only.

Furthermore, Justice Jagot rejected the argument that WorkCover NSW did not “seek” compliance with industrial law but rather enforced compliance. Her Honour held that as WorkCover NSW was not a Court enforcing that law, it was, therefore, a body which sought compliance with the law. Justice Jagot also stated that WorkCover NSW deals with legislation not only concerned with Occupational Health and Safety but also the relationships between employers and employees, therefore within the definition of “*industrial law*” under s.779 of the Act.

Moreover, Justice Jagot held that to rely on s.793, legal proceedings do not need to have been commenced and that an employee’s threats to commence proceedings can be “*vague*”. It is enough if the employee believes they could commence court action but are dismissed before having the opportunity to do so.

Accordingly, employers should exercise caution in dismissing an employee’s occupational health and safety complaints, or any other complaints, especially where there is a possibility that the complaint may escalate outside the employer’s business or result in termination.

For more information on managing your employee’s OHS complaints and/or terminations please do not hesitate to contact Nick Stevens or Alicia Mataere.

The Safe Work Australia Bill 2008 Passes the Lower House and now attempts the Senate

The *Safe Work Australia Bill 2008* (“**the Bill**”) seeks to establish a body called Safe Work Australia, to replace the Australian Safety and Compensation Council and was recently passed by the lower house.

In the Bill’s second Reading Speech, Minister for Employment and Workplace Relations, Minister for Social Inclusion and Deputy Leader Ms. Julia Gillard MP, stated that the Bill would establish Safe Work Australia (“**SWA**”) as “*an independent national body whose role will be to improve occupational health and safety outcomes and workers compensation arrangement across Australia*”.

SWA will be funded by the Federal and State Governments with a budget of \$17 million established for 2008-2009. SWA will, among other things:

- develop national Occupational Health and Safety (“**OHS**”) and workers compensation policy;
- prepare, monitor and revise model OHS legislation and codes of practice;
- develop a compliance and enforcement policy to ensure nationally consistent regulatory approaches;
- develop proposals relating to harmonisation of workers compensation arrangements; and
- advise the Workplace Relations Ministers Council on OHS and workers compensation matters.

The Bill has now moved to the Senate where the Opposition, Greens and Independent Senator Nick Xenophon (“**the Senate’s OHS Coalition**”) have sought amendments to the Bill, specifically the constitution of SWA’s members. The Bill originally proposed SWA comprise 15 members consisting of an independent chair, 9 members representing State and Federal Governments, 2 members representing employees and 2 members representing employers and a Chief Executive Officer. However, in a surprising twist, the Senate’s OHS Coalition has passed amendments guaranteeing the ACTU and ACCI three members each on SWA.

Ms. Gillard called on the Opposition to withdraw their support for the amendments, which were designed to curtail State Labor Government power in SWA and derail the Occupational Health and Safety Harmonisation process. Watch this space...

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