

AUSTRALIAN LABOUR LAW ASSOCIATION

NSW CHAPTER

NOTES OF MEETING OF THE SYDNEY FORUM, 18 OCTOBER 2006

- Venue:** Minter Ellison Rooms, University of Sydney Law School
- Time Commenced:** 5.15pm
- Attendees:** Professor Ron McCallum, Peter Punch, Mick Sheils, Joellen Riley, Ron Baragry, David Wedgwood, Michael Rawling, Clive Thompson, David Bliss and Jim Nolan
- Apologies:** Brian Williamson, Joe Catanzariti and Paul Murphy
- Chairing:** Professor Ron McCallum

The meeting opened at approximately 5.15pm and closed at about 6.05pm, followed by refreshments and informal discussion amongst those that could stay on.

Jim Nolan presented a report on some recent case law developments in of the Australian Industrial Relations Commission namely:-

- CEPU –v- BP (Commissioner Thatcher); 16 October 2006; (Print PR974352) – concerning Prohibited Content and “Employee Representatives”;
- CFMEU –v- Ulan Coal Mines Limited (Vice President Lawler), 13 October 2006 (Print PR974347) – concerning whether a union was “Genuinely trying to reach agreement” and claims for prohibited content in a common law deed or side agreement;
- Kieselbach –v- Amity Group Limited (Deputy President Hamilton), 9 October 2006 (Print PR973864) – need for employer to produce evidence if relying on the “Genuine Operational Reasons” exemptions from unfair dismissal claims.

Clive Thompson then presented a detailed analysis of the alternative dispute resolution provisions in the WorkChoices legislation, including a discussion as to what he saw as the legal and policy deficiencies in the model. Clive’s central thesis was that an outstanding opportunity to encourage alternative dispute resolution in the industrial relations field had been lost due to conceptual and drafting deficiencies, and the failure to have an infrastructure set up to take advantage of the alternative dispute resolution opportunities under the legislation once it commenced.

Members present engaged in a discussion about the difficulties so obviously apparent in relation to the alternative dispute resolution provisions under WorkChoices, including the removal of the AIRC’s power to arbitrate and the failure to have a proper accreditation system in place for providers and the apparent agenda to eradicate compulsory

processes that could result in the imposition of an outcome on parties, particularly employers.

At the conclusion of the meeting the Chair thanked Clive for his contribution and discussion took place on the date of the next meeting and the venue. It was tentatively agreed that the next and final meeting of the forum for 2006 would be conducted on Tuesday, 5 December, at a venue to be determined. It was noted that Susan Price of Bartier Perry had offered to make her firm's Boardroom available for that meeting. Peter Punch would follow up with Susan in relation to arrangements for the next meeting.

END OF NOTES