

July 2007

**Breakfast 11 July - Industrial Relations and the Future?, Ms Julia Gillard MP**

On 11 July 2007, ClarkeKann hosted a breakfast on *Industrial Relations and the Future?*, with Ms Julia Gillard, MP, Deputy Leader of the Opposition, Shadow Minister for Employment & Industrial Relations, Shadow Minister for Social Inclusion as the keynote speaker. The breakfast was well attended with over 100 clients and colleagues.

Lisa Honeychurch, Partner, Employment & Industrial Relations introduced the breakfast and spoke on the "ever-changing" and "dynamic" industrial relations landscape in Australia.



From left, John Toigo (Managing Partner), Julia Gillard MP, Lisa Honeychurch (Partner)

In light of the ever changing landscape of industrial relations and the uncertainty of the future of industrial relations, the breakfast was held to give the clients and colleagues more access to information about the Opposition's policy platform and the implications for employers should that party form government.

Ms Gillard addressed some of the key questions of business including the basis of Labor's concern with AWAs now that the Government has implemented the 'fairness test', and why Labor would do away completely with AWA's rather than simply re-introducing the no-disadvantage test? Whether Labor intends to keep an Award Safety net and what will be the main focus of the new body "Fair Work Australia"? Also how Labor sees the future of the Queensland State Industrial Relations system under a Federal Labor government (if elected), and how a Labor Government would deal with the issue of a national system? Ms Gillard also addressed questions from the floor and outlined Labor's policy on Industrial Relations, *Forward with Fairness*.

## Recent Restraint of Trade Case

A real estate agent has been successfully restrained from acting for customers of the company where he previously worked ('the Agency') while being located only a few doors down from the Agency's office (*Kazzi v Raptime Pty Ltd (2006) NSWSC 1261*).

The real estate agent entered into a service agreement with the Agency. The agreement contained a restraint of trade clause which specified that the agent was not to consult with or advise any person who had been a customer of the Agency during a certain period of time, for a period of 12 months from the agreement's termination date

The agent's employment was terminated when the Agency was sold, and the agent proceeded to establish his own business a few doors down from the Agency's premises taking with him a number of the Agency's customers.

The Agency was granted an interim injunction against the agent in the NSW Supreme Court which restrained him from breaching the restraint of trade clause for the period of 12 months. Factors the court considered in granting the injunction included:

- (a) That the injunction would not cause the agent hardship or substantial inconvenience;
- (b) That the interests of the purchaser may be prejudiced if the injunction was not granted;
- (c) That the value of the Agency's rent roll would be diminished or was being threatened; and
- (d) That in these circumstances, damages was not considered to be an adequate remedy.

### HOW DOES THIS AFFECT YOU?

- The inclusion of a restraint of trade clause in an employment agreement should be carefully considered, especially when the employee is a senior employee.
- A restraint of trade clause will be enforceable where the employer is able to show that:
  - (a) it has a legitimate business interest to protect; and
  - (b) the restraint goes no further than what is reasonably necessary to protect that interest.
- Restraint of trade clauses must be specifically tailored to the employer's business taking into account the geographical location, the duration of the restraint and the restricted activities of the individual employee.
- Well-drafted restraint of trade clauses can be an effective tool in protecting your business's interests.



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