

# DISADVANTAGED EMPLOYEES AND AUSTRALIAN WORKPLACE AGREEMENTS

It is well known that many employees in both the private and public sectors are being offered Australian Workplace Agreements (AWAs) to either replace their Award or Certified Agreement or as a condition of commencing employment and that many others are already on such agreements. Where can an employee, particularly a disadvantaged employee without access to a private lawyer, turn to obtain free, confidential and independent legal advice about substantive and procedural rights?

Former Territory lawyer (and now solicitor with the Roma Mitchell Community Legal Centre Inc. in South Australia), Andrew Jones, has been employed by the Centre (with funding provided by the Office of the Employment Advocate) to give legal advice and assistance to disadvantaged people who are involved with AWAs in South Australia and the Territory. He spoke to *Balance* about some of the common concerns and problems he encounters.

"Under the Commonwealth Workplace Relations Act the Employment Advocate has a duty to look after the interests of disadvantaged employees involved with AWAs. Such employees include Aboriginal people, young people, women, Non English Speaking Background, people with disabilities and others. Unfortunately, many of the Centre's clients who have been offered AWAs, even those not usually considered as disadvantaged, feel quite powerless when offered these agreements," said Mr Jones.

Over the past decade there has been a general movement away from the independent umpire of the Australian Industrial Relations Commission to workplace negotiated agreements and more recently to individually negotiated AWAs. Employees are under increasing pressure to sign AWAs, or have already signed them, without understanding the full implications of the documents before them.

"The Workplace Relations Act is very complex," said Mr Jones. "It can take an industrial lawyer hours to assess. Once an agreement is signed and registered the parties are bound for three years at least in most cases. It is important to assess each

clause and the agreement as a whole against current working conditions and to be sure that the agreement is what each of the parties really intends.

"There are some protections built into the registration process and whether an employee negotiates an AWA that is beneficial or disadvantageous depends to a large extent on how informed they are, how prepared they are and most importantly how much bargaining power they have with their employer. Unfortunately, many of the Centre's clients have little or no leverage in negotiations," said Mr Jones.

"If employees had an unrestricted opportunity to look at an Agreement and take advice there would be less risk of misunderstanding, but they don't — there are time limits under the Act," said Mr Jones. New employees (which can include those who are paid out and reengaged with minimal change of duties) have a minimum of five days to consider the Agreement. It is quite lawful to make signing the AWA a condition of engagement. AWAs replace any Award terms during their operation unless the terms of the AWA specifically incorporate an Award.

Existing employees must be allowed a minimum of fourteen days to examine any agreement and are under no obligation to sign it. The Act provides penalties for

employers who coerce their employees into signing these agreements. "Unfortunately, some employees are still bluntly told 'sign this AWA or you haven't got a job' and of course pressure to sign can be indirect," said Mr Jones.

"It is often difficult for employees to identify where to get the help they need to understand their Agreement. There has been a perception amongst employees that unions are reluctant to get involved in the process as they are opposed to individual agreements. If an employee can not obtain other assistance they can call the Employment Law Service and, if eligible, book a half hour telephone appointment. Employees can call from anywhere in the Territory and, if appropriate, they can send down their Agreement and we will have a look at it," said Mr Jones.

The Centre is encouraging Darwin law firms to make referrals in appropriate cases. The Centre would also like to hear from any Darwin law firms, private practitioners or IR consultants who are prepared to take Industrial Matters on spec or at a reduced fee structure.

Contact the Roma Mitchell Community Legal Centre Inc. on (08) 8362 1199. The Employment Law Service is available on 1300 131 540 for the cost of a local call.

## MEDICO-LEGAL NEUROLOGY

**Dr Geoffrey Boyce, Consultant Neurologist, wishes to advise that he is resuming regular visits to Darwin. He will be consulting at the Darwin Private Hospital every two months.**

Over the last year Dr Boyce has travelled to the United States on several occasions and undergone 50 hours of special training in the area of medico-legal assessment to fulfil requirements for Fellowship of the American Academy of Disability Evaluating Physicians. This Academy is largely set up to oversee the publication *The American Medical Association's Guide to the Assessment of Permanent Impairment*.

Over the last two years Dr Boyce has produced a medico-legal neurology newsletter. Copies of these are available to interested solicitors.

Dr Boyce is an Associate Member both of the Australian Plaintiff Lawyers Association and the Australian Insurance Law Association. He has experience in examining medico-legal clients both from a plaintiff and defence point of view. He also has extensive experience in WorkCover issues, Veterans Affairs and military matters. Dr Boyce is an ex-serviceman and qualified pilot.

**Appointments should be made by calling 1800 816596.**