



## Working for You

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### THE AEIR & LABOR'S NEW IR REGIME

For a few years now I have been an executive member of the *Australian Institute of Employment Rights*.

The AIER is an independent group of industrial relations professionals, including union and employer representatives, lawyers and academics. Our aim is to encourage the creation and protection of workplace rights to create a system fair to employees and employers.

The AIER's *Charter of Employment Rights* ([www.aierights.com.au](http://www.aierights.com.au)) is our attempt to provide the foundation for a new workplace relations system by identifying the fundamental values and processes that a fair and effective system must be based on.

We have been actively responding to the proposals being floated by the federal government about its proposed new industrial relations regime. Our position is one of principle – how does any proposal stack up against the foundation of basic standards in the *Charter of Employment Rights*?

As the federal government begins to consult on its post WorkChoices legislation, I think it's time for all of us to go back to the Charter and think about those fundamental elements of our system. If we don't get it right now, when will we?

**Sean Reidy**  
Partner

### WHEN IS NOTICE NOT ENOUGH?

Every other day we hear about intimidation and threats to workers when they decide it's time to leave their job.

The worst case that we have come across in a long time concerned the extraordinary lengths which Griffith University took to punish an NTEU member for moving to a new position at another university.

Michelle Leimner got offered a promotion from Griffith University to Southern Cross University and gave her managers at Griffith University about two months notice of her intending resignation. The University refused to negotiate a compromise and insisted on her complying with the University's EBA and staying for a full six months of notice.

They threatened to withhold pay, prosecute her and take court action to prevent her working anywhere else. She continued to try to negotiate with them, but to no avail. Eventually the University made a claim in the Federal Magistrates Court for a penalty to be imposed on her for breaching its EBA by leaving without giving full notice.

The maximum penalty against an employee for an EBA breach is \$6,600. Griffith University asked for a penalty for \$4,000. Asking for a penalty of that amount was extraordinary in the circumstances.

We represented Michelle in the court proceedings. We could find no

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other prosecution like this of an employee for breaching an award or agreement in the hundred year history of the federal and state award systems.

Griffith University effectively were asking the court to impose almost the maximum fine on a first time offender in her first permanent position, in relation to the first ever offence of this kind ever prosecuted against an employee in Australia.

As a result of our representations, the Court quite rightly rejected the University's characterisation of her actions and its submissions on the appropriate penalty.

The magistrate criticised the University for bringing the action at all when it could have been sensibly settled at little expense months beforehand. Instead of their proposed \$4,000 fine, he pointedly made her pay only exactly what she had originally proposed to settle it for - \$500.

This extraordinary prosecution is another in the list of increasingly aggressive actions taken by employers to intimidate former employees, presumably in an attempt to teach everybody else a lesson.

Last year we successfully defended a bizarre application in the Supreme Court by an employer to restrain an AMWU member from working for a competitor because the employer claimed he was entitled to refuse her resignation and prevent her working elsewhere.

On both these occasions we were able to assist union members to successfully resist the unfair legal action taken by their former employers. Unfortunately, the trend in most cases that are coming before the courts recently is in the opposite direction, as employers become more and more willing to run to the courts to prevent competition and control their former and remaining employees.

If your members are threatened in any way by their employer when they decide to move on, make sure they are properly aware of their rights and get the legal support they deserve.

## **YOU HAVE TO WONDER SOMETIMES ...**

I am not a great one for conspiracy theories, but sometimes the coincidences are just a little too neat.

After we raised the issue in two newsletters in a row of the tactics of certain state public sector agencies trying to claw back alleged overpaid wages, we were pleasantly surprised to hear that the agency that had originally inspired us to look into the issue had announced a review of its policy for retrieval of overpayments.

And what do you know – they have started to address nearly all the issues we raised.

It will be interesting to see whether the leopard can change its spots.

## **NEW ROCKHAMPTON OFFICE**

For those of you who haven't heard, Carne Reidy Herd have recently opened an office in Rockhampton, staffed initially by Kirinya Khamson who many of you already know.

Kirinya is available to provide legal advice to union members on any legal problems they face, including all employment, criminal or family law matters.

She says her door is always open – so feel free to put her to the test next time you are in downtown Rockhampton.

**David Quinn**  
**Associate**

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