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It's on again this year

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Put the date in your diary now

Friday 9th December 2005

7.00 pm

Sofitel Wentworth Hotel

Phillip St, Sydney

**For further information
and tickets sales**

Contact Ross 02 9960 0046 or
email: ross@avrra.com.au



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Rental Awards 2005

Judging almost complete

As this edition of the newsletter goes to press, I can report the Mystery Shopper company conducting the Mystery shopper program to determine the Rental store awards for this year has reported almost all of the two mystery shopper calls had been completed to the stores that entered. The level of entries by stores this year is the highest it has been for years and the results will most certainly be separated by mere fractions of a percentage.

Rental Awards winners will be determined by the highest average score from the two Mystery Shopper visits and awarded on a state by state basis, while the overall National winner will be that store with the highest average score from all entries.

The Group Head office Marketing award also just recently closed and again all entries are very well presented with lots of detail for the Judges to consider. This is always a hotly contested category with many reputations and pride at stake.

As we wait for the results to be announced at the Awards night, Friday 9th December 2005, I would like wish all those members who entered, the very best of luck and of course may the best store win.

The awards night this year is shaping up to be bigger and better than ever. The change of venue to the newly refurbished Ballroom at the Sofitel Wentworth Hotel, Phillip St, Sydney will only but add to the excitement and glamour of the night. The Grand Ballroom is just that it's Grand.

The entertainment, the food, the wine and the chance to mix with everybody involved in this great industry of ours makes it a night not to be missed.

With only 600 tickets available and believe me that are selling fast, it will be a sell out like last year's event.

So do not wait any longer book now by contacting Ross Walden at the AVRRA office on 02 9960 -0046 or email ross@avrra.com.au.

AUSTRALIAN DVD & VIDEO INDUSTRY AWARDS 2005

You are invited to the biggest industry event of the year...

Hosted by the

Australian Video Rental Retailers Association &
Australian Visual Software Distributors Association

Sponsored by

AAV Regency

Sofitel Wentworth Hotel
Friday 9th December 2005
Phillip Street Sydney

This Black Tie Event will commence with Drinks at 7pm followed
by Dinner and Awards Presentation

For tickets please contact Ross Walden at AVRRA on
Tel: (02) 9960 0046 ross@avrra.com.au Cost: \$175 p/h (incl GST)

How the battle was won: Gadens lawyer Nathan Mattock summaries the Stevens v Sony Case

At 10am on 6 October 2005, Mr Eddie Stevens and the writer of this piece attended the High Court of Australia to collect the much anticipated judgment on Stevens' four-year battle against the multinational corporation Sony.

After losing the first appeal in the Federal Court, Mr Stevens had nowhere else to turn but the High Court. Fortunately for Mr Stevens, the High Court agreed with him. All six judges ruled that Sony's Playstation did not warrant the protection of the Copyright Act which Sony had contended. Mr Stevens has been heralded around the world as a champion of consumer rights.

For Sony, it's game over. Mr Stevens is not liable to them for damages or costs as a result of any breach of the Copyright Act.

Sony's Playstation - the so-called anti-piracy device

Sony's Playstation games contain a large amount of data which, when loaded into a Playstation console, enable a user to play a computer game. Within this large amount of data is an extremely small piece of information known as an "access code". Without this access code the game cannot be played in a Playstation console.

An important feature of the access code is that it only permits the owner of the game to play the game in a designated console. Through this Sony has been able to divide the world into different regions, vary its prices in each region and only allow a consumer to play a game from his or her region on his or her regional console. This means a consumer in Australia cannot buy a legitimate game from the USA or Japan and play that game on an Australian console.

The access code cannot be copied by conventional means. The remainder of the disc (which stores the computer game) data can be copied, but not the access code.

It is this access code and its interaction with the console which Sony argued was an anti-piracy device, designed in its ordinary course of operation to prevent or inhibit the infringement of copyright.

A significant aspect of Sony's argument (which ultimately caused it to fail) was that the access code did not prevent a person from illegally copying a Playstation game. The access code only prevented the person from playing the illegal copy of the game in a Playstation console.

Mr Stevens' chip

To get around Sony's access code, Mr Stevens installed a computer chip or "mod chip" into Playstation consoles. This chip enabled a person to play a game purchased from a different region in his or her console. The chip, as an unfortunate by-product, also enabled a person to play a pirated game in a console.

The case brought by Sony – trapping Mr Stevens

In 2001, Sony sent lawyers from a Sydney law firm to Mr Stevens' rented house to purchase mod chips from Mr Stevens. Using that information, Sony commenced Federal Court proceedings against Mr Stevens claiming that the sale of mod chips by Mr Stevens constituted a breach of provisions of the Copyright Act.

Sony's case can be split into three parts. Sony's arguments are as follows.

The access code used by Sony constituted a "technological protection measure" as defined in the Copyright Act and the mod chip sold by Mr Stevens was a "circumvention device" which was illegal.

The playing by a consumer of a game constituted an illegal copy of the game into RAM, which Sony had the right to control by the use of the access code. The access code therefore is a "technological protection measure" which prevents the making of a copy of a film embodied in the RAM.

A computer game is also a cinematograph film, of which a substantial part is copied into RAM when played. The Copyright Act treats the infringement of copyright in cinematograph films differently to that of computer games.

Mr Stevens' defence to these three claims are:

Sony's access code was not a "technological protection measure" because it did not prevent or inhibit the making of an illegal copy of a game. Sony's access code only prevented the playing of the illegal game.

By playing a game, a user does not make an illegal copy of the game into the RAM of the console because the game could not be "reproduced". This is a requirement of the Copyright Act.

Sony did not prove that a "substantial" part of the film was copied into RAM (assuming that a game is also a film).

The High Court: 6 – 0, Stevens wins

The High Court delivered its unanimous judgment in favour of Mr Stevens.

Technological Protection Measure

The judgment deals with the technical aspects of Sony's access code, which Sony argued was a "technological protection measure". The important aspect of the definition of a

technological protection measure, which the High Court considered in this case, was whether the device used by Sony "prevented or inhibited the infringement of copyright in a work".

The High Court held that Sony's device did not prevent or inhibit the infringement of copyright. Sony's device only prevented or inhibited the playing of an infringing copy of a game. The distinction lies in the fact that a person can illegally copy a Playstation game without any impediment. This is not like DVDs which are encrypted and encoded so that a copy of the movie cannot be made. The Sony Playstation access code only prevented the person playing the illegal copy, once made. The access code did not prevent piracy.

The High Court also said that if they adopted Sony's arguments it would produce a result where a lawful use of the mod chip; that is, playing a game legitimately purchased in another country would be unlawful. Sony's attempt to segment the market using its access code and outlawing "mod chips" was struck down by the High Court. A consumer who buys a game in the USA or Japan has a legitimate right to play that game on his or her Australian console and modify his or her machine to enable him or her to do so.

A salient aspect of the legislation which persuaded the court to reject Sony's argument was that criminal sanctions apply to the selling of devices (circumvention devices) which "get around" technological protection measures. Given the severity of the outcome the High Court used "caution in accepting any loose, albeit 'practical construction'" propounded by Sony.

Sony argued that in practice the access code prevents or inhibits infringement because if a person is unable to play the pirated game the infringement of copyright is impractical. The High Court disagreed.

To add a little spice to the reasons of the court, Justice Kirby also noted that there may be some constitutional limits which may constrain the government from enacting amendments to the Copyright Act to keep copyright owners, like Sony, happy following this judgment.

Copying into RAM

The High Court rejected Sony's argument that by playing a Playstation game the person using the game is making a copy of the game in RAM, which is an illegal copy. The definition of what constitutes an illegal copy in the Copyright Act hinges on the words "material form". The important aspect of this definition is that in order for an illegal copy to be made in RAM the work must be able to be "reproduced" from the copy.

In the DVD case (AVRA v Warner – in which Gadens Lawyers also acted) and in the

Stevens case, the courts held that a copy into RAM was temporary, ephemeral and a copy cannot be made from the RAM without the use of additional hardware or software to extract the copy. For those reasons Sony failed. The court held that a copy made of a game in the RAM is not an illegal copy.

Copying of a cinematograph film

Sony also argued that the playing of a game constituted a copy of a substantial part of a cinematograph film. Interestingly, and it looks like the next test case in the games area, the High Court expressed some doubt (but did not decide) about whether a computer game was also a film under the Copyright Act. In earlier cases in the Federal Court, the court held that a computer game was also a film. This seems strange to the lay person, and strange to many lawyers as well!

In short, the High Court agreed with Mr Stevens that in order for Sony to succeed a "substantial part" of the film must be reproduced in RAM. Unfortunately for Sony, it failed to prove that case.

Of interest is Justice McHugh's reasons for rejecting the argument that a computer game when played in the RAM is a "cinematograph film". If any new case were to run before the lower courts in Australia, a very strong case could be put for following Justice McHugh's reasons and rejecting the argument that a computer game is also a "cinematograph film".

Stevens to celebrate

The victory by Mr Stevens has been heralded around the world. Tributes to Mr Stevens' tenacity, guts and will to fight a large multinational company have flowed thick and fast. Mr Stevens deserves all the credit that has come his way. He worked hard, never gave up, and as he said after the High Court judgment was handed down, "If you believe something is right, why would you not fight it?".

Prime Minister Issues Statement on Fundamental Changes to Work Place Relations System [Workchoices]

Introduction

On 9 October 2005 the Government issued an explanatory statement, "WorkChoices", which provides further detail of the fundamental changes it proposes to make to the Workplace Relations System in Australia.

It is expected that the Government will introduce a bill into federal parliament within the next few weeks. The Prime Minister has expressed his intention to have the new laws

operational by early 2006.

The clear emphasis of the package is on direct agreement making between employers and employees and a reduction in the role of industrial tribunals.

Interestingly, the package contains extensive transitional arrangements which will apply for a number of years. The transitional provisions are if anything the most important part of the "WorkChoices" package as these provisions will determine how the system will operate in the short to medium term.

The changes which have now been announced create a number of opportunities and issues for the whole range of employers. Employers will need to consider their existing industrial arrangements in light of the anticipated effect of the transitional provisions as well as the long-term changes to the system. While the "WorkChoices" Package has only just been released employers should give consideration to what strategic steps should now be taken to take advantage of the enhanced flexibility offered by the changes.

Executive Summary

Under the changes there will be very significant limitations on the ability of employees to bring unfair dismissal claims. Employers who employ 100 or fewer employees will be exempt from unfair dismissal claims.

All Constitutional Corporations will be drawn into a single federal industrial relations system.

A new federal safety net for wages, hours of work, annual leave, personal and carers' leave, compassionate leave and parental leave will be established.

The WorkChoices package focuses on enterprise-based bargaining and agreement-making by direct parties to the employment relationship.

Industrial Action will be limited strictly to protected industrial action.

There will be enhanced powers to stop industrial action, including by way of damages and fines, particularly in respect of the building and construction industry.

Secret ballots will now be required before protected industrial action may be taken.

The changes further tighten union right of entry which will apply only under federal law and the federal law will cover the field.

There will be comprehensive transitional arrangements for employers and employees as part of the new WorkChoices system. Two separate transitional systems will apply for constitutional and non-constitutional corporations.

1. Unfair Dismissal

Employers with up to and including 100 employees will be exempted from the unfair dismissal regime.

Employers who have more than 100 employees may still be subject to unfair dismissal claims, but only by employees who have been employed for six months or more. Seasonal employees will also be unable to bring unfair dismissal claims.

The number of employees is calculated by counting the number of full-time and part-time employees, as well as any casual employee engaged by the employer on a regular and systematic basis for at least 12 months at the time of the dismissal.

In an important addition to Government's original proposals, collective agreements will be prohibited from providing for an unfair dismissal entitlement.

State unfair dismissal laws that provide for remedies following the termination of employment will be overridden by the new federal laws, including state unfair contracts jurisdictions, as exists, for instance in NSW and Queensland.

No unfair dismissal claim is able to be made where operational requirements prompted the termination (for instance, in the case of genuine redundancies). This is even the case with employers with more than 100 employees.

Where an employee argues that he or she was unfairly dismissed through a forced resignation (a "constructive dismissal"), that employee will now bear the onus of proving that the resignation was not truly voluntary.

While it is too early to tell what will be the effect of the limitation of the right to bring unfair dismissal claims, it seems likely that employees will bring more discrimination claims in available tribunals and courts.

2. Unlawful Termination

Employees of constitutional corporations may still seek remedies for "unlawful termination" where the termination was made on the basis of a prohibited reason, such as temporary absence from work due to illness or injury, trade union membership or participation, absence from work during parental leave and discrimination-based grounds, including sex, race, religious or political belief, pregnancy, age or sexual preference.

Such unlawful termination may now be pursued in one jurisdiction only – for instance, an employee could not bring an unlawful termination case in the federal AIRC as well as a discrimination-based complaint in a State Anti-Discrimination Tribunal.

Up to \$4,000 in federal assistance may be granted to an employee to seek legal advice relating to an alleged unlawful termination, provided that the employee can demonstrate

financial need and the AIRC has both exhausted conciliation options and determined that the claim has merit.

3. National IR System

All "constitutional corporations" (that is, trading and financial corporations) will be drawn into a single federal system. The new national system will immediately regulate all existing federal and state awards and agreements. All state awards and agreements will become subject to special federal transitional arrangements.

Corporations which are not "constitutional corporations" may remain in the old system for a five year transitional period.

States may choose in future to refer their industrial powers to the Commonwealth.

A new statutory body, the Australian Fair Pay Commission (AFPC) will set minimum wage levels and classification rates of pay, a role which under the old system was performed by the AIRC.

Awards will be further simplified following a review and recommendations to the Government by a new body called the Award Review Taskforce.

The Office of the Employment Advocate will be responsible for receiving and registration of Agreements and for otherwise assisting in the agreement making process.

The lesser known Office of Workplace Services will have an expanded role and will ensure that the requirements imposed on both employers and employees by the new agreement making process are satisfied.

4. Minimum Wages and Conditions

The new safety net for wages and conditions will be the Fair Pay and Conditions Standard (FPCS), in conjunction with applicable Award provisions.

The FPCS incorporates five components:

a. Wages. Initially wages levels are set at current award levels which will be adjusted periodically by the AFPC. Various minimum wage levels will be set as part of this function, including:

- minimum award classification rates of pay;
- minimum wages for junior, trainees and disabled employees;
- minimum wages of piece workers;
- casual employees loadings;
- a federal minimum wage.

In setting these rates, the AFPC will be required to consider economic matters, including overall competitiveness across the economy and the capacity of unemployed and low paid employees to obtain employment or to remain in employment.

b. Maximum Ordinary Hours of Work: This standard will be set at 38 hours a week; however, this figure may be reached by averaging an employee's hours over an entire year. Hours worked in addition to 38 must be paid at least at the relevant minimum standard and will be subject to any applicable award conditions in relation to overtime and/or penalty rates. Employees may be required to work reasonable additional hours.

c. Annual Leave: will be 4 weeks per year. Some shift workers will be entitled to 5 weeks leave. An employee may request in writing to cash out up to two weeks' annual leave, provided that the agreement or AWA explicitly provides for this option. An employer must not coerce an employee into doing so.

d. Personal and Carers' Leave: Employees will be entitled to 10 days' paid personal and/or carers' leave per year. The entitlement is cumulative. In addition, there is provision for two days' unpaid leave for an unforeseen emergency, provided that all personal leave entitlement has been exhausted, or where the employee is a casual. An additional entitlement to "compassionate leave" covers circumstances which fall outside personal/carer's leave and which may be used, for instance, to attend a funeral.

e. Parental Leave: Up to 52 weeks' unpaid parental leave may be taken.

Award conditions continue to be of relevance where an employee is covered by an Award and the Award entitlements on any of these minimum conditions are more generous than the FPCS. In such a situation, the Award provisions will prevail.

It is envisaged that the AFPC will periodically vary the minimum standards enshrined in the FPCS and Agreements will need to comply with this standard as it applies through the life of the Agreement. As Agreements may be made for up to 5 years, the changing nature of the FPCS will be of considerable relevance.

However, the FPCS will not apply to Agreements made under the old system or to State Agreements which are incorporated into the new unitary national system.

Various matters which extend beyond minimum conditions, and which are addressed in existing awards, will be preserved under the new system. Thus current Award provisions which deal with long service leave, jury service, notice of termination and superannuation will continue to apply for present and future employees who are employed subject to an Award. However, new Awards will not be permitted to deal with these preserved matters.

5. Awards

The following matters remain allowable award matters:

Ordinary time hours of work and the times when they are performed, rest breaks, notice periods and variations to working hours;

Incentive-based payments and bonuses;

Annual leave loadings;

Public holidays;

Ceremonial Leave;

Allowances;

Loadings for working overtime or shift work;

Penalty rates;

Redundancy pay for employers with 15 or more employees;

Stand-down provisions;

Dispute settling procedures;

Types of employment – e.g. full-time, casual, shift work;

Conditions for Outworkers.

Matters which are no longer allowable award matters are:

Skill-based career paths;

Restrictions on apprenticeships/traineeships;

Enterprise Flexibility provisions;

Independent Contractors;

Labour hire workers;

Union picnic days;

Tallies;

Trade Union Training Leave.

New federal awards will no longer be able to include provisions in relation to long service leave, superannuation, jury service and notice of termination; however these matters in current awards will continue to apply to existing and new employees covered by these awards.

6. Agreement Making

The focus of agreement making is centred on enterprise based bargaining and individual agreements. The purpose of the "WorkChoices" Package is to simplify and promote the agreement making process in the workplace in place of awards.

At present, federal collective agreements apply only after they have been certified by the AIRC. Under the new system, collective agreements and AWAs will have effect from the time they are lodged with the Office of the Employment Advocate.

New agreements may apply for 5 years and may be extended by agreement for another period of up to 5 years. However, there will be an exception for Greenfields agreements, which will have a nominal expiry date of 12 months.

Once an agreement has expired, any party

can terminate the agreement with 90 days' written notice lodged with the OEA.

Agreements must comply with the AFPC and must also contain a dispute resolution procedure. Where an agreement expires and is not replaced by a new agreement, the employment relationship will be governed by the FPCS (rather than any award).

Employers are solely responsible for lodging documents with the OEA with no input from unions, employees or employee representatives.

Employers are, however, subject to certain requirements under the new process:

A minimum of 7 days must be allowed for the employees to consider the collective agreement (or AWA).

The employer must not coerce employees into signing the proposed agreement (or AWA).

The employer must lodge a statutory declaration attesting that the requirements for the agreement making procedure have been satisfied.

The Office of Workplace Services may enforce penalties against anyone found to have engaged in false or misleading conduct, coercion or duress during the agreement making process.

Certain matters are prohibited from being dealt with by Agreements:

Prohibition of AWAs;

Restrictions on the use of independent contractors or on-hire arrangements;

Allowing industrial action during the term of an agreement;

Provision for trade union training leave, bargaining fees to trade unions or paid union meetings;

Provision that any future agreement must be a union collective agreement;

Mandatory union involvement in dispute resolution;

Provision of remedies for unfair dismissal;

Other matters prohibited by regulations or legislation.

Penalties of up to \$33,000 may apply where a party seeks to include prohibited content in an agreement or lodges an agreement containing prohibited content.

The following "protected Award matters" will continue to apply unless an agreement explicitly deals with these matters so as to either vary or exclude them:

public holidays;

rest breaks (including meal breaks);

incentive payments and bonuses;

annual leave loadings;

allowances;

penalty rates; and

shift/overtime loadings.

Agreements currently in force and made under the old system will continue to apply up until their nominal expiry date, but they cannot be extended or varied once the new regime takes effect.

Where an agreement made under the old system is terminated, the terms and conditions of employment will be based on the FPCS and the relevant Award. Old agreements may be terminated using the current rules for terminating agreements and may be replaced by an agreement made under the new system.

7. Industrial Action

Industrial action will be limited strictly to protected industrial action.

A secret ballot will be required before protected action may be taken.

Before protected industrial action may be taken, an order must be obtained from the AIRC. The AIRC must be satisfied of a number of matters, including that the proposed industrial action is not designed to advance claims to include prohibited matters in the agreement and that there is not element or pattern bargaining or other prohibited conduct. "Pattern bargaining" is defined by the WorkChoices package to occur where a person who is a negotiating party for two or more collective agreement seeks common wages in two or more agreements by engaging in a single course of conduct extending beyond a single business.

The Federal Minister acquires a new power to terminate a bargaining period in circumstances where the protected industrial action threatens personal safety, the health or welfare of the population or is likely to cause significant economic damage. The parties will have access to AIRC Workplace Determinations in these circumstances.

Employer acts, with the exception of lockouts, will not be regarded as industrial action under the new laws – for instance, the implementation of redundancies would be classified as employer industrial action.

The changes also provide for enhanced powers to stop industrial action including fines and damages, penalties which are particularly relevant for the Building and Construction industry. For example in respect of applications to stop or prevent industrial action (under s. 127) the AIRC will be required to issue an interim order if it has not determined the application within 48 hours.

8. Freedom of Association

New, more expansive Freedom of Association provisions will apply to any party. The provisions make it unlawful to coerce a person to join a union or resign from a union, to make false and misleading statements about union membership or to institute industrial action on the basis that a person is, or is not, a union member.

9. Right of Entry

The WorkChoices changes further limit union right of entry.

The requirements for the granting of an entry permit will be tightened to ensure that the recipient is a fit and proper person to hold a permit.

Union Right of Entry will apply only under Federal law and the Federal law will cover the field.

Where a person seeks entry under a State Occupational Health and Safety law, that person must also hold a federal permit.

The employer will be able to give reasonable directions as to what areas of the workplace may be accessed. Only the records of union members may be investigated in the absence of an AIRC order permitting the inspection of other records.

There will be no right to enter premises where the entire workforce is covered by AWAs and there is not right to inspect AWA documentation without consent.

Under the new changes Union Officials will be required to provide to the employer particulars of the breach that is sought to be investigated. No doubt there will be argument as to the level of detail of the alleged breach that the union official must specify in order to gain entry.

Entry permits can be suspended, limited or revoked.

10. Transmission of Business

Where a business is transmitted to a new owner, industrial instruments will also transmit to the new owner, but only for those employees who are transferred to the new business, and only for a maximum of 12 months.

11. Transitional Provisions

All employees of constitutional corporations who are at present within a state industrial relations system will move to the new federal regime. The terms of the former state awards and agreements will become enforceable under the new federal system as transitional agreements.

There are two separate sets of transitional arrangements, depending on whether an employer is a constitutional corporation, or a non-constitutional corporation:

Constitutional Corporations

Constitutional Corporations moving into the new federal system for the first time from the state system will have a maximum 3-year transitional period.

Here, existing wages and conditions in former state awards and agreements are protected. The current state agreements and awards become transitional federal agreements in the new federal system.

i. Former State Agreements

Former state agreements will keep their nominal expiry date and will continue to operate until terminated or replaced by a new agreement in the new federal system. They may be not varied or extended but may only be terminated and replaced.

If former state agreements provide for matters that are prohibited under the new system, those matters will be unenforceable. Former state agreements will not be required to comply with the FPCS.

Protected industrial action for a new agreement will not be permitted before the former state agreement's nominal expiry date, although employers and employees can reach and lodge a new agreement under the new federal system before the expiry date of the old state agreement.

Provided that organisations who were a party to the former state agreement register under the new federal regime, those organisations will retain their right to enforce the terms of the agreement.

ii. Former State Awards

The terms and conditions of the current state awards will not change unless the FPCS is more generous, in which case the FPCS standard will apply.

Parties will be able to negotiate a new federal agreement at any time during the transitional period, but where parties do not make a new agreement, they will move to an appropriate industry-based federal award. The Awards Review Taskforce will make recommendations on which federal award is the most appropriate in this circumstance and subsequently, the AIRC will decide which federal award should be applied.

Protected industrial action is permitted after the expiry date of the transitional agreement, provided that the requirements for taking protected industrial action under the new system are met. A new agreement may be lodged before the expiry of the transitional period.

Non-Constitutional Corporations

Non-Constitutional Corporations, such as unincorporated businesses, which are currently in the existing federal system (for

instance, by being a respondent to a federal award) will have a maximum transitional period of 5 years.

Here, existing federal awards and agreements will continue to apply for the five year period under the transitional conciliation and arbitration system.

During the transitional period, unincorporated businesses may enter into a state agreement or revert to the state system. However, if the parties cannot arrive at a state agreement, the parties may apply to the AIRC to be released from the federal system.

i. Current Federal Collective Agreements

Where a current federal collective agreement applies to a non-constitutional corporation, this agreement will become transitional under the new system. These transitional agreements will run for up to 5 years. At the end of this time, the agreements will cease to operate and any unincorporated business will automatically revert to the applicable state industrial relations system.

ii. Current Federal Awards

Where a current federal award applies to a non-constitutional corporation, that award becomes transitional under the new system. At the end of the transitional period, transitional awards will cease to operate and any unincorporated business will revert to the applicable state industrial relations system.

The AIRC will be able to make new awards for non-constitutional corporations during the transitional period and may vary wage rates and other monetary entitlements so that the awards remain relevant during the transitional period.

12. Conclusion

The "WorkChoices" package focuses on employers and employees making agreements directly between each other which are tailored to the specific requirements of the workplace. It is likely that many unincorporated businesses will incorporate to take advantage of the enhanced flexibility offered by the new federal system.

In line with this changing focus there is a much a more limited role for industrial tribunals in relation to dispute resolution and the setting of wages and conditions. The changes seek to limit industrial action to protected industrial action and reduce union rights of entry. The changes will also no doubt reduce the number of unfair dismissal claims which are brought and the costs associated with unmeritorious claims.

Employers should give consideration to what strategic steps are necessary to take advantage of the enhanced flexibility offered by the changes, especially in light of the Federal Government's intention to introduce these changes in early 2006.

Article written by Gadens
Lawyers 02 9931 4999



ASIA-WIDE MOVIE PIRACY CRACKDOWN

NETS 5.3 MILLION PIRATE DISCS, 577 ARRESTS

Law Enforcement Agencies Conduct 1,323 Raids to Reduce Street Vendor Presence and Boost Legitimate Sales

Hong Kong, Encino – Operation Heatwave, an Asia-wide anti-piracy enforcement initiative launched by the Motion Picture Association (MPA) on July 1, concluded August 31 having resulted in the seizure of 5.327 million pirated optical discs and the arrest of 577 motion picture pirates.

In 12 countries across the Asia-Pacific region, law enforcement agencies conducted 1,323 raids in an effort to crack down on the availability of illegally pirated movies in retail shops and markets and from street vendors during the important summer season.

The main targets of Operation Heatwave were piracy hot spots that had caused significant problems in the past and resisted previous enforcement efforts. The operation was aimed at protecting sales of cinema movie tickets and legitimate home video products such as DVDs, VCDs and VHS videotapes by reducing the availability of pirated optical discs.

Among the highlights of Operation Heatwave were:

Australia – In 21 raids, 140 DVD-R burners were seized and 30,345 pirated DVDs and CDs were seized.

China – One hundred sixty-three raids were conducted, resulting in the seizure of 2,312,491 illegal VCDs/CDs. In two raids alone, a total of 4.1 million counterfeit inlay cards were seized.

Hong Kong – Three hundred forty-eight raids were conducted and 87 pirates were arrested. Total seizures amounted to 373,896 illegal DVDs and VCDs as well as 126 DVD-R and CD-R burners.

India – In 66 raids, 65 people were arrested and 666,698 pirate optical discs were seized.

Malaysia – in 305 raids, 100 people were arrested and 1,334,678 pirate optical discs and nine vehicles were seized.

Thailand – In 268 raids, 164 suspected pirates were arrested and 185,934 illegal VCDs and DVDs were seized.

"This summer's Operation Heatwave and last December's Operation Eradicate together

yielded seizures of more than 11.2 million pirated DVDs, VCDs and CDs across the Asia-Pacific region," said Mike Ellis, Senior Vice President and Regional Director, Asia-Pacific for the Motion Picture Association. "Continued aggressive enforcement action throughout the year by law enforcement agencies and governments has had and will continue to have a significant impact on the availability of illegally pirated movies that damage sales of theater tickets and home video products."

Operation Heatwave focused on notorious piracy "black spots" in major cities in Australia, China, Hong Kong, India, Indonesia, Japan, Malaysia, New Zealand, the Philippines, Singapore, South Korea, Taiwan and Thailand.

Piracy in Asia

The MPA estimates that its member companies lose in excess of US\$896 million in potential revenue annually in the Asia-Pacific region alone. In 2004, the MPA operations in the Asia-Pacific region investigated more than 25,500 cases of piracy and assisted law enforcement officials in conducting nearly 12,000 raids. These activities resulted in the seizure of approximately 49,000,000 illegal optical discs, and the initiation of more than 8,000 legal actions.

Local Movie Pirate Raided in Normanton

On Wednesday, August 17 Normanton Crimes Investigations Branch (CIB) raided the home of a 31-year-old woman in Normanton after receiving reports of movie piracy from locals in the area. During the raid police seized a computer, 127 optical discs believed to have been used as masters for burning pirated copies, and other burning material including DVD covers and DVD labels. The Australian Federation Against Copyright Theft (AFACT) estimates the burning operation was capable of producing as many as 15,000 pirated discs per year, generating illegal revenue of up to \$150,000.

"Movie piracy and copyright theft are problems throughout Australia, in big cities, small towns and everywhere in between," said Adrienne Pecotic, Executive Director of AFACT. "The success of this raid will make a dent in the supply of pirated product in this area, and we commend the Normanton CIB, led by Detective Ryan Hanlon, for their swift action."

Local Man Guilty of Running Large-Scale Commercial Movie Piracy Operation

Liverpool, Sydney – Osama Dannoun, a 24 year-old man from Bankstown, Sydney, was given a three-year good behaviour bond and fined \$11,900 plus \$195 in court costs after

Highway Patrol nets DVD haul

POLICE discovered 2000 allegedly pirated DVDs after stopping a driver in Sydney early yesterday.

A car was pulled over on King Georges Road in Wiley Park by Ashfield Highway Patrol officers, and DVDs in assorted titles were found.

The 24-year-old man was charged with receiving a breath test and speeding. He was given conditional bail and will appear at Sutherland Local Court on November 1.

An investigation into the alleged copyright offences had begun, police said.

Page 25, The Sun Herald, Sunday 2nd October 2005

pleading guilty to 22 copyright offences, one trade mark offence, one classification offence, and one goods in custody offence.

The charges were laid against Dannoun by Green Valley Police following a raid on Preston Trash and Treasure Market in May this year. During the raid, officers and Australian Federation Against Copyright Theft (AFACT) investigators seized 600 pirated DVDs with an estimated street value of \$6,000. Many of the titles being offered for sale had not at the time been released on DVD format anywhere in the world.

During proceedings Magistrate Shepherd noted that Dannoun was "obviously operating a large-scale commercial operation".

"Intellectual property theft is theft, pure and simple, and the more clearly the courts communicate that these crimes damage our society, and the more significant the penalty, the more likely we are to stop the crime infiltrating our suburbs and costing honest Australians their jobs," said Adrienne Pecotic, Executive Director of AFACT.

Large Pirate DVD Lab Raided in Western Sydney

Blacktown, Sydney – On Thursday October 13, Blacktown Police with the assistance of the Australian Federation Against Copyright Theft (AFACT) raided the home of a husband and wife in Blacktown in one of the largest

Seize! Destroy!

By **Kyle Stevens**

POLICE have warned would-be profiteers about hiring or selling pirated DVDs.

Green Valley officers have joined units from the Australian Federal Police and the Australian Federation Against Copyright Theft to smash movie piracy in a continuing operation.

The joint operation has so

far seized 150,000 pirated DVDs, videos and CDs with an estimated value of \$1.5 million which have now been destroyed.

Green Valley police have arrested 20 people for 400 offences during raids on markets at Prestons which led to the recovery of 5000 pirated goods.

They are continuing to crack down on copyright

breaches.

"Our aim is to seize, destroy and prosecute," said Green Valley police Chief Inspector Brett Daley.

"First and foremost, it's illegal and in breach of the Copyright Act.

"Secondly, law enforcement agencies are targeting these people who are profiting from average citizens.

Page 1, South Western Rural Advertiser, Wednesday 28th September 2005

Report Piracy!

Go to the AVRRRA Website
www.avrra.com.au

raids on a DVD piracy lab in NSW this year. Seizures from the raid included 20 DVD burners, two PCs, two laser printers, one inkjet printer, 550 blank DVD-Rs, approximately 2,500 pirate movie DVD-Rs, approximately 300 pirate CD-Rs containing movies and computer games, and approximately 800 DVD slicks infringing various film titles.

Also seized were lists of approximately 1,000 pirated movie titles the husband and wife team were offering to their customers. Titles on that list included *Stealth* and *The Dukes of Hazzard*, which are still screening in Australian cinemas and have not yet been released on DVD format anywhere in the world. Also listed were approximately 200 pornographic film titles, which were selling for \$20 each.

The raid was a result of investigations by AFACT and Blacktown Police following a Crimestoppers report that indicated the residence was being used for movie piracy. AFACT estimates the lab to have been capable of producing 299,520 DVD-Rs per year with a street value of over \$2.99 million dollars.

"Every illegal movie piracy lab shut down is another win for the honest, legitimate businesses in Australia being threatened by this crime on a daily basis," said Adrienne Pecotic, Executive Director of AFACT. "The success of this raid stands as a warning to movie pirates that the NSW Police are taking this crime very seriously."

Australian man implicated in raid on pirate DVD operation in Bali

Indonesian police last week raided a store in Bali run by Australian Neil Lord, an Indonesia resident, and his Indonesian wife, Arifah Lord, after a joint investigation by the Australian Federation Against Copyright Theft (AFACT) and the Motion Picture Association (MPA) in Indonesia revealed that illegal DVD movies were being openly sold from the premises.

The raid marked the first time that a business run by an Australian had been targeted by Indonesian police for copyright offences relating to pirate DVDs. As a result of the raid, Arifah Lord was arrested and the couple will be subject to further police investigations. Police seized 1,500 discs and revealed that the Lords' store was stocked entirely with illegal DVDs - nothing was legitimate. This is, unfortunately, common in Indonesia, where over 90 % of the DVD market is pirated product.

Traders in pirate DVDs throughout Asia, where copyright piracy has in many places been linked to organized crime, are increasingly targeting Australian consumers, and this is

especially true in the popular holiday destination of Bali. Australian Customs seized over 40,000 pirate DVDs imported into Australia in 2004, a 185% increase compared to the 14,000 seized by Customs in 2003.

"Film piracy is a global issue and not a victimless crime. Pirated films are stolen goods that when exported around the world, significantly impact local economies," said Adrienne Pecotic, Executive Director, AFACT. "To address this, the fight against copyright theft has also become global, with cross-border cooperation a regular occurrence as governments and copyright owners work together to protect the value of intellectual property that translates to business revenues and employee salaries. The purchase by Australian tourists overseas of pirate DVDs has dire consequences back home, through the erosion of our film and television industries and the loss of local income and jobs."

Police swoop on Bali store

Indonesian police have raided a store in Bali run by Australian Neil Lord, a resident of Indonesia, and his Indonesian wife, Arifah, after a joint investigation by the Australian Federation Against Copyright Theft and the Motion Picture Association resulted in allegations that illegal DVD movies were being openly sold from the premises. The couple will be subject to further police investigations. **Lyndall Crisp**

Page 6, *Financial Review*, Saturday 6th August 2005

Piracy in Australia

AFACT estimates that movie piracy cost the film industry in Australia in excess of \$400 million in potential revenue in 2004. The illegal distribution of unauthorized copies of movies rose from 4% in 2000 to around 10% of the legitimate market in 2004. Police across Australia have more than doubled the number of illegal discs seized in 2004 compared to 2003. Discs comprise mostly DVD-R copies as DVD-R technology has increased its share of the pirate optical disc market. In addition Australian Customs seized over 40,000 pirate DVDs imported into Australia in 2004, a 185% increase compared to the 14,000 seized by Customs in 2003.

Police jurisdictions now recognize organized crime involvement in film piracy. Organized crime links to movie piracy in Australia were first uncovered following a raid on Malaysia-linked movie pirates in 2002.

Australian Taxation Rulings Effective Life of Rental VHS tapes and DVD discs

One of the most frequently asked questions is "what is the effective life of rental tapes and DVDs?"

Background

The Australian Taxation Office originally issued Taxation Ruling IT 2248 which specifically dealt with the depreciation of video tapes in a video library whereby the prime cost rate of depreciation was determined to be 50% per annum. This rate was based on the effective life of the video cassettes as set out in the Income Tax Assessment Act. This ruling was withdrawn on 15 October 1997.

The depreciation rate for video tapes in a video library was then reproduced in Taxation Ruling IT 2685, Depreciation Effective Life, under "Amusement Machines and Equipment" and "Video". However IT 2685 was withdrawn from effect on 1 January 2001.

Current Position

There is no tax ruling that deals specifically with the depreciation of video tapes/DVDs that are purchased for hire to customers and not for sale. The only current reference is Taxation Ruling TR 2000/18, Depreciation Effective Life.

The Commissioner has made written determinations pursuant to Sections 42-110 and 387-177 of the Income Tax Assessment Act 1997 (the Act) which came into effect on 1 January 2001. The effective lives specified by the Commissioner in those determinations are reproduced in Tables A and B of this ruling.

Under the heading "Personal and Other Services", page 41 of 75 lists the effective life of video tapes and games hiring at half a year. This effectively means the tapes etc. can be depreciated on a pro-rata basis from date of purchase divided by 182 days.

If you are already deducting an amount of depreciation based on the effective life specified in the schedule to Taxation Ruling IT 2685, you continue to use that effective life as the basis for your deduction.

The new determinations will apply if you choose to use the Commissioner's determinations of effective life to calculate the amount of your deduction.

You can, however, make your own estimate of effective life (see Sections 42-100 and 387-175 of the Act) whereby you can take into account your own particular circumstances of use.

Another alternative would be to elect to adopt the Simplified Tax System whereby if your annual cash turnover is less than \$1 million, purchases under \$1,000 can be written off immediately in the year of purchase.

Should you wish to discuss this further please contact Mr Stephen Swaine on (02) 9299 9429.

Article written by Steve Swaine, Principal of Swaine and Associates Pty Limited.