Email to: Dr Neil McGoran, Director, Catholic Education South Australia, 08 April 2020, from Glen Seidel.

Dear Neil,

For the record I do not concede your view on the applicability of the consultation clause 11 in the EA. There are many employment conditions outlined in the Act, the operation of which are augmented by an EA. Clause 11 is of general operation.

I draw your attention also to Clause 13.3 relating to representation of employees. Undeniably, any meeting with an employee about stand downs must "***reasonably be expected to materially impact in a negative way upon the employee's employment or employment conditions"***. Clause 13.3 would also be of general application and require notification and representation.

I am receiving information of many situations where not only is Clause 13.3 being ignored but the news is being delivered via "ambush meetings" or verbally in passing in public areas.

There are references to employee agreement to the stand down in letters, but the employees have not been given the opportunity to consider the implications and alternatives and give any form of informed consent.

When documentation is provided it is being delivered as a fait accompli without any discussion of whether the employee can still be gainfully employed (with or without some modifications).

In other situations nothing is in writing which makes the obtaining of advice or social security problematic.

Stand downs are not available to be used for periods of business downturn (especially where the business simply declines to charge for services) but there must be an actual work stoppage beyond the control of the employer and the employees need to not have any ongoing work available because of this.

The IEU's position is that

1. Specific work stoppages as per s.524 of the Act must be identified before stand downs can be invoked. The mere prediction of a downturn is not sufficient
2. The EA consultation clause 11 is generally applicable but in the alternative should be invoked as good practice incorporating natural justice and procedural fairness
3. Any stand down decisions relate to individuals with individual work and personal circumstances. A cookie-cutter approach is not appropriate, but needs individual discussions before acceptance or otherwise of a stand down (partial or full)
4. Individual meetings must be held with employees being identified for stand down. Those meeting must comply with EA Clause 13.3 and must be open to discussion of options including work redesign.
5. It is offensive and inappropriate for employees to be notified without warning in "ambush" situations
6. Proposals and decisions need to be provided in writing in a timely fashion to allow for the obtaining of advice and for social security purposes
7. Employees on any approved form of leave or absence (including Workcover) cannot be stood down (see s525 of the Act)
8. ESOs with averaged pay need to have full credit for hours worked ahead and for accrued annual leave
9. Public holidays during a period of stand down need to be paid

It would appear that the cuts are too early, too deep and too brutal in execution.

Regards

Glen