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## 2011 ANNUAL CONFERENCE REPORT: 'FAIR WORK – MOVING BEYOND THE RHETORIC'

*Pranav Bhatt, Editor*

The 2011 Annual Conference returned to the Sebel Harbourside Kiama, marking the 50th Conference of the Society. Speakers were drawn from a variety of backgrounds and provided insights from judicial, political, legal, union, employer, academic, consultant, labour hire and regulator points of view.

The theme of the 2011 Annual Conference was "*Fair Work – Moving Beyond the Rhetoric*" and invited speakers and delegates to consider and debate whether this was the case. Many speakers also touched on the changes that unfolded in the NSW IR system in May 2011.

The **Honourable Senator Jacinta Collins**, Parliamentary Secretary for Workplace Relations made the first address and emphasised the successes of the Fair Work System, covering about 96 percent of private sector employers and about 2 million employees under enterprise agreements. Senator Collins noted that it was important to move on from the ideological battles of the past decade and not rush into making legislative quick fixes.

The **Honourable Justice Boland**, President of the NSW Industrial Relations Commission delivered a passionate defence of the Commission in view of the limits placed on its jurisdiction in relation to occupational health and safety (OH&S) and minimum wage setting. His Honour noted that the rationale for transferring the majority of the Commission's OH&S functions to the District and Supreme Court was not explained and that the Commission had developed considerable expertise and jurisprudence (**cont. page 2**)



**Conference Panel Discussion:** Jennifer Hunt, Manpower Services (Australia), Michael Harmer, Hamers Workplace Lawyers and Chris Christodoulou, Unions NSW (**top**)

**Conference closing address:** Melanie Binet, President, Australian Labour and Employment Relations Association (**centre**)

**International Forum on Employment Relations in a Global Context:** Joe Catanzariti, Immediate Past President of the Society and Emeritus Professor Russell Lansbury, AM (**bottom**)

in OH&S over about twenty five years. In relation to minimum wages, his Honour observed that the Commission will be required to give effect to public sector wages policy despite the success of the bipartisan approach in setting fair and reasonable wages for over 100 years. His Honour closed by stating that the NSW Government will have to examine whether it wants an independent and viable Commission.

**Professor Andrew Stewart**, Adelaide University remarked that the proposal for a “compliant Commission” was antithetical after over 100 years of having an independent umpire. Returning to the Conference theme, Professor Stewart observed that the hype around good faith bargaining and the low paid bargaining stream had not played out. He pointed to some recent decisions of Fair Work Australia (**FWA**) that generally showed that:

- more than ordinary harm to third parties was required to warrant the suspension or termination of protected action;
- an employer can validly give advance notice that any employees choosing to take protected action will be locked out on return to work;
- annual leave can be cashed out in an enterprise agreement without having to show an extra benefit; and
- individual employees can opt out of enterprise agreement and revert to a modern award.

Professor Stewart also pointed out that notwithstanding the general protections provisions being described as the “sexy part of the Fair Work Act”, few cases have emerged, and most have been victimisation complaints. In addition, he observed that general protections were not a great departure from the last century of arbitrated outcomes because an employer has never been able to take adverse action against an employee on the basis of union membership or the lodgement of a complaint.

**Mark Lennon**, Secretary, Unions NSW continued the OH&S theme reminding delegates that although only twenty third party OH&S prosecutions were commenced under the OH&S regime, health and safety outcomes were enhanced, particularly in the banking sector where armed robberies have fallen to about twenty a year after the installation of full height anti-jump barriers following a successful union prosecution.

Lennon pointed out that the NSW Government decision to only grant wage increases above 2.5% when savings are actually achieved would lead to lagging and declining public sector real wages. Lennon also said that the recent Fairfax outsourcing dispute showed the increasing importance of social media tools as a new method to raise awareness to industrial issues.

The **Honourable Greg Pearce**, NSW Minister for Finance and Services highlighted that the NSW Government had a clear mandate to “make NSW number one again” and this applied to making changes to the OH&S regime and the powers of the Commission. Minister Pearce noted that the Commission would continue to have a broad role covering areas including awards, enterprise agreements, EEO, underpayments, disputes, unfair dismissals, unfair contracts and work health and safety licensing.

The **Honourable Sophie Cotsis**, NSW Shadow Minister for Industrial Relations pointed out that until now, the NSW cabinet has had a Minister for Industrial Relations for over a century. The Shadow Minister noted that the NSW IR system still covered the public and local government sector and those stakeholders expected consultation and advisory from a dedicated Minister. **(cont. page 3)**

**Adam Dansie**, Manager, Industrial Relations at the Local Government and Shires Associations of NSW provided delegates with a run down on the Paid Parental Leave scheme and how NSW Local Government had integrated the scheme into the *Local Government (State) Award 2010*. He also provided a statistical comparison with Australia's trading partners to show where Australia was positioned on a global scale.

**Michael Easton**, Counsel, Frederick Jordan Chambers brought day one of the Conference to a close, fusing the major news events of 2010/11 with major developments in IR in the Year in Review. Easton dryly likened the appointment of the Honourable Kevin Rudd MP to the Foreign Ministry to how destructive a re-employment order can be following an unfair dismissal and cleverly described the adverse action jurisdiction to be the "Hail Mary pass jurisdiction" - a term from American Football indicating it's the final chance, all or nothing jurisdiction.

**Charles Cameron**, Managing Director, Stratecom commenced day two of the Conference by asking delegates to think beyond the traditional 'permanent versus casual' categorisation of employees in light of the increasing trend towards non-standard engagements. Cameron asked delegates to consider whether casual employees should be able to gradual transition towards receiving the benefits of permanency by trading a percentage of their casual loading in exchange for leave accruals or progressive notice of termination provisions.

**Siobhan Flores-Walsh**, Special Counsel, Norton Rose challenged whether the Model Work Health and Safety regime could deliver a uniform national system akin to the Fair Work Act. Flores-Walsh criticised the architecture of the regime and pointed out how the voluntary cooperative federalism model was open to political pressures and jurisdictional interests, distracting from delivery of real reform to work health and safety. For example, she pointed out that the presence of 58 jurisdictional notes could ultimately lead to changes across 58 different areas.

The afternoon panel discussion asked three practitioners to debate what parts of the IR system were broken and what parts were not. **Michael Harmer**, Chairman, Harmers Workplace Lawyers noted how workers rights were being hampered by the forces of deep pocket litigation and declining union membership, making it particularly difficult for insecure workers to bargain or contest managerial prerogative. He closed by saying that the system could be fixed if it was anchored to a rights based model.

**Jennifer Hunt**, Solicitor, Manpower Services highlighted the importance of Individual Flexibility Agreements to workers that sought non-standard forms of employment. Hunt also said that casual conversion options were not being taken up by workers engaged via Manpower because they undermined flexibility.

**Chris Christodoulou**, Assistant Secretary, Unions NSW rounded off the panel emphasising the importance of having an independent umpire and that the Commission should determine fair wages not the NSW Government.

**Linda Addison**, Group Manager, Field Operations, Australian Building and Construction Commission brought a unique perspective to the Conference and advised delegates that her organisation had recently taken on the task of investigations as part of its transition towards becoming a full service regulator.

**Melanie Binet**, President, Australian Labour and Employment Relations Association (ALERA) formally closed the Conference. She presented a seamless (**cont. page 4**)

summary of the key themes that were raised by the line up of speakers and noted the underlying theme was that the IR system requires third party intervention. She closed proceedings by inviting delegates to attend the ALERA National Conference from 6 to 8 October 2011 in Fremantle, Western Australia.

**Ben Gee**, Partner, FCB Group drew the curtain to the Conference, combining a variety of thought provoking issues with humorous observations as the Guest Dinner Speaker.

It goes without saying that the Society would like to thank the generosity of its sponsors whose support ensured the success of the Conference: FCB Group, Harmers Workplace Lawyers, Moray and Agnew Lawyers, Clayton Utz, Piper Alderman and Federation Press. We must also give a special mention to Brad Buffoni who took on the role of Conference Convenor for yet another year. Brad and the Conference Sub Committee worked tirelessly and we thank them for the efforts. We hope to see even more delegates at the 2012 Conference which returns to Kiama once more by popular demand.

*Delegates and guests at the 2011 Annual Conference (top to bottom)*



## GLOBAL FORUM ON EMPLOYMENT RELATIONS: THROUGH THE EYES OF A STUDENT

*Caitlin Naidoo, Student, University of Sydney*



As a student, I felt privileged to be a part of the Workplace Research Centre's International Forum on Employment Relations in a Global Context. It brought together the bright minds of both practitioners and academics of employment relations. I was provided the wonderful opportunity of meeting them and sharing in their passion along with fellow students.

The forum allowed us to get a snapshot of a wide variety of current issues. Professor Thomas Kochan, for example, illustrated how the current conditions in the US may allow for a significant transformation in their industrial relations system.

It was interesting to hear local perspectives too. Emeritus Professor Ron McCallum AO, former Dean of the Faculty of Law at the University of Sydney, provided an inspirational and thought provoking presentation, arguing that rather than asking how Australia's industrial relations laws should be changed, we should be asking what can be achieved under the current system. With an entertaining declaration that "the Higgins' era is over", he argued that we've had enough law and order and now need to concentrate on action and practicing good employment relations with the time the resource boom has given us.

The forum also provided an insight into the practical application of my studies in Economic and Social Sciences. The forum offered quite a different experience to our usual lectures, with presentations being kept snappy and concise but also interesting and informative. As students, we enjoyed the opportunity to ask the resident experts questions and seek their opinions.

As an added bonus, the venue, Doltone House, was lovely with an excellent water view and great food – especially the Turkish bread sandwiches! The day may have been long but was truly worthwhile.



*Delegates and special guests at the International Forum on Employment Relations in a Global Context (top and bottom)*

## PROFESSIONAL RECOGNITION PROPOSAL

*Geoff Stevenson, Executive Committee Member*

A professional survey that looked at future strategies for the Society in 2003 identified the need for the IRS of NSW to meet a wider range of aspirations of both its potential and current members. There were a number of comments from members surveyed that indicated professional recognition was important to some members, or that it was noted that other professional societies differentiated their membership in order to recognise the individual's professional standing in some way.

In 2007 the NSW Committee resolved to discuss professional recognition of members of the Society as one of a number of future strategies.

A sub-committee developed a proposal for discussion that was presented and discussed at an open forum at the 2008 Conference. The objective of the proposal was “to create a membership system that recognises the need for continuing education of members in the new and frequently changing Industrial/Workplace Relations environment” and to “provide IRS members with a relevant and affordable access point to continuous professional education”. Various views for and against a formal system were received.

Members of the NSW Committee believed that the proposal should also be forwarded to the National Society for feedback and to see what other state Societies were interested in. The IRSA Committee (now ALERA) requested the model be developed further by NSW so that a wider discussion could take place.

The proposal identified benefits for members which included:

- Recognition of career development
- Recognition of continuing education
- Recognition of continuous membership
- Gateway to career recognition (status, remuneration etc)
- Increase in events to promote continuing education

Following the up coming Annual General Meeting on 19 August 2011 there is the opportunity to discuss what members would like the Society to do with developing this proposal further, including any ideas that members may have from their experiences with other professional societies or the direction the Society should take with this future strategy.

Members who would like a copy of the 2008 proposal please contact Geoff Stevenson on [industrialrelations@gmail.com](mailto:industrialrelations@gmail.com) or via [irsnsw@bigpond.com](mailto:irsnsw@bigpond.com)

## **WELCOME NEW MEMBERS DECEMBER 2010 – JULY 2011**

Dr Sarah Kaine	University of Technology
Jenny Roberts	Perform HR
Justice Michael Walton	Industrial Court NSW
Nicola Williams	Coal & Allied – Hunter Valley
Jane Howrylak	
Johanna Macneil	University of Newcastle
James Morley	Lion Nathan National Foods
Sam Puri	Workplace Guardian
Joe Degabrielle	DP World
Brian Duggan	Civil Contractors Federation
Janine Stewart	Perpetual
Fiona Corbett	NSW Business Chamber
Julie Duncan	
Stephen Gavin	Clayton Utz
Luis Izzo	Clayton Utz
Andrew Kiejda	NSW Parliament
Jim Lloyd	Dept. of Premier & Cabinet
Nicky Peacocke	Thomsons Lawyers
Ben Petrie	Clayton Utz
Stephen Schofield	Komatsu Australia Pty Ltd
Matthew Toro	Fairwork Ombudsman
David Walker	Donaldson Coal
Mark Helm	Real Estate Employers Federation of NSW
Lea Petersen	Perpetual

## **ANNUAL GENERAL MEETING**

Friday 19 August 2011  
NSW Parliament House  
Annual General Meeting 12:00 – 12:30pm  
Lunch 12:30 for 1:00pm

## **CHRISTMAS PARTY**

Friday 25 November 2011  
Occidental Hotel 5:30pm

## **QUESTIONS, COMMENTS, CONTRIBUTIONS?**

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