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**irs**

INDUSTRIAL  
RELATIONS  
SOCIETY OF  
NSW

**NEWSLETTER**

## Federal Government bill to decimate NSW Commission ?

by David Vincent \*

### Special Interest Article:

**Federal Government bill to decimate NSW Commission? By David Vincent**

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In just a couple of years, the NSW IRC's workload could be cut in half – thanks to Federal Workplace Relations Minister Tony Abbott.

Mr Abbott's predecessor, Peter Reith, wanted "big bang" industrial change. He got it with his Workplace Relations Act and then pursued it unsuccessfully with his second wave "More jobs, better pay" bill and his push for a unitary system under the "Breaking the Gridlock" banner.

Unlike Reith, MR Abbott has sought change incrementally, following the Reith rebuffs. He has presented a series of mini-bills to Parliament to change the Workplace Relations Act, and has taken a similar approach to the unitary system push (the exception is likely to be

Mr Abbott's forthcoming Cole legislation, which will be anything but incremental).

Rather than the big bang approach to the unitary system, the Minister has begun chipping away by seeking to take over the largest part of the states' unfair dismissal regimes, believing this will achieve "a withering away of the states", at least in unfair dismissal.

*"Abbott's predecessor wanted "big bang" industrial change... Unlike Reith, Abbott has sought change incrementally, following the Reith rebuffs"*

Mr Abbott has failed for now with his unitary system push, after the Senate rejected the Workplace Relations Amendment

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## Federal Government to decimate NSW Commission...

(Termination of Employment) Bill 2003 in the middle of August. But Mr Abbott has vowed to bring it back in three months, meaning it could be put to Parliament again in the November sitting of Parliament. And if rejected again, it could be passed, unamended, after a double dissolution.

Some commentators, such as Sydney University Dean of Law Professor Ron McCallum, say Mr Abbott's bill would deal a heavy blow to the state tribunals, particularly in the smaller states. He told a conference in April that state tribunals were important not just for the operation of laws governing wages and conditions, but also for enforcing OHS compliance.

**“Abbott onslaught will have a big impact – cutting the number of applications it receives by 48%”.**

The NSW Commission is arguably large enough to withstand the attack, but the legislation will have a big impact – cutting the number of applications it receives by 48%.

The Workplace Relations Amendment (Termination of Employment) Bill 2002 would mean that 85% of workers who currently claim unfair dismissal in the

State jurisdiction will have to pursue their claims in the Federal Commission.

In recent years, unfair dismissal claims have consistently accounted for more than half of all applications to the State Commission – 52.4% in 2001, 54.6% in 2002 and 60.3% in the first half of this year.

Take away 85% of dismissal applications and the State Commission's workload would be substantially reduced, with dismissal claims falling away to about 16.5% of the Commission's total load of applications.

Take for example, the first six months of this year, the 2431 dismissal claims dealt with so far would fall away to 365, and the Commission's total number of applications for all matters would be reduced from 4275 to 2209 – a 48% reduction.

The bill makes no provision for dual appointees to take up the extra workload, while this year's Federal Budget provides \$5m in recurrent funding from July next year to appoint new members of the Federal Commission, to cope with the expanded workload.

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## Federal Government to decimate NSW Commission

The Federal Government could, of course, choose to appoint to the Federal Commission any State Commission members whose continued role couldn't be justified by the workload reduction.

All of this points to substantial downsizing of the Commission over time, as the current contingent of members couldn't be justified with such a dramatic reduction in work. The membership would be allowed to decline by natural attrition – there won't be forced redundancies.

However, the Democrats' proposed amendments to the bill would require the Federal Government to use dual appointees to deal with the increased Federal workload as a result of the bill passing. There are currently five dual appointees in NSW - the President, Justice Lance Wright, and Justices Russell Peterson, Frank Marks, Monika Schmidt and Rod Harrison. But these senior judicial members of the Commission are unlikely to begin dealing with unfair dismissal claims.

### ***Bill Could become dissolution trigger...***

The Senate failed to support the

Democrats' amendments and Labor and the minor parties combined to vote down Abbott's bill, making it yet another of the pile of workplace relations bills that are double dissolution triggers or potential triggers.

*"The Democrats support a unitary IR system, so they are sympathetic to the legislation's expansion of the federal system".*

The legislation is fundamentally straightforward – the key change extends the federal unfair dismissal system to cover all employees of constitutional corporations. The current system is restricted to federal award employees of constitutional corporations.

The Minister says the change would increase the federal system's coverage from four million employees (about half of all employees) to seven million employees (85%).

The Minister is upfront about his objective, saying in his second reading speech that the Government believes the substantial expansion of the federal system via the legislation will lead to 'a withering away of the states', at least in unfair dismissals.

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### Federal Government bill to decimate NSW Commission cont...

The Democrats support a unitary IR system, so they are sympathetic to the legislation's expansion of the federal system. However, the party has made it clear that there is a price for its support – a substantial increase in the fairness of the federal unfair dismissal system and a significant expansion in the types of workers who qualify as employees in the unfair dismissal jurisdiction.

**Abbott has begun chipping away by seeking to take over the largest part of the states' unfair dismissal regimes**

NSW IR Minister John Della Bosca says Abbott is wrong in claiming his amendments would reduce the complexity of the IR system.

#### ARE YOU FINANCIAL??

2003/2004 MEMBERSHIP SUBSCRIPTIONS were due and payable from 1 July 2003. Renewal notices have been sent to members for fees for 2003/2004.

He says any business operating exclusively within state system will, if Abbott succeeds, be compelled to be involved in two systems. "For such a business, industrial relations will become more complex, not less complex", he says.

He says small employers who operate under state common rule awards will face the greatest challenges under Abbott's proposal, says Della Bosca. They are unlikely to move fully to the federal system because of the convenience of the common rule award system, he says in the State Government's submission to the inquiry into the bill.....

\*David Vincent is a journalist with on line IR publication workplace

#### 2003/04 MEMBERSHIP SUBSCRIPTIONS ARE DUE

Payment can be made by Bankcard, Mastercard, Visa Card, American Express or Diners Club.

If you are unsure of your financial status please call Susan Stewart on 9630 5211



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### 1<sup>st</sup> Women in Industrial Relations Event

The first women in industrial relations function was held on 10th July 2003 with the guest speaker Justice Monika Schmidt providing an enlightening overview of her successes in the field of Industrial Relations. Justice Schmidt also paid tribute to Justice Glynn, the first female appointment of the NSW Industrial Relations Commission and to the delight of the 150 women who attended Justice Glynn was more than

happy to speak impromptu about her own experiences and remarkable career. Justice Glynn will be retiring later this year.

A special thanks goes out to Clayton Utz who kindly provided the venue, the food and drink and of course their hard working staff who helped make the event such a success.



Thanks to: -

**CLAYTON UTZ**

who were the proud sponsors of the first NSWIRS Women in IR Function.





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## Member Profile .... NSWIRS President Commissioner Greg Harrison

Current Position Commissioner -  
Australian Industrial Relations  
Commission

If you had your choice of careers, would  
you choose IR again? Definitely

What is your favourite football team?  
Sydney Swans.

Who inspires you the most? People  
who are idealistic and creative in  
whatever they do.

What was your first job in IR?  
Elected as a job delegate when a Fourth  
Year Apprentice.

What motivates you? A bright sunny day  
and a moonlit night... and the challenge  
in resolving disputes.

What advice would you give those  
entering the field on the ground floor?  
Treasure your integrity.

What is the last book you read? The  
Workplace Relations Act...only joking, it  
was Qantas inflight magazine!

What does IR mean for you?  
Facilitating agreement and  
managing change.

Favourite holiday destination? Port  
Stephens and Vietnam

Highlights of your IR career?  
Election to State & National positions  
of the AMWU over 20 years.  
Appointment to the Commission in 1989.  
Being very privileged to experience work  
life and working people in various  
industry sectors.

Any regrets? Yes, but I'm a private  
person some of the time so I'll pass on  
that one.

Lowlights of your IR career? "I can't  
recall, your honour".

Suggestions to people starting out in IR?  
Don't let ideology or prejudice cloud your  
judgement about people or events.



**Commissioner Greg Harrison**



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### MOOT COURT 2003

The Mock Arbitration Competition for 2003 involved university students from University of New South Wales and University of Newcastle.

There were six teams in total, three from each university. The first round of the competition was held on 25 August in the court rooms in the Industrial Relations Commission of NSW. The judges for the evening were Commissioner Alistair Macdonald, Commissioner Greg Harrison and Commissioner Inaam Tabbaa. The proceedings involved an application for an interim injunction in a threatened unfair dismissal situation. After a close finish, the three Newcastle teams emerged as winners and the two teams with the highest points went through to the finals.

The final was held on 3 September in the President's Court in the State Commission. The judge for the evening was the President, the Hon. Justice Wright. The proceedings involved applications for s 137 dispute orders in the context of the employer company facing financial difficulties, proposed redundancies and past industrial action by the union.

The winning team from the University of Newcastle consisted of Laura Waring, Carrie Skinner, Eliza Evans and Adam Moulton.

Congratulations to all the students who participated. The Society would like to thank the "judges" for the competition, particularly his Honour, Justice Wright, for providing their time and advice to the students.

**By Sue-Ern Tan**





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### IRS of NSW Annual General Meeting 2003

The 2003 Annual General Meeting was held at Parliament House on the 8th August 2003. The meeting was well attended and the 2003/2004 executive committee were decided by secret ballot vote as follows:

President  
Commissioner Greg Harrison  
Vice Presidents  
Joe Catanzariti  
Alastair Macdonald  
Dick Grozier  
Treasurer  
Jon Hanlon  
Secretary  
Christine Badcock  
Asst. Secretary  
Yaseen Shariff

Immed. Past Pres.  
Warwick McDonald  
Patron  
Hon. John Cahill  
Committee Members  
Robin Amos  
Stephen Banister  
Professor Ron Callus  
John Counter  
Graham Evans  
Paula Hoctor  
Jennifer Hunt  
Minna Knight  
Nicole Law  
Philip Marchionni  
Mark Paul  
Paul Reid  
Geoff Stevenson  
Sue-Ern Tan  
Nikki Town

*A special thanks to Vice President Dick Grozier who organized the AGM and Luncheon.*

**Below: The Hon John Della Bosca addresses IRS members at the AGM Luncheon**





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### THE IRS WELCOMES THE FOLLOWING NEW MEMBERS

Clayton Cross	Abbot Pardy & Jenkins
Stephanie Antonis	Student
Claire Blades	Ambulance Service of NSW
Marie Brown	Housing Industry Assoc
Rod Bush	United Group Limited
Tony Cavanagh	Mullane & Lindsay
Peter Clarke	Registered Clubs Assoc
Michelle Cooper	Henry Davis York
Brigitte Fairbank	Smith's Snackfood
Robert Foggo	Robert Foggo Lawyers
Jennifer Gray	Registered Clubs Assoc
Charlie Heuston	Transport Workers Union
Dianne Hollyoak	Solicitor/Consultant
Catherine Holmes	AMMA
Glen Hugo	Labor Council of NSW
Penelope Hume	NSW DIR
Clint Indrele	Registered Clubs Assoc
Kate Jackson	Port Waratah Coal Service
Stephen Jolly	Drake Recruitment & Training
Joanne Macara	MacMahon Associates
Noel Martin	United Services Union
Pat McDonough	Working Womens Centre



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## New Members Continued .....

Mark Morey	Labor Council of NSW
Katherine Morris	Henry Davis York
Adam Moulton	Uni of Newcastle
Ian Pike	University of Newcastle
Joseph Pineda	Fairfield Health Service
Comm Frank Raffaelli	Australian IR Commission
Aaron Rathmell	University of Sydney
John Robertson	Labor Council of NSW
Michael Rawling	Transport Workers Union
Nathan Rudd	Australian Workers Union
Shaun Ryan	Uni of Sydney
Dep Pres Peter Sams	IRC of NSW
Simon Spence	NSW Premier's Dept
Scott Spicer	Registered Clubs Assoc
John Stafford	CCH Australia
Tom Stevanja	Office of Employment Advocate
Rachael Sutton	Moray & Agnew Solicitors
Nada Vujat	Emery Partners
Will Ward	Toomey Pegg Drevikovsky
Bridget Whelan	Minister for IR's Dept
Rosa White	Matrix Corp Solutions



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## **Book Review - “Fragmented Futures - New Challenges in Working Life” | Watson, J Buchanan, I Campbell & C Biggs**

Fragmented Futures examines how working life has become more ‘fragmented’ as a result of significant social and economic change in Australia in the last quarter of the twentieth century. It asks how we should address such fragmentation in pursuit of a society in which prosperity is shared, diversity, choice and opportunity are increased, and exclusion and inequality are minimised.

The book begins by examining the dominant model for Australian working life throughout most of the twentieth century (known as ‘Harvester man’), its breakdown and the various responses proposed in recent years. It then explores the specific fragmentation processes that have occurred, using a combination of surveys, statistics and qualitative research. Trends and issues covered include:

- aspirations for working life
- opportunities for work, and the problems of unemployment and underemployment
- industry restructuring and occupational change

- the growth of non-standard forms of employment
- longer and more intense working hours
- wage trends and growing inequality
- the work/life balance
- skills, training and education
- retirement and superannuation
- how international factors such as increased competition, excess capacity and investment flows have contributed to the above changes.

The editors claim that the book provides a foundation on which to begin addressing the real social problems faced in work and life today. Its themes are at the core of everyday Australian experience; our response to its challenges will determine every Australian’s future.

**Published by Federation Press  
Paperback, 236 pages, RRP \$49.50**



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**Editor**

**Nikki Town**

## Membership Register

A Register of Members will be produced and sent to all members early in 2004

Inclusion in this Register is optional and not a complete list of all members but an information booklet to facilitate contact between members of the Society.

Application forms were sent out with Fees Notices, however for those of you who paid your membership for 2 years last year there is one included in this Newsletter RSVP November 2003.

## Dates for your Diary

11 September 2003  
Women in Industrial  
Relations Event  
[www.irsa.asn.au](http://www.irsa.asn.au)  
Tel: 9630 5211

18 October 2003  
2<sup>nd</sup> Annual IRS Patrons  
Dinner - Sydney  
Museum

26 - 27 September 2003  
QLD IRS  
State Conference  
Gold Coast  
[www.irsq.asn.au](http://www.irsq.asn.au)

24 - 26 October 2003  
WA IRS  
State Convention  
Busselton WA  
[www.industrialrelations.com.au](http://www.industrialrelations.com.au)

15 October 2003  
Julian Small Foundation  
Annual Address  
[michelle.fiddes@minterellison.com](mailto:michelle.fiddes@minterellison.com)

Please forward any  
"dates for your diary"  
that may be of interest  
to our readers to:-  
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