

## President's Welcome

Welcome to 2018.

If you haven't already heard, our Annual Breakfast event held on February 20 at the Novotel was a great start to a work day!

The speaker was Andrew Herbert, covering the 2017 IR year in review and, as always, was insightful and entertaining.

Outside of Andrew's excellent presentation, as often is the case, many other workplace matters were discussed. At our events, you have an opportunity to catch up with colleagues from across the industrial sector. There is significant benefit to attending a forum where shared industrial topics are canvassed and with practitioners who share your experiences. Networking!

The same experienced practitioners and Commission members will share their knowledge when we deliver our sought after Advocacy for Workplace Relations Professionals course later this year. We already have a waiting list, so please ensure any new graduates or practitioners get in early to register for that event. Keep your eye on our web site for details of our other events.

Increasingly we find that interest in events is shown from Society members and other interested parties outside of the Brisbane metropolitan area, so with that in mind we are organising an event to be delivered in Cairns, this will allow us to meet members and gauge interest for this to become a regular scheduled activity. Please, if you have an interest in the Cairns event, make contact with us. We need to market this as widely as we can.

Like any volunteer Committee, you need to maintain relevance but also keep true to the purpose of the organisation you serve. We are very pleased to be involved in the history project

funded by the Australian Labour Employment Relations Association, our national body.

We have nominated previous Committee members to participate as part of gathering information about the IRSQ's history for the project. You rarely get the opportunity to look back and see what has gone before as a volunteer Society. Committee members move on and much of our sixty plus year history is reported in Minutes on paper. What has been of interest when speaking about this history project to members is the shared sense of community that the Queensland Society membership has maintained. Life members and others speak fondly of their time on the Committee and participation in delivering professional development events; they can tell you who else was on the Committee with them, where they worked then and are now and who the Patron was at that time.

On reflection of my own experience, I can certainly recall who was present at the Advocacy for Workplace Relations Professionals course when I attended, and who also appeared in the Moots at the QIRC. Thank you for your time then DP Bloomfield and your feedback. I still see many of those participants from that time in my field of workplace and industrial relations and regularly at IRSQ events. So relevance – tick!

No doubt, this year will have started busy and has increased in activity - remember to take care of you.

*Jo McConnell*



# Annual Breakfast Wrap Up

By Sarah Tilby, Vice-President (Employer), IRSQ

On 20 February 2018, the IRSQ held its annual breakfast event – kicking off what is sure to be another year of worthwhile and engaging events. The breakfast was held at Novotel Brisbane Hotel, with Andrew Herbert as the guest speaker.



Andrew is one of Australia's leading barristers practising in the areas of industrial and employment law, and over 100 people from a variety of sectors within the IR community heard his reflections on a variety of topical issues in the IR in 2017 (and trends for 2018) in both the public and private sectors. Some of the topics Andrew covered included:

## **Public Sector Bargaining Under the New State IR Legislation**

In relation to public sector industrial relations, Andrew noted the issue of public sector bargaining under the new *Industrial Relations Act 2016* (Qld) ('IR Act') – and more specifically whether the IR Act:

- allows a public sector employer to choose to bargain directly with its employees, instead of being obligated to bargain with employee organisations which are entitled to represent the employees of the employer; and
- requires that all negotiating parties provide their agreement prior to the employer being able to hold a ballot to seek approval of a proposed certified agreement, or whether the agreement of at least some negotiating parties would be sufficient.

Andrew argued that these issues potentially reduced incentives for bargaining, and questioned whether this would be an issue for the Queensland Government to fix through amendment to the IR Act. Andrew also noted that there was reserved decision from the QIRC which covered these questions. In fact, it was only a day after Andrew's presentation that a QIRC Full Bench delivered their decision in *The Electrical Trades Union & Ors v Brisbane City Council; The Australian Workers' Union v Brisbane City Council* (No. 2) [2018] QIRC 015.

Andrew also commented that the provision of scope orders under the new IR Act for collective bargaining did not include, unlike the *Fair Work Act 2009* (Cth) ('FW Act'), a requirement for the Commission to consider whether the making of such an order would promote fair and efficient bargaining conduct.

Additionally, in relation to protected industrial action under the IR Act, Andrew explained that with the introduction of the new legislation, it had been expected that new bargaining processes under the IR Act would be subject to a PABO process if industrial action were expected. However, he commented that this did not appear to be the case, and to his understanding there had only been exchanges between the Registrar and relevant unions, and not affected employing Government Departments.

## **Fair Work Commission – staffing changes and continued 4 Year Modern Award Review**

In the federal IR sphere, Andrew noted that there had been some significant changes to the make-up of the Fair Work Commission, with several resignations from FWC in 2017, as well as the further continuation of the 4 Year Modern Award Review Process, and the unfortunate matter of the next 4 Yearly Review being intended to start in 2018. (Note: readers may already know that there is a pending bill before the Federal Parliament to abolish the requirement to hold 4 Yearly Reviews, and given the current review is still being run, a new review has been put on hold).

## Enterprise Bargaining in the Federal IR System

On enterprise agreements in the federal industrial relations system Andrew posed the question of whether the current system is 'dead' and if a new a new system of bargaining (as opposed to a reversal back to the days of arbitration) was needed. Andrew pointed out that the creation of new enterprise agreements is at a record low and applications to terminate enterprise agreements are at record highs, particularly in non-unionised industries. He argued that employees have little left to trade in enterprise bargaining, and that employers are not going to want to continue to give wage increases through enterprise agreements without some benefit for themselves as well as to the employee. It was suggested that agreements for administrative pay increases, rather than the negotiation of a full enterprise agreement, may be one possible course of action for parties to take up in future.

The High Court Decision of *ALDI Foods Pty Limited v Shop, Distributive & Allied Employees Association* [2017] HCA 53 was also discussed. It confirmed that a non-greenfield enterprise agreement could be made by ALDI with current employees for a store yet to be built, without needing to wait until these employees had actually commenced work at the new store. Andrew noted this was an important decision reinforcing the existing position provided in *CFMEU v John Holland Pty Ltd* [2015] FCAFC 16.



## Industrial ramifications of the #MeToo movement

Andrew concluded his presentation with a discussion on managing sexual harassment claims, given the increased awareness of this issue through the #MeToo campaign. He noted the recent announcement by Malcolm Turnbull banning Federal Ministers from having a sexual relationship with a staffer – commenting that trying to ban relationships between workers outright was problematic. He noted the particular risk of managing sexual harassment in the workplace where it involves staff in powerful positions (of any gender) abusing their power over subordinates, and noted the need for organisations to have authority over even the highest

person in the organisation when dealing with complaints, to ensure they can effectively investigate and manage any alleged sexual harassment. Andrew highlighted the importance of employees needing to feel empowered to speak up about sexual harassment concerns without fear (e.g. for their career).

**Sarah Tilby – Vice President (Employer), IRSQ**

## Upcoming events



The IRSQ has an exciting array of events planned for the remainder of the year including networking, educational and social events. Keep an eye on our website for further details.

### [Advocacy for Workplace Relations Professionals course](#)

9 - 10 June 2018 and 22 June (moots)

[Patron's Lunch](#) August 2018

[Women in IR](#) October 2018

# Family and Domestic Violence Leave in Modern Awards – An Update

By Sarah Tilby, Vice-President (Employer), IRSQ

A decision has been released by the Fair Work Commission (FWC) on family and domestic violence leave in modern awards, as part of the 4 Yearly Modern Award Review. Here is what you need to know in relation to the decision.

Prior to the release of this decision, the Full Bench had rejected the ACTU's claim for 10 days of paid FDV leave but provided a preliminary view that unpaid FDV leave should be inserted into all modern awards, and that modern awards should extend an employee's ability to access personal/carer's leave for the purpose of FDV.

As part of the proceedings, many parties had submitted expert evidence regarding the impact of FDV. For example, expert evidence by Dr Peta Cox (submitted by the ACTU) looked at data from the Personal Safety Survey (PSS) carried out by the Australian Bureau of Statistics and found based on the PSS data that 'one in four women in Australia have experienced violence by an intimate partner they may or may not have been living with'.<sup>1</sup>

A proposed model FDV leave term had been published by the Commission and feedback had been sought from interested parties.

Conferences were held before Justice Ross in October 2017.

In the Decision released on 26 March, the Full Bench decided on the following matters:

- Unpaid FDV leave to be included in modern awards (five days)
- The Full Bench confirmed their preliminary view that modern awards should provide for unpaid FDV leave (with the exception of three modern awards that will be dealt with in later proceedings).

During the October 2017 conferences, agreement had been reached on several elements of the model term, albeit with a 'significant compromise of their respective preferred positions'.<sup>2</sup> The Full Bench noted they would retain these agreed upon elements from the last version of the model term.

These elements are reproduced below:

## **Definition of FDV for the purposes of the model term**

### **1 Definitions (Agreed)**

#### 1.1 In this [model term]:

**family and domestic violence** means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

**family member** means:

- (a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- (b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
- (c) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

1.2 A reference to a spouse or de facto partner in the definition of **family member** in clause 1.1 includes a former spouse or de facto partner.

<sup>1</sup> [2018] FWCFB 1691, [79].

<sup>2</sup> Ibid [192].

## The circumstances in which an employee may access FDV leave

### 3 Taking Unpaid Leave (Agreed)

An employee experiencing family or domestic violence may take unpaid family and domestic violence leave if the employee needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.

*Note: The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.*

## Notice and evidence requirements

### 4 Notice and evidence requirements (Agreed)

#### Notice

4.1 An employee must give their employer notice of the taking of leave by the employee under this [*model term*].

4.2 The notice:

(a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and

(b) must advise the employer of the period, or expected period, of the leave.

#### Evidence

4.3 An employee who has given their employer notice of the taking of leave under this [*model term*] must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a purpose specified in clause 3.

*Note: Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.*

## Confidentiality obligations for the employer

### 5 Confidentiality (Agreed)

5.1 Employers must take steps to ensure information concerning any notice given or evidence provided under clause 4 is treated confidentially, as far as it is reasonably practicable to do so.

5.2 Nothing in this clause prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

*Note: Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.*

## Statement that an employee is not entitled to FDV leave unless they comply with all relevant obligations under the model term

### 6 Compliance (Agreed)

An employee is not entitled to take leave under this [*model term*] unless the employee complies with this [*model term*].

Regarding what the unpaid FDV leave entitlement should entail, agreement on issues such as quantum and accrual could not be reached.

The Full Bench decided to provide five days' unpaid FDV leave for all employees in the model term. This entitlement to five day's unpaid leave:

- 'will be available in full at the commencement of each 12 month period rather than accruing progressively during a year of service;
- will not accumulate from year to year; and
- will be available in full to part-time and casual employees (i.e. not pro-rated).<sup>3</sup>

<sup>3</sup> Ibid [253].

FDV leave will not constitute continuous service for the purposes of leave accrual, but will not break an employee's continuous service.

Employees will be able to access the FDV regardless of what paid personal/carer's leave accrual they may hold – it will not be a requirement to first exhaust paid personal/ carer's leave (if the employee could have taken the leave in the circumstances – as not all FDV scenarios might render an employee eligible to also take personal/carer's leave).

### ***Paid personal/carer's leave – access for FDV purposes? Question to be revisited in 2021***

The Full Bench, noting that there was a 'unanimous position' taken in submissions that the FWC did not have the jurisdiction to expand access to personal/carer's leave through modern awards, stated that would not make final decision on this jurisdictional issue. Expanded personal/carer's leave access will not be included in the final version of the model term, and instead this topic will be revisited in June 2021.

### ***June 2021 review of FDV clause***

Once modern awards have been varied to include the model term, the Full Bench intends to review its operation in June 2021, after the model term has been in operation for three years. They noted that 'the extent to which the new entitlement to unpaid leave will be utilised is unknown, as is the impact of the new entitlement on business'.

Whilst the Full Bench confirmed their preliminary view that FDV leave should be unpaid in this decision, this June 2021 review would also involve revisiting the question of whether paid FDV leave should be offered in future.

### ***Next steps***

The Decision stated that a final version of the FDV clause will be completed 'in the coming weeks'<sup>4</sup> and interested parties will be given the opportunity to comment on whether the final model term accurately reflects the Full Bench Decision.

<sup>4</sup> Ibid [269].

## **Five Minutes with... Ruth McPhail**



***Ruth McPhail is a Professor of Human Resource Management and Head of the Department of Employment Relations and Human Resources at Griffith University. She is on the Board of ANZAM and is Standards Australia's representative to ISO on the development of a standard for Diversity and Inclusion. Ruth is a nationally recognised educator receiving both an OLTC citation and University Teacher of the Year Award in 2015. She has wide experience in management consulting, human resource management and leadership, having trained management teams in Australia, China, Malaysia, Thailand, the USA and India. Her research interests include international human resource management, LGBT expatriates, LGBT elders and aged care, student success, educating adults and first year preparation and transition for students.***

### ***How did you decide on your career path?***

I knew very early that I wanted to be a teacher and as an undergraduate student that I wanted to teach adults. I understood good teachers influenced people's lives in a positive and lifelong way. My career has taken a number of pathways from High School Teacher, to Director of Human Resources, Lecturer and Professor and Head of the Department of Human Resources and Employment Relations in the Griffith Business School. I pursued my career path welcoming every opportunity and at every crossroad I have followed my instinct and my core values and to date that has been successful.

**Who are the people who have influenced your career decisions?**

My parents. Both have PhDs and have had successful careers of their own with my Father receiving an AM. My Father seems to me to have been very 'street savvy' – he often told me 'never make a career decision based on a cat' (I recall a few going missing in my youth as we moved often with his promotions!). My mother has had a career as a teacher, academic, entrepreneur and business owner and adopted a slightly more political lens to my career decisions. She also advised me strongly that I was raised to be an independent woman who should have her own successful career and not be reliant on others.

But to be honest I think that when I had such a decision to be made, I might consider what they might advise me - as influential people, they mostly found out about what I was up to...well... after the fact! Matching my core values to the role or organisation has been a non-negotiable in every major career decision I have made and so far so good.

**Who do you admire and why?**

Nelson Mandela. He was in prison when I started University and protesting and educating against the Apartheid laws of the time became a big part of my life for a number of years. Justice is a core value of mine, along with a strong spine!

**What do you consider to be the most important issues in industrial relations today?**

Artificial Intelligence and how to manage the social changes this will bring to average Australians and people all around the world. How will we deal with a living wage that requires little or no human work? How will that impact on equal opportunity and the rights of individuals? What is

work life balance if there is no work? I wonder if we are just seeing the tip of a very large technological iceberg approaching (and gaining speed).

**What do you most enjoy about your current role?**

Having the opportunity to support staff and students. I have introduced a series of professional development opportunities for staff and increased the number of student awards provided. We have developed an Executive Team which helps keep our portfolios moving and creates leadership opportunities at the same time. We have developed research, learning and teaching and engagement Directors roles and each have developed plans supporting the Department. I enjoy leadership roles and working with a great team supported by our professional and administrative team

**When you started in your role, what did you set out to achieve and why?**

I only ever set out to ensure the environment is better off for having had me in the role. I like to be able to leave demonstrable outcomes in the roles I have held; however, more important to me are the people you can help on your way through. I am incredibly proud of the staff in my Department. We have some remarkable research academics of world-wide calibre such as Professors Adrian Wilkinson (also Director of WOW) and Kate Hutchings as well as many up-and-coming stars too. We have the largest number of teaching awards held by staff in the University and we engage with and make a difference through our service and engagement activities both locally with important groups like the IRSQ and globally. So I regard having the opportunity to help and support this group of staff as an achievement in itself.

## Social Media

The Society is on Social Media!

You can like, post and follow us on [LinkedIn](#) and [Facebook](#)



# Women in IR High Tea

**Sarah Tilby & Vaishi Rajanayagam, Vice-Presidents, IRSQ**



On 27 October 2017, the Society hosted its annual Women in IR event at the Stamford Hotel, Brisbane.

The event, with the theme 'Empowering Women at Work - Breaking Barriers & Harnessing Leadership Potential' was a treat for both the minds and appetites of the ladies (and a few lucky gentlemen!) who attended.



The more than 110 public servants, industrial relations and legal practitioners from across the sector who attended the sold-out event, enjoyed both an array of 'Spirit of Queensland' delicious high tea delights, as well as the wit and wisdom of our imminent panel of speakers who shared experiences of, and insights into, their different paths to leadership.

QCU General Secretary, Ros McLennan provided a number of insightful tips for those aspiring to be leaders in the workplace, including: asking for help when you need it; not expecting perfection of yourself; keeping your sense of humour; that nothing beats integrity (you may not be thanked but you'll be trusted); not being afraid of a little conflict; and that sometimes you do have to retreat to win.

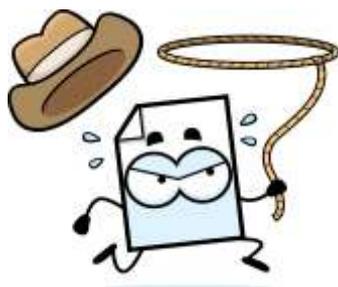
Justice Atkinson discussed: the importance of networking and mentoring in career development; and the value being someone in your workplace who has worthwhile things to say (rather than being passive), whether it be in an office meeting or through speaking opportunities at conferences/seminars.

Karen Smith-Pomeroy (AustralianSuper) likewise emphasised that: it was important to have informed opinions; be visible beyond your immediate work group; use one's persuasive skills and emotional intelligence (EQ); interact with colleagues in the workplace at all levels; maintain networks; and find mentors who can stand up for, and champion, you.

And last, but certainly not least, our youngest panellist Madeline Price (founder of the One Woman Project) spoke about various gender-based workplace inequalities and biases, including not only the more populist notion of the 'glass ceiling', but the lesser known, 'sticky floor' and 'glass cliff'.



Special thanks go to our sponsors AustralianSuper and Eagle Street Recruiting, as well as our raffle prize donors (including Noosa Chocolate Factory, Endota Spa Nundah, Alex Scott – Together Union, Nancy Kousidis Beauty, Outdoor Personal Trainer – Shona Stephenson, and Transformational Coaching & Counselling). As a result of the event, the Society was pleased to be able to make a donation to the National Breast Cancer Foundation.



# IR World Roundup

**Sarah Tilby – Vice-President (Employer), IRSQ**

**Nate Burke – Conciliator, Fair Work Commission**

## **Anti-discrimination complaint dismissed by QIRC – argument that dismissal on the basis of experiencing domestic violence was sex discrimination fails**

An employee who was dismissed by an employer days after she took a day off work due to a domestic violence incident, following which the employer emailed her employment agency saying she had ‘too many personal problems’, has had her anti-discrimination claim dismissed by the Queensland Industrial Relations Commission (QIRC).

The Applicant, Ms Wright, had submitted that the Respondent employer dismissed her in breach of the *Anti-Discrimination Act 1991* (Qld) (‘the Act’). She argued that it was discrimination on the basis of sex (one of the protected attributes under the Act) because women have ‘a disproportionate likelihood of being victims of domestic violence’, so as to fall within the circumstances of section 8(a) of the Act. She also argued the concept of not being able to keep personal issues outside of the workplace was ‘often imputed to women’ such to fall within the circumstances of section 8(b) of the Act.

Section 8 of the Act provides:

### **8 Meaning of discrimination on the basis of an attribute**

*"Discrimination on the basis of an attribute" includes direct and indirect discrimination on the basis of—*

- (a) a characteristic that a person with any of the attributes generally has; or*
- (b) a characteristic that is often imputed to a person with any of the attributes; or*
- (c) an attribute that a person is presumed to have, or to have had at any time, by the person discriminating; or*

*(d) an attribute that a person had, even if the person did not have it at the time of the discrimination.*

**Example:** *If an employer refused to consider a written application from a person called Viv because it assumed Viv was female, the employer would have discriminated on the basis of an attribute (female sex) that Viv (a male) was presumed to have.*

The employer Respondent argued a threshold issue, specifically that there was no unlawful discrimination on the basis of an attribute, as required by the Act. The Respondent noted that males are also victims of domestic violence and while ‘females may be disproportionately greater victims of domestic violence, it cannot be said that being a victim of domestic violence is a feature of quality of being a woman that serves to identify a person as being a woman’. Additionally, the Respondent submitted that the Applicant’s argument surrounding women not being able to keep personal issues outside of the workplace appeared to be based on an ‘archaic notion that women by their status as being female are more likely to be emotional and unable to control such emotions’. The Respondent ultimately submitted that the Applicant’s argument that discrimination occurred on the basis of an attribute as per sections 8(a) and (b) of the Act should fail. Deputy President Swan agreed with the submissions of the Respondent, stating that the Applicant’s submissions regarding section s 8(a) and (b) of the Act did not include anything to support such submissions.

**[Wright v Callvm Vacheron Wallace Bishop and Anor \[2018\] QIRC 007](#)**

### **Stop bullying order to be issued by FWC after employer's failure to investigate**

After unsuccessful conferences, a catering assistant employed by Ramsay Health Care ('Ramsay') has been successful in their application to the Fair Work Commission for an order to stop bullying.

The Applicant, Ms Watts, filed an application regarding alleged bullying against her by colleagues at Glengarry Private Hospital. She named in her application Mr Kumar, the Hotel Services Manager at the hospital, and Ms Laabei, a HR Advisor at the hospital.

Ms Watts' application also referred to a 'group of people' bullying her, stating that the bullying was 'unrelenting, and will continue'. She alleged that she brought up this bullying with Mr Kumar and Ms Laabei, as well as Mr Kumar's 2IC, Mr Shetty. She explained that she was asked to provide proof of the allegations, and that when she gave more detailed information about the bullying, her employer did not act upon this.

Specifically, in April 2017, the employer, through Mr Shetty provided to Ms Watts six allegations regarding her conduct at work, including failing to 'clock out' when leaving work and yelling at colleagues. She provided a written response to the allegations which referred to her being bullied by a group of colleagues, who had 'waged a secret war' to have her dismissed. Her letter provided the details of both current and former employees of the hospital, who she attested could confirm that she was subject to bullying. The bullying of which Ms Watts had alleged included a range of behaviour, including accusations that she was intoxicated at work when she was not.

At the time, there was no attempt by the employer to look into Ms Watt's comments in the letter regarding bullying. None of the people mentioned in her letter were contacted at the time.

Mr Kumar gave evidence that Ms Watts made comments that she felt bullied several times often at times when she taking part in conversations about her performance and conduct at work. He stated that he would, in response, ask for specific details about the bullying, but that Ms Watts would not provide this., Ms Laabei provided similar comments to the Commission. Both of their witness

statements included at note that because Ms Watts did not provide specifics regarding her bullying allegations, that 'there were no allegations to investigate'.

Ultimately, no formal action was taken against Ms Watts regarding the six allegations, with several of them being inconclusive or unsubstantiated.

In August 2017, Mr Kumar had concerns about Ms Watts' fitness for work – for example, he gave evidence that Ms Watts had become highly emotional on several occasions at work without being able to provide a reason, and had also become forgetful and lacking in concentration. Ms Watts attended an assessment with a doctor and a report was provided to Ms Watts' employer stating that there was no evidence of any health issue impacting on her ability to undertake the inherent requirements of her role.

Over the course of September and October 2017, Ms Watts was provided in writing with a further five allegations regarding her performance and conduct at work. These included disclosing to a colleague that Ms Watts had been directed to attend a medical evaluation, as well as showing a colleague the first letter of allegations she had been provided in September 2017, in breach of a direction to keep these matters confidential.

Ms Watts in her written response to the allegations again mentioned claims of bullying against her by colleagues, noting that management had failed to make contact with any of the staff she had mentioned would verify her claim of bullying.

Ms Watts had also filed her application for an order to stop bullying on 18 September, which detailed a document listing specific incidents of alleged bullying. Commissioner Williams noted that despite being provided this detailed document listing several examples of alleged bullying, Ramsay had failed to investigate them.

Commissioner Williams noted that it was not until after the second conciliation conference regarding Ms Watts' application for an order to stop bullying that Ramsay in November 2017 contacted Ms Watts' former manager and an Orderly employee mentioned in her letter. Two other staff mentioned by Ms Watts were never contacted.

In submissions by Ramsay regarding the application, they argued that they did not fail to act on the complaints of Ms Watts, and rather that they had explained to her that if she provided sufficient particulars about her allegations, they could then investigate them. Ramsay noted that they had regardless held education sessions for all staff on bullying.

Commissioner Williams found that Ms Watts had been bullied at work for the purposes of section 789FD of the *Fair Work Act 2009* (Cth) by co-workers, such as through accusing her of being intoxicated at work when she was not. It was also found that Mr Kumar and Ms Laabai's failure to investigate Ms Watt's comments regarding bullying in her written response to the April 2017 allegations made against her, despite her providing contact details of staff who would be able to speak to the alleged bullying, was unreasonable behaviour and was not reasonable management action.

Commissioner Williams stated that Ms Laabai failed to 'recognise Ms Watts' unsurprising reticence to name co-workers that had bullied her' and failed to contact the people Ms Watts provided details of at the time they were mentioned in April 2017. Ramsay's failure to investigate Ms Watts' claims by arguing a lack of detail was 'not correct ... [w]hat actually occurred was that Mr Kumar and Ms Laabei imposed their own requirements on how Ms Watts must complain to them about alleged bullying before they would investigate'. Ramsay had a Discrimination, Bullying and Harassment Policy which dealt with workplace bullying, but the Commissioner determined that nothing in this policy required Ms Watts to provide the level of detail asked of by Mr Kumar and Ms Laabei, before Ramsay could investigate Ms Watts' claims.

It was determined that there was an ongoing risk that Ms Watts would continue to be bullied at work, and given the lack of investigation by Ramsay into her claims (beyond calling two people which Ms Watts gave details of, at the urging of the Commissioner) Commissioner Williams concluded it was necessary to make a stop bullying order.

[Jennifer Watts \[2018\] FWC 1455](#)



We welcome the following new members:

Stacey Tomley - Dept of Employment (Cth); Dianne Hone - Banana Shire Council; Ashley Cam - Bris Uniforms & Workwear; Amber Harrington - Broadley Rees Hogan; Ben Keenan - ClarkeKann; Tim Dive - Consultant; Rachael Cage - Corrs Chambers Westgarth; Paul Whitton and Anthony Simpson - Dept of Transport & Main Roads (Qld); Kegan Scherf - Employsure Pty Ltd; Kylie Edmonds - Everhard Industries; Savannah Fea and Calum Woods - FWC; Christina Ong - Finance Sector Union; Melanie Bonser - Hastings Deering; Alana Paterson - HopgoodGanim Lawyers; Paloma Cole - Maurice Blackburn; Teneille McDermott - Minter Ellison Lawyers; Sam McIvor - Mullins Lawyers; Martin de Rooy - National Union of Workers; Rachel Abbott, Ashleigh North, Kate Matley, Kate Langdon, Lyndall Vaughan, John Yates, Tara Armstrong, Brian Feldman, Ray Clarke, Lauren Gribbin, Tony James, Lucy Yarrington, Kate Spiers, Tricia Rooney and Thomas Brauns - Office of Industrial Relations (Qld); Nicole Thompson - Protech Group; Hunter Trotman - Qld Workplace Law; Cheryl Mills - QUT; Craig McFadden - Savvy HR; David Brice - Stoddart; Deborah Ramsay - Student; Chelsea Attreed - Student; Michelle Hitchener - Super Retail Group; Paul Harpur - TC Beirne School of Law; Monica Matray, Daneil Goldman and Melissa Butters - Together Union; and Jane Halliday.

**If you have moved, been promoted or taken on a new challenge, email the Secretariat at [irsq@irsq.asn.au](mailto:irsq@irsq.asn.au) for inclusion in the next edition.**



## CHANGING OF THE GUARD

The Society thanks retiring management committee member Kristen Ramsey for her contribution to the Society, and welcomes Faiyez Devjee, Julia Grant- Vicig, Cara Spence, Jason Stein and Luke Meacle as new (or returning) members of the committee.



# Notable Quotes

**Rohan Hilton – Industrial Officer, National Tertiary Education Union (QLD Division)**

*“As quoted above, the CFMEU is not entitled to any leniency.*

*In my view the maximum penalty of \$51,000 should be imposed on the second respondent. The second respondent’s intent through the conduct of the first respondent to coerce John Holland into not exercising its workplace right to enforce its Two Longs Safety Policy is reprehensible and, in my view, plainly objectively very serious. This is particularly so where the respondents were aware of lawful dispute resolution paths available which they deliberately chose to ignore.”*

Judgement of Judge Emmett in *Australian Building and Construction Commissioner v Auimatagi & Anor (No.2)* [2018] FCCA 524

---

*“It is difficult to comprehend how Mr Brice could have failed to notice that the applicant was crying during the meeting. Mr Brice clearly failed to appreciate the level of emotional distress that the applicant was experiencing during the meeting on 16 November 2016.”*

Decision of Commissioner Cambridge in *Bupa Aged Care Australia Pty Ltd T/A Bupa Aged Care Mosman v Shahin Tavassoli* [2018] FWC 1074

---

*“The corollary of this however is that when an employee raises a complaint about a past incident of unreasonable behaviour it may be difficult for that to be investigated because of the passage of time. This potential difficulty is not a sufficient reason to not commence an investigation at all.”*

Decision of Commissioner Williams in *Jennifer Watts* [2018] FWC 1455 (Application for an order to stop bullying)

---

*“Surprise must be expressed that a person who was once employed at the rate of \$857.86 per week and who has been continuously unemployed since 3 November 2017 to the date of proceedings before the Commission on 13 March 2018 would not seriously consider the alternative of continuous employment albeit at the lower rate of \$777.86 per week while perhaps at the same time maintaining these proceedings. The only explanation must be that Mr Priest simply does not want to return.*

*While that is likely the case, the question before the Commission is whether reinstatement is appropriate.*

*In the context of this matter I think it is not.”*

Decision of Commissioner Wilson in *Leigh Priest v Albury Blue Logistics* [2018] FWC 1810

---

*As a result of the Applicant’s passing, the Commission is not able to determine the current application without denying the Applicant her legal right of natural justice and procedural fairness.*

*The application for costs is dismissed.*

Decision of Commissioner Riordan in *Ms Lynlie Cantwell v Olympus Medical Centre (Brisbane City) Pty Ltd T/A Olympus Health Group* [2018] FWC 1457

---

*“Be mighty. Be unbreakable. Join your union.”*

*ACTU Secretary Sally McManus to the National Press Club of Australia on 21 March 2018*

---



## IRSQ Management Committee

### Patron

The Honourable Justice Glenn Martin, President of the QIRC and Justice of the Supreme Court of Queensland

### President

Jo McConnell  
Director, Member Support  
Together Queensland

### Immediate Past President

Joanna Minchinton  
Employment Relations Manager  
Queensland Hotels Association

### Vice President (Employer)

Sarah Tilby  
Employment Relations Advisor  
Queensland Hotels Association

### Vice President (Union)

Vaishi Rajanayagam  
Industrial Officer / Lawyer  
Independent Education Union  
(Qld & NT Branch)

### Vice President (Other)

Lydia Daly  
Senior Associate  
McCullough Robertson

### Secretary

John Payne  
Managing Director  
Hall Payne Lawyers

### Treasurer

Terriane Redman  
HR and Admin Manager  
Deaf Services Queensland

### Employer Representative

Daniel Pfrunder  
Human Resources Manager  
HQ Plantations Pty Ltd

### Employer Representative

Faiyez Devjee  
Principal Consultant  
IRIQ Law

### Employee Representative

Michael Thomas  
Director, Industrial Services  
Together Queensland

### Employee Representative

Rohan Hilton  
Industrial Officer  
National Tertiary Education Union  
QLD Division

### Government Representative (Commonwealth)

Nate Burke  
Conciliator  
Fair Work Commission

### Government Representative (Qld)

Julia Grant- Vicig  
Senior ER Advisor  
Dept. Transport & Main Roads

### Tertiary Academic Representative

Ben French  
Lecturer  
Griffith University

### Legal Profession Representative

Dr Megan Brooks  
Barrister-At-Law

### General Member

Jason Stein  
Co-ordinator Member Assist  
United Voice

### General Member

Jessika Reghenzani  
Lawyer  
WGC Lawyers

### General Member

Cara Spence  
Workplace Relations Specialist  
Brisbane City Council

### General Member

Kris Birch  
Solicitor  
Hall Payne Lawyers

### Student Member

Luke Meacle  
Griffith University

### **Prohibition on republication**

No part of this publication may be copied or reproduced without the written consent of the IRSQ Management Committee.

### **Disclaimer and feedback**

The views expressed in this publication do not necessarily reflect the individual views of the members of the IRSQ Management Committee and do not represent the collective stance of the IRSQ Society as a whole, which aims to be impartial. Feedback, suggestions and improvements, including material for upcoming editions can be emailed to the Editor, Vaishi Rajanayagam at [vraja@qieu.asn.au](mailto:vraja@qieu.asn.au)