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President's Welcome

Greetings everyone! How quickly 2019 is progressing and I am sure you are all busy; remember to take a moment to reflect.

I was privileged to attend the Valedictory event for Deputy President Swan on 10 May 2019, what an amazing contribution she has made to our field!

What really struck me when reflecting on what the speakers said, was that DP Swan had made contributions from very early on in her employment to industrial relations.

DP Swan spoke up about injustice for workers in terms of practice long before she had an institutional role for that very purpose; her sense of fairness was already well developed.

On behalf of all IRSQ members I wish her well in her deserved retirement.

Everyone makes a contribution to their field, and there is no predictor of the impact of your work no matter your role or what side of the industrial table you sit. We each set out each day in all

our matters to conduct ourselves to the best of our ability and treat all parties with respect. At the end of the day you can walk away and be proud of the work you have done, and you may never know who has taken note of how you have presented a matter, or an argument you have presented in advocacy that has been picked up.

I genuinely felt that this was a message further supported following the 'Preparing to Appear at the Commissions' members-only event held on Thursday 23 May 2019. Vice President O'Connor and Commission Spencer both eloquently suggested that keeping to facts and conducting yourself respectfully allowed for the matter to be presented in it's best light. There were many other fabulous pieces of advice, and what a great event for members.

Our Education Series provides us an opportunity to deliver a professional development event to our current members that is targeted at practice, for those who may have already attended the "Advocacy" course or are

seeking to ensure currency of their practice knowledge.

Our first Education Series event for the year was filled to maximum capacity attendance, so look out for the second Education Series event scheduled for September.



Jo McConnell
President

What does the Election Result mean for Industrial Relations?

Helen Donovan, Senior Associate, Allens



Image courtesy of: www.kochiesbusinessbuilders.com.au

Enterprise agreements: Although the Coalition has indicated it may review the approval process for enterprise agreements, it did not propose any specific changes to the Fair Work Act. It is still unclear how the Coalition will respond to more recent calls for improved efficiency in the agreement making process. Given the decision in *One Key*, and Labor's proposal that agreements be approved by a representative cohort, it is likely we will see unions continuing to test whether agreements were "genuinely agreed to" by the workforce.

Casuals: The Coalition's lapsed *Fair Work Amendment (Right to Request Casual Conversion) Bill 2019* will likely be reintroduced. If passed, it will include in the NES an entitlement for eligible employees to request conversion to permanent employment. This will extend the entitlement to employees who are not employed under an industrial instrument and employees employed under instruments that do not contain a casual conversion term. Employers will need to review or establish processes to manage disputes regarding the requests (with disputes only being arbitrated by the FWC with the consent of both parties).

Employers should consider how the various example reasons for refusing requests contained in sub-clause 66D(2) of the Bill will apply to their operations. Employers should also be aware of a provision in the Bill (sub-clause 66F(3)) that prohibits employers from taking action that may deprive employees of their right to convert (e.g. by changing the employee's roster to avoid the employee becoming eligible to make a request).

Recommendations from the Migrant Workers' Taskforce Report

Labour hire providers: Following the Coalition's endorsement of the recommendations of the *Migrant Workers' Taskforce Report*, it is likely the Coalition will implement a labour hire licensing scheme in the horticulture, meat processing, cleaning and security industries (all industries in which the taskforce found evidence of employees being exploited). The Coalition has endorsed a 'light touch' labour hire model that imposes a low regulatory burden on operators.

Underpayments: The Coalition will consider further whether a criminal offence should be introduced for the deliberate and systematic exploitation of workers. The Coalition recognises that breaches of employment standards have not been historically recognised as criminal offences and the Fair Work Act may not be the most appropriate legislative vehicle for such offences.

Sham contracting: It seems likely the Coalition will give consideration to how the accessorial liability provisions in the Fair Work Act can be extended to prevent employers contracting out of their obligations. The Coalition will also provide additional funding to the FWO to establish a dedicated sham contracting unit, with greater capacity to investigate and litigate cases.

Parental leave: The Coalition plans to allow parents, from July 2020, to split their 18-week government-funded paid parental leave (PPL) into blocks over a 2-year period, with up to 6 weeks taken in the second year of leave, taken in any increment (one day a week, two days a week etc.). For example, a parent could return to work after taking one year of leave (after accessing 12 weeks of the PPL), and then take one day a week of PPL for up to 30 weeks, before their child turns 2. Employers will need to consider how these changes interact with employer-funded parental leave entitlements, which generally must be taken in one continuous block. The Coalition also intends to ease the work test in order to qualify for PPL. Instead of requiring that an employee not have a break from work of more than 8 weeks in the 13 months prior to taking leave, employees will be permitted to have a break of up to 12 weeks. With more employees accessing PPL, an employer's overall liability to pay parental leave may be reduced, if the employer's policy 'tops-up' the PPL entitlement.

Religious Discrimination: In December 2018, the Coalition generally accepted the recommendations of the *Expert Panel Report: Religious Freedom Review*. In the *Government Response to the Religious Freedom Review*, the Coalition endorsed a proposed Commonwealth 'Religious Discrimination Act', similar in structure to other Commonwealth anti-discrimination legislation. The Act will prohibit discrimination on the basis of 'religious belief or activity', including on the basis that a person does not hold a religious belief. Exemptions will be granted to educational institutions, which no doubt will generate continued debate. Such Federal legislation will fix an anomaly in NSW and SA, where such discrimination is not currently prohibited, and strengthen the limited protection provided for under the Race Discrimination Act (where 'national or ethnic origin' has been interpreted to cover some religious groups). Employers (and ultimately the FWC and Courts) will need to give nuanced consideration how this right is fairly balanced against other rights.

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The committee notes that wage theft continues to occur in many franchises: partly due to the business model franchisors operate and partly due to a range of socio-cultural problems. At times, wage theft was occurring as a way for franchisees to extract profits or

service payments in order to stay afloat in a financially constrained business model (given wages are one of the greatest costs in the franchisee's control). In some instances wage theft was encouraged by franchisors. Whilst many franchisors cited greed as the primary motivation for wage theft, the committee notes that the issue is far more complex and partly inherent to the business models' structural breakdown of power and the imposition of cost controls.

'Fairness in Franchising' Report, Parliamentary Joint Committee on Corporations and Financial Services

We are satisfied that the level of increase we have decided upon will not lead to any adverse inflationary outcome and nor will it have any measurable negative impact on employment. However, such an increase will mean an improvement in real wages for those employees who are reliant on the NMW and modern award minimum wages and an improvement in their living standards.

FWCFB Statement, Annual Wage Review 2018–19

The re-election the Morrison Government gives them no mandate whatsoever to further pursue an anti-worker agenda.

Morrison's silence, despite repeated requests, on industrial relations policy means he has no mandate to undermine worker's rights, pay or job security.

Sally McManus, ACTU Secretary

In line with the Prime Minister's commitment to improving inefficiencies in the public service, AMMA will encourage Minister Porter to review the performance and processes of the Fair Work Commission (FWC).

For example, employers are very concerned about the FWC's performance with what should be basic administrative tasks, such as the approval of enterprise agreements taking on average 76 days, and in some cases much longer, to complete.

Such inefficiency is unacceptable. It delays employees getting pay increases and is driving employers to bypass future enterprise bargaining. An option may be to move this function to the better-resourced.

Steve Knott, AMMA Chief Executive

In our view, once a party to a dispute objects to a member of the Commission who has been involved in conciliating that dispute from undertaking arbitration, that by itself should generally be enough to persuade the member to arrange for the matter to be reallocated to another member for arbitration.

Senior Deputy President Hamberger on behalf off FWC Full Bench in CFMMEU v Watpac Construction Pty Ltd [2019] FWCFB 3855

Education Series: Preparing to appear at the Commissions



The Fair Work Commission (FWC) hearing room (14) was bursting at the seams on Thursday 23 May 2019 with over 60 IRSQ Members attending the first of our two Education Series events, Preparing to Appear at the Commissions. Honouring the IRSQ's stated objectives of encouraging education and creating opportunities for networking amongst its members, this year these events are being run as exclusive members' only events to foster these objectives and as a reward to its members.

Over many years the IRSQ has become very well known for its "Advocacy for Workplace Relations Professionals" course. This education seminar, "Preparing to appear at the Commissions" was, in particular, held for those who may not have completed the IRSQ Advocacy Course but have a desire to learn more about developing their advocacy skills.

His Honour Vice President Daniel O'Connor of the Industrial Court of Queensland and Queensland Industrial Relations Commission (QIRC) and Commissioner Paula Spencer of the FWC presented to members at the sell-out event. Vice President O'Connor and Commissioner Spencer guided members through the do's and don'ts of appearing in the Commissions. Primarily focussed on preparing for advocacy in the Commission(s), the seminar provided members with an update on more recent considerations when advocating in both the FWC and QIRC, such as limits on materials provided to the Commission and more contemporary approaches on the use and value of affidavits, the increasing number of self-represented litigants and the appropriateness of granting representation to a lawyer or paid agent.

Similar themes emerged from the presentations by both members of the Commission, such as keeping

in mind how to present the client's case to its best advantage, preparing to cut down on the opponents arguments by legitimate means, and the art of persuasion. I am sure that it was comforting for many present to be reminded by VP O'Connor of the perhaps obvious but often forgotten fact that, at some stage everyone has had their own first day in the Commission (and first days repeat themselves in different roles over time, from advocate to Commissioner, VP etc.). VP O'Connor assured members that it was normal to be nervous when appearing in the Commission for the first time, but good preparation helped to ease these feelings over time and that learning, and skill development, is continuous. As a takeaway message from the night, VP O'Connor provided the following pearl of wisdom: Remember the 5 P's of Persuasion. "Prior Preparation Prevents Poor Performance."

Members enjoyed plenty of well catered networking in the lobby of the FWC/QIRC building (Central Plaza Two) at MAS Espresso after the main event.

Once again thank you to both Vice President Daniel O'Connor and Commissioner Paula Spencer for giving generously of their time, and to the Commission for allowing the IRSQ to hold the event at its premises.

Look out for the second event of the Education Series in the second half of 2019.

The Valedictory of DP Deidre Swan of the QIRC

Speech by the The Honourable Grace Grace MP

I am delighted to be with you all at today's valedictory for Deputy President Deidre Swan, to celebrate and thank you for almost thirty years of outstanding service on the bench of the Queensland Industrial Relations Commission – a wonderful achievement!

One wonders if a young Deidre Swan, the youngest of six children in her family growing up in Townsville, could ever have imagined the varied and successful career that was ahead of her.

- Starting out with a wide range of jobs in agriculture and hospitality while travelling throughout the country.
- Working at the totalisator at various Brisbane race tracks – where some members of the IR community may well have been part of your clientele! - and eventually becoming the union delegate at the Tote.
- Becoming the first elected female organiser of the Australian Workers' Union in its long history and ultimately being elected to positions of Vice President of the State and Federal Union, serving as National Vice-President from 1987 to 1990.

During this time, Deputy President Swan also studied for and completed her arts and law degrees while working and raising a young family, and was later admitted to the Bar.

In September 1990 she was appointed to the Queensland Industrial Relations Commission as an Industrial Commissioner – only the second female at the time to be appointed to this office (coming just months after Commissioner Glenys Fisher who was appointed earlier that same year).

In 2003, Deputy President Swan was one of the first two appointments to the new position of Deputy President of the Commission – a position she has held since that time.

I note also that in December 2009 you were appointed to Fair Work Australia as a dual appointment, having previously been a dual appointment to the predecessor body, the Australian Industrial Relations Commission or AIRC since 1991.

Over this nearly 30 year period at the Commission, industrial relations in this state and country has undergone a massive transformation.

You came to the Commission when the state Industrial Relations Act 1990 had just recently been enacted.

Enterprise bargaining was in its infancy.

Since that time, we have seen major changes in the labour market and the nature of work, and in the size and scope of the state industrial relations jurisdiction.

Queensland industrial laws have undergone various rounds of major reviews and changes.

At the federal level, we have had developments such as Work Choices, where the then federal Government used the corporations powers to significantly expand its industrial relations jurisdiction at the expense of the states.

[and I note that Deputy President Swan, along with Commissioners Asbury and Thompson, were given the task at the time of conducting an inquiry into the impact of WorkChoices on Queensland workplaces, employees and employers.

The Report of the Inquiry was presented in January 2007 and led to the establishment of the Queensland Workplace Rights Ombudsman to promote fair industrial relations practices in Queensland.]

To its credit, the Commission has always adapted and evolved with these changes over time, and, throughout, has maintained its reputation for independence, impartiality and fair treatment.

This is a tribute to the institution itself, but it's also in no small part a reflection on the qualities of the individual members, such as DP Swan.

Deputy President, you have brought fairness, wisdom, good judgement, as well as great expertise and life experience to this role.

You have earned the respect of all those who have appeared before you – from all sides – and that is no mean feat.

The people of Queensland are indeed fortunate to have been served so well over the past thirty years by Deputy President Swan.

Your contribution throughout your time on the bench has been in the very best traditions of the independent umpire, determining matters according to 'equity, good conscience and the substantial merits of the case'.

Once again, it is my pleasure as Minister for Industrial Relations to congratulate Deputy President Swan on her outstanding career.

Thank you for your contribution not only to the Commission but also to the state and the people of Queensland, and I wish you all the very best in your retirement.

Vale Andrea Gibson

Written by Commissioner Susan Booth

Many of you will know or have worked with Andrea over her long career in industrial relations.

Andrea passed away last November, but in her indomitable style requested no funeral and no fuss.

Andrea worked her whole life in pursuit of a better life for workers.

Her work choices reflected her ideals that focused on importance of the collective rights of workers and their human rights.

Early in her working career she worked at the University of Queensland union in administrative role and spoke often of the great shenanigans that occurred within the student union.

However Andrea, was always an advocate, and in her early 20s, now a mother to twin boys Gabriel and Daniel she began working at the clerks union. Bernadette Callaghan recalls a vibrant and capable organiser who moved with her young family to Toowoomba, working hard and always in the interest of members.

Andrea worked also for the Human Rights Commission. She actively participated in a very public strike at this time. The strike was unusual - it occurred because they believed that a senior bureaucrat did not share a strong enough commitment to human rights.

Later at Human Rights Commission to very much enjoyed working with the formidable Quentin Bryce – who of course was a passionate advocate for human rights.

Andrea also worked at the Queensland antidiscrimination commission for many years as the principal conciliator. After that, she worked at the Queensland antidiscrimination Tribunal, then QCAT, and finally at the Fair Work Commission. Many of you would have known her at this time for her incredible conciliation skills.

Although there are many things I admired about Andrea, what will always stay with me is what she taught me about conciliation -the need for fairness, precision and preparation thrown in with a lump of old-fashioned advocacy.

Andrea was a warm and creative person, she was loved by many. She enjoyed the fine things of life - French champagne, good food and was a lover of jazz.

She is missed by many - including her family, especially her granddaughters and her many friends and colleagues.

I'm proud to say I was one of those friends.

Griffith University Department of Employment Relations and Human Resources and Centre for Work, Organisation and Wellbeing (WOW):

With a team comprising more than 25 professionals, the Department and Centre provides tailored expert advice and training to not-for-profit, industry and government organisations through workshops, consultancy and research partnerships in the areas of human resource management, industrial relations, workplace innovation and organisational behaviour. The Department and WOW see engagement - the interaction and knowledge exchange that occurs between researchers, their clients and the research's beneficiaries – as pivotal in supporting workers, organisations and labour markets to effect positive change through the implementation of best-practice policy and procedures.

For more information on how the Centre can provide support and advice for industry partners, please visit: <https://www.griffith.edu.au/work-organisation-wellbeing/impact-engagement>

Vale George Polites

AC CMG MBE, 1918-2019

Written by Greg Bamber, Professor, Monash University

"For some twenty years or more, from the early 1960s, George Polites was Mr Industrial Relations in Australia. He was constantly in the news and his face featured frequently in the daily press. He had sharp mind laced with sense of humour. His wide knowledge and good judgment on economic, industrial and political matters were appreciated by governments of different political leanings who sought his advice and appointed him to many important committees of inquiry. The honours conferred on him – AC CMG MBE – reflected his public contributions."

"During my academic career, I drew on his generosity to speak to my undergraduate and graduate classes on current industrial relations issues. On many occasions, a senior representative of the unions would also participate in these sessions. Although differences would inevitably arise between them, they were expressed with humour and mutual respect."

"George was one of the initiators of what is sometimes referred to, disdainfully in some quarters, as the 'industrial relations club'. For many years, he and his wife Edna and two sons, Colin and Geoffrey, both also actively involved in IR, would host a Christmas party at their home to which many Victorian industrial relations luminaries, including union officials, would be invited. George saw the 'Club' as the venue for employers and their representatives, union officials and practitioners to meet and exchange wide-ranging views in a friendly setting free from immediate industrial pressures. It was in this context that the IRSV was established in 1963 with George Polites as one of its leading promoters."

"George outlived most of his contemporaries, leaving many of the more recent generations lacking in appreciation of the contributions of this legendary figure. His life and work should provide ample material for a postgraduate dissertation."



SAVE THE DATES!

Cairns Education and Networking Event

14 June 2019

Patrons Lunch

19 July 2019

Details will be posted on our [website](#) shortly!



Congratulations to Professor Rachel Claire (Rae) Cooper

Queen's Birthday 2019 Honours List: Officer (AO) in the General Division - for distinguished service to higher education, particularly in the field of employment relations, and workplace policy and practice.

5 minutes with...Kaye Smith (President, ALERA)

Kaye is the Director and Principal of law firm EMA Legal based in Adelaide, which focuses on the representation of employer interests on all aspects of employment law, including work health safety and discrimination.

Kaye is the President of the state chapter of ALERA (ALERA SA) and currently serving a term as President of ALERA. In those positions she is privileged to be able to work along side really clever, engaging people who are passionate about industrial relations and reform.

Kaye is a graduate of Flinders University, and has practised in employment relations since 1997. She has been individually recognised, since 2011, as a leading and preeminent employment lawyer in the Doyle's Guide to the Australian Legal Profession. Kaye is a graduate of the Australian Institute of Company Directors.



How did you decide on your career path?

At school there was never any question in my mind I would get a law degree and practice as a lawyer. Once at law school, I was influenced by my mother who had a background in human resource management and was lucky enough to be lectured by Professor Andrew Stewart. I landed my first proper role as a lawyer with a leading employment lawyer in Adelaide Rick Manuel. By that stage I was hooked.

Who do you admire and why?

Too many people to mention and all for different reasons. I can say my two boys make the list – they teach me something new every day!

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

I set out to achieve where I am in life now, I wouldn't change a thing!

What do you do in your spare time?

If I had more spare time, I would probably do a little more reading (non fiction thanks), or learn how to cook properly.

What do you most enjoy about your current role?

I love that no day is ever the same, and you never know what to expect from clients needing advice and direction. I love that with every election comes change, and that keeps me so engaged and connected to this area of law.



The Society welcomes:

If you have moved, been promoted or taken on a new challenge, email the Secretariat at irsq@irsq.asn.au for inclusion in the next edition!

Karen Low, Mackay Hospital & Health Service

Jackson Inglis, Sparke Helmore Lawyers

Lauren Smith, Fair Work Ombudsman

Tracey Ellis, Australian Maritime Officers Union

Scott Moran, Thiess

Micah Beaumont, Nxt Legal & Compliance

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John Simpson, Australian Super

Louise Loriaux, Qld Teachers' Union

Madelyne Inch, Carter Newell Lawyers

Penny Washington, RetireAustralia

Kim Roy, Qld Teachers' Union

Luke Hodge, Qld Police Union of Employees

Crystal Evens, Premise

Helen Donovan, Allens

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Feedback and contributions

Feedback, suggestions and improvements, including material for upcoming editions can be emailed to the Editor, Vaishi Rajanayagam at vraja@qieu.asn.au.



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