

President's Welcome

By the time this edition is released the theory element of the Advocacy for Workplace Relations Professionals course will have been delivered.

Many of you reading this will cast your minds back to when you attended the "Advocacy" course, heard about it from other practitioners or presented at it yourselves.

I took a journey back in IRSQ history to see if I could identify the origins of this very successful professional development event, if you have personal stories or other details about your Advocacy course, please contact me. I would love to hear from you.

The course was developed in the late 1990's; at that time the Society felt there was no Queensland training being offered, and what was offered interstate was very costly and inaccessible.

The Management Committee did what Committees everywhere do and created a subcommittee, tasked with developing a state focused program that the Society could offer to members and others.

I consider John McCollow, then a Research Officer for the QTU, John Merrell, then a Principal Industrial Officer for the QPSU, and Cheryl-Anne Laird, then with what was DIR, all champions of the Society! It was these three who pulled the original program together.

I have had contact with all three, and they recall many others who assisted them (coercion may have been used). All three remain members of IRSQ, and Cheryl Anne and John Merrell are still part of the course program itself. Of course, we cannot forget those who have followed and contributed to each course, who bring with them their own knowledge, experiences and contacts into the programme.

In every Advocacy course IRSQ have had access to the participation and support of the QIRC and FWC members. Many of the Commissioners have presented during the theory element of the course prior to their appointment as Commissioners, and then have not only been involved in Moots, but also in presenting material to contribute to the learnings and experience of the attendees when appointed.

There are so many people to recognise, a special mention goes to the Mentors who have added coaching over the last two years. Finally to all of our IRSQ members and supporters who have participated over the last 20 years, thank you!

I have come to realise the ongoing generosity of the practitioners in the Queensland field. It is non-partisan and it doesn't change; no matter a move in career from Principal Industrial Officer to Junior Counsel, the support and the giving back to their field continues.

Everyone is considered a peer, the collegiality and the support from across all areas of IRSQ membership is the factor that ensures the relevance, the high standard and the longevity of the Advocacy course.

I think we must take a moment to celebrate IRSQ, and all who share their time, knowledge and skills so generously.

You are all IRSQ Champions!

Jo McConnell



Advocacy for Workplace Relations Professionals Course

By Georgia Hill, Together Union



On the weekend of 9th and 10th of June I attended the theory component of the “Advocacy for Workplace Professionals Course”. The weekend was enriching experience which provided the opportunity to receive first hand coaching from experienced advocates and members of the Queensland Industrial Relations Commissions (QIRC) and the Fair Work Commission (FWC).

Over the course of two days, we received comprehensive instruction and invaluable advice about the practical aspects of advocacy. Beyond that, it was an excellent opportunity to network with



Justice Martin addressing the Course

other industrial relations practitioners from across the IR spectrum.

Some of the highlights of the weekend

were:

- Justice Glenn Martin provided an overview of advocacy and its purpose. The opportunity to hear directly from the President of the Queensland Industrial Relations Commission and the Industrial Court of Queensland on his views of what makes good advocacy was invaluable.
- Tara Armstrong of Queensland Government’s Office of Industrial Relations and Michael Thomas of Together Queensland painted a picture of conciliation conferences and how best to prepare a case, while Maurice Swan from the Australian Industry Group talked through a procedural overview of conciliation conferences.

- John Merrell’s presentation about opening address, evidence in chief and closing submissions was a particular highlight, as he impressed about how the art of persuasion in advocacy can be achieved through meticulous preparation.
- Karen Garner talked about the art of cross-examination and re-examination, and Andrew Herbert demonstrated his impressive experience in drafting submissions and pleadings.
- On Sunday Deputy President Dan O’Connor talked us through the Do’s and Don’ts of advocacy in the QIRC, and Commissioner Paula Spencer gave a fantastic presentation on advocacy in the FWC.

The physical materials provided by presenters is invaluable and no doubt I will refer to them for years to come.

Everything covered over the weekend was preparation for the upcoming moots – an incredible opportunity for attendees to

employ knowledge gained over the course of the weekend in the commission. These moots will be a great way to fill the shoes of an advocate in a supportive environment.

I feel really grateful to have had this opportunity, as the kind of coaching and experience it has provided cannot be gained anywhere else.



Commissioner Spencer

Five Minutes with...



Rob Setter

Robert Setter,
Commission Chief
Executive, Queensland
Public Service
Commission

Mr Robert Setter was appointed Commission Chief Executive on 29 June 2017 by the Governor in Council.

Robert's career over the past 35 years has been in both the private and public sector governance and a strong focus on leadership. Robert is a graduate of the Australian Institute of Company Directors, and was a Founding Director of Aviation Australia Pty Ltd, the Corporation Sole for the Australian Agriculture College Corporation and a former Director, Agri-Food Skills Australia. He is currently on the board of the Australia and New Zealand School of Government (ANZSOG) and is President of the Institute of Public Administration Australia – Queensland, and the Chief Executive, Queensland Public Service Commission.

How did you decide on your career path?

Not sure I “decided” my career path, rather it evolved. Like many involved in public work, it is in my DNA and I think linked to the circumstances in which I grew up. After that opportunities just kept coming

Who are the people who have influenced your career decisions?

Usually my managers – I enormously respect great managers who are leaders committed to working with people – sharing a common purpose, and absolutely about building trust and respect. Also poor leaders – who have thought they “owned” and

that I “owed them” – I am very clear about what leadership is not!

Who do you admire and why?

People who pursue their passion, and in doing so change lives positively. People who put their own interest secondary to whom they provide service, and those whom they work.

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

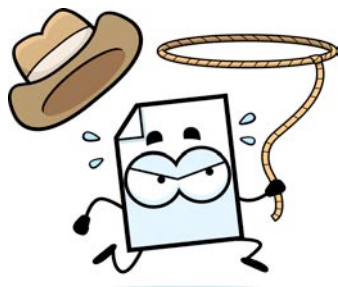
- *Respectful, caring and fair workplaces:* more and more we are seeing our workplaces, and the person to person engagement that happens at work as a means of enabling cohesive communities.
- *Contingent workforce:* legitimacy and balance
- *The future of work and workforce skilling:* aligned to the impact of technology and increasing automation
- *Leadership:* collaborative and purposeful engagement in designing and planning adjustment to assure business success and opportunity for worker growth and development.

What do you most enjoy about your current role?

I am in a position to empower, enable, link and convene diverse groups who are all involved in public purpose work. Bringing key people together, people representative of the various and diverse parts of our system to shape major strategy and policy is very rewarding and satisfying.

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

Surviving actually! Being of a certain age however gives me a degree of confidence that my life and work experience is of value, and I am now keen to see how far we can go to rebuild respect and trust across the public service system. My mission is to reconnect the people of our complex human system of public work by building capability, aligning effort, and growing confidence so that the system is resilient and at all times the best it can be.



IR World Roundup

Nate Burke – Conciliator, Fair Work Commission

Sarah Tilby – Vice-President (Employer), IRSQ

“Conspiracy theory” not a valid reason for hairdresser’s dismissal

Commissioner Riordan of the Fair Work Commission has found that the dismissal of a hairdresser that occurred during a discussion on Facebook messenger was unfair.

Ms Morris was employed by the Respondent for more than 18 months as a hairdresser. The Respondent was in the process of opening a new salon, at which Ms Morris was going to be manager.

However, in December 2017, Ms Morris and the Respondent engaged in a Facebook messenger exchange at which point Ms Morris was dismissed. Some of the more interesting exchanges in that conversation are where the Respondent said to the Applicant:

- ...You are not in control I am girl...
- You have had a voice for to long, now you will here mine! Cut them off or you will not have a job with me!
- As I said your either with me or against
- And tell Lee she is nothing but an ugly hard looking looser! And every one thinks you are descusting! You two will and shall be shunned in this town xo
- Oh and don’t come for me as I will break you
- My brother will be here soon and he out ranks you as a detective!
- I will win dumb c**t
- Take ur shit u ugly piece of crap

(errors in original)

During the exchange, Ms Morris called the conversation a “f***ing joke”.

The Respondent did not participate in proceedings before the Commission, other than attending a directions conference, during which unsuccessful without prejudice discussions were held.

Commissioner Riordan found that there was no evidence of a valid reason for dismissal. The Commission considered that the Facebook conversation revealed that the reason for dismissal appeared to be “some type of conspiracy theory” about the Applicant’s relationship with current and former colleagues, but that there was no evidence of any inappropriate behaviour on behalf of the Applicant.

Similarly, the Commissioner found that the decision was seriously procedurally flawed:

- The “conversation” was via social media, late at night and there was no evidence of the capacity or sobriety of the participants;
- There was no opportunity to respond and the discussion escalated to an “unfortunate conclusion”;
- It was not a disciplinary meeting but a Facebook chat which “spiralled out of control”; and
- It was not a case of unsatisfactory performance and it was likely the size of the business was a factor.

The Applicant’s loss was limited to 4 weeks’ pay, which the Commissioner ordered as a remedy.

[Jaymi-Lee Morris v Alphaeus Hair Salon \[2018\] FWC 2642](#)

Test case on certified agreement provisions under the Industrial Relations Act 2016 (Qld)

After a series of bargaining meetings commencing in 2016 between the Electrical Trades Union, Construction, Forestry Mining & Energy Union and the Australian Manufacturing Workers Union ('combined unions') and Brisbane City Council (BCC) for a new certified agreement (EBA9), the BCC subsequently advised the combined unions in September 2017 that it would be conducting a ballot for (EBA9) without the agreement of the combined unions.

The BCC and the combined unions entered into voluntary conciliation conferences held by the Queensland Industrial Relations Commission (QIRC), however on 22 September the BCC notified the combined unions that it would still proceed to a ballot for EBA9. In October 2017 the BCC advised the combined unions that it would no longer enter into any negotiations regarding the content of the proposed EBA9, disputing the combined union's argument that the BCC could not proceed to hold a ballot without their agreement on the form of the proposed EBA9.

The combined unions made an application to the QIRC which had sought that the Commission make a declaration that the combined unions were negotiating parties as defined in section 171 of the Industrial Relations Act 2016 ('the Act'), and that the BCC not be able to ask employees to vote on a proposed bargaining instrument, if it is not actually proposed by all relevant negotiating parties as per section 171 of the Act.

In this Decision, a Full Bench of the QIRC held that:

- section 165 of the Act could only allow an employer to make a certified agreement directly with employees 'where there is no union coverage or where there is union coverage but the union does not wish to be involved in making an agreement'.¹ It was noted

that it would be a rare occurrence for public sector employees in Queensland to not be subject to union coverage.

- Section 171 of the IR Act requires that all negotiating parties (as defined by the IR Act) needed to give their agreement to allow an employer to put a proposed collective agreement to its employees.

As a result the BCC was restrained from taking any further action to have the proposed EBA9 be voted on by employees, pending further hearing and determination of the matter, or any subsequent order of the Commission on the matter.

[The Electrical Trades Union & Ors v Brisbane City Council; The Australian Workers' Union v Brisbane City Council \(No. 2\) \[2018\] QIRC 015](#)

FWC Full Bench issues a reminder about the application of section 387 in the Fair Work Act 2009

A plant operator dismissed from the employer Nyrstar on the basis of a serious safety breach had lodged an unfair dismissal application, arguing that there was not a valid reason for dismissal and that the dismissal was harsh, particularly given his 37 years of service. Deputy President (DP) Barclay at first instance had found the dismissal to be harsh, despite the safety breach being a valid reason for dismissal, noting that Nyrstar should have given the plant operator the opportunity to make a submission as to any sanction for the safety breach prior to his dismissal.

An appeal was lodged and granted by a Full Bench on the basis that the DP had found it incumbent on Nyrstar to give the plant operator an opportunity to make a submission on any sanction for the breach, which they determined meant that the DP 'adopted a decision rule and thereby imposed an unwarranted fetter on his discretion. This constituted appealable error. It manifested an injustice'.

¹ [46].

The Full Bench stated at paragraph 23 of its Decision:

‘Section 387 requires the Commission to approach the consideration of whether a dismissal was harsh, unjust or unreasonable in a particular way. It directs the Commission to take certain matters into account. It does not stipulate criteria that must be satisfied in order for a dismissal to be fair or unfair. Nor does it authorise the Commission to develop or apply its own criteria’.

The Full Bench noted that the DP had acknowledged a meeting between the plant operator and Nyrstar in which mitigating circumstances were discussed, but specifically in relation to the safety breach conduct, and not regarding a proposed sanction for the conduct. The DP had said that this could have given the plant operator the ability to emphasise to the employer his 37 years of service, lack of prior formal warnings for any safety breaches, the potential that he would not be able to obtain other employment in their location (Hobart) and financial obligations that the plant operator held.

It was said by the Full Bench that if an appeal bench wonders whether the Commission member at first instance gave too much or little consideration to a factor, this will usually not be a basis for deciding ‘that the member’s discretion miscarried’. In this situation, the Full Bench argued that there was an error through the DP finding it incumbent on Nyrstar to give the plant operator the ability to respond to a proposed sanction.

The Full Bench considered whether the error was serious enough to warrant the upholding of the appeal, and found that it was on, the basis that the DP’s decision that the plant operator’s dismissal was harsh was to a large degree based on the DP’s position that it was incumbent on Nyrstar to give the plant operator the ability to respond to a potential sanction.

As a result, the appeal was upheld and the plant operator’s unfair dismissal application was referred to Commissioner Lee for a rehearing.

[**Nyrstar Hobart Pty Ltd v Peter Brain \[2018\] FWCFB 3346**](#)



The IRSQ would like express its gratitude to all the wonderful professionals who gave their time to be mentors to participants of the “Advocacy for Workplace Professionals Course”.

John Martin – QCU
Matthew Williams – Barrister
Maurice Swan – AiGroup
John Spreckley – United Voice
Caroline O’Connor – Franklin Athanasellis Cullen
Lawyers
Pat Rogers – Electrical Trades Union
Rachel Smith – Maurice Blackburn
Cheryl-Anne Laird – Livingstones
Mark Curran - DWF Law
Jason O’Dwyer – Master Electricians Australia
Dr Megan Brooks – IRSQ
Nate Burke – IRSQ
Daniel Pfrunder – IRSQ

Social Media

The Society is on Social Media!

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



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.

FNQ Twilight Seminar	6 July 2018
Patron's Lunch	24 August 2018
IRSQ Conference	14 September 018
Women in IR	26 October 2018



We welcome the following new members:

Ann Mish-Wills, Darling Downs Hospital & Health Service

Danielle Williamson, Qld Nurses & Midwives Union

Olga Murphy, Livingstones

Mark Singh, Dept of Transport and Main Roads

David Marskell, Metro South Hospital & Health Service

Peta Newton, SEE Group Pty Ltd

Gordon Stewart, Clifford Gouldson Lawyers

Kyle Paull, Clifford Gouldson Lawyers

Alece Daley, Bank of Queensland

Kyie Dixon, Qld Health

Chantell Hagen, Sigma Healthcare

Cassandra Launder, Dept of Environment & Science

Gavin Moules, Brisbane City Council

Olivia Paull, Qld Urban Utilities

Damien Hamwood, Together Qld

Georgia Hill, Together Qld

Christina Snowdon, Together Qld

Peter Morris, Austin Engineering

Emma Kirkby, Master Builders Queensland

Robert Byrom, Sandvik

Tobey Knight, Minter Ellison Lawyers

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.



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

Terrianne Redman
HR and Admin Manager
Deaf Services Queensland

Employer Representative

Daniel Pfrunder
Human Resources Manager
HQ Plantations Pty Ltd

Employer Representative

Faiyeez 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