

President's Welcome

Welcome to another fabulous edition of the Advocate!

We have been very busy since our last publication with two events having been presented by the Committee.

We had nearly 300 attendees at Patron's Lunch this year held at the Hilton on 24 August 2018. Natalie Wakefield, Director, Labour Hire Licensing Compliance Unit, OIR spoke about the new licensing arrangements in Queensland and what she herself has learnt along the way.

Natalie is always an engaging speaker and has been a very generous supporter of IRSQ this year given that she also addressed our Cairns event in July. When I introduced the Lunch topic I did say that everyone would go home that day having learnt something new, the breadth and scope of labour hire is more that you would ever have considered.

We just held our Conference, Toward 2020 at the Pullman on Friday 14 September 2018. I know many members enjoy our destination conferences, however we determined this year to have a one-day event in Brisbane to see if it would be attractive to attendees, and it was. Thank you to all who attended and made it a great event, the feedback on both of the panel discussions was powerful.

Of course, there was never an option not to impress at the Conference, we had a number of our IRSQ champions present on the day. Professor David Peetz, Dr John Martin and Dr Josh Shingles regarding us about the new world order of IR, it was destined to be

entertaining. Mr Andrew Herbert, DP Asbury, DP O'Connor, and Commissioner Hunt attend and speaking on a skills workshop panel regarding actions and Tribunals.

I must make mention of the Deputy Commissioner of the PSC, Mr Peter McKay who met his obligations to the investigation session even when A/DG DSBT, this session captured a lot of interest.

I extend my thanks to all the presenters, you contributed to a successful Conference.

There is always a lot of emerging issues in our field, your attendance, and as members, and indeed, the non-member attendance indicates to us that the professional development events we deliver to you are relevant to you as practitioners and academics and are topical.

I welcome you to contact us to seek advice about joining the Committee and making suggestions for us and what is presented. Being a member of the Society's Committee provides many benefits, both professionally and personally, I am lucky to be a part of a great team of very skilled individuals.

See you at Women In IR on 26 October 2018!!

Jo McConnell



IRSQ 2018 Day Conference – Beyond 2020

By John Simpson, Australian Super

On Friday the 14th of September the IRSQ held its annual conference, the event was held at the Pullman hotel to approximately 50 attendees who enjoyed the benefit of learning from a plethora of esteemed presenters. The event focused on several key issues impacting the industrial landscape including:

- A panel discussion around the Gig economy,
- A debate on the legal implications of wage theft,
- An interactive skills workshop on legal actions available to employees,
- An investigation of the impacts of Occupational health and safety, and
- A discussion piece on best practice workplace investigations



The Gig Economy:

The day started with a panel presentation by Professor David Peetz, John Martin from the QCU and Dr Josh Shingles from Livingstones on “The Gig Economy, contractors and casuals: The new world order of IR”. This session was opened by David Peetz who defined both formats of a company in a gig economy, the online or platform format and the work on demand apps similar to Uber. A significant focus was placed upon the latter as its growing popularity is having several flow-on effects to superannuation and workers compensation and the economy in general as it is believed that over 50% of gig economy workers are paid under the minimum wage.

From the data presented the panel then discussed the potential measures or regulations that the government might be able to set to counteract these negative

consequences. Finally concluding around a central concept that these workers should at least receive the minimum wage and basic working conditions that govern other forms of employment in Australia.

Wage Theft:

The next session was hosted by Ros McLennan, General Secretary of the QCU and Scott Barklam, Director of the ACCI on “Wage Theft: Two Perspectives”.

Ros held the belief that wage theft was tantamount to theft, if an employee was caught stealing money from the tills of a business they would be charged with theft. Ros believes that wage theft should justly carry an equal repercussion. Ros told us that there are a wide

range of industries and employers that get caught up with wage theft and therefore it needs to be handled effectively. She advised that a recent audit of [Grab your reader's attention with a great quote from the document or use this space to emphasize a key point. To place this text box anywhere on the page, just drag it.]

23 stores of a national food company only found four stores fully compliant. These types of audits and investigations resulted in \$30.6 million being recovered on behalf of employees last year. It was her position that whilst the recently introduced Labour Hire legislation passed in Queensland will assist in improving practices in this area it will not completely solve the issue.

In contrast, Scott offered the opinion that not all non-compliance is necessarily wage theft, and that the complexity of current laws and regulations makes it confusing for both employers and employees. He added that the ACCI is about helping their members get it right.

Scott then focussed on the three P's:

- *Penalties – the current penalties are adequate and need time to show they can work*
- *Policies – there needs to be an appropriate analysis to determine if additional resources are needed*
- *Publicity – make employers and employees aware of the obligations and entitlements and promote understanding.*

Scott also suggested better promotion of the Fair Work Ombudsman and the role this agency provides. He was not convinced that stiffening the penalties to include criminalisation would be any greater deterrent than the current penalty regime.

Both Ros and Scott agreed that employers and employees need to be encouraged to ask

questions to improve their understanding of the law.

Interactive Skills Workshop:

The conference attendees then participated in an "Interactive Skills Workshop on Courts, Tribunals and choice of action, specifically the pros and con's and how to decide". The workshop was facilitated by Deputy President Asbury (FWC), Deputy President O'Connor (QIRC), Commissioner Hunt (FWC) and Andrew Herbert.

The scenario highlighted several industrial issues and investigated the numerous possible courses of actions that need to be considered when dealing with workplace incidents. It was incredibly insightful to have each of the facilitator's interpretation of both the situation and legislation that applies in the circumstances similar to the one presented.

All members of the panel agreed that there are always numerous options that an employee may wish to seek. Therefore, it is essential to define the situation to avoid unnecessarily severing possible courses of actions; this may be as simple as determining whether the employee is still employed or wish to remain employed.

Occupational Health and Safety:

Greg Karlsson from WHS Qld presented on the "Regulator's powers and processes; common complaints and recent cases; developments, changes and reforms". Greg advised that their primary activity is responding to incidents and complaints, with over 5,300 incidents and 4,300 complaints received over a 12 month period. He placed particular focus on the statistics of multiple different industries and examining how they compare via several analytical graphs and tables.

Luke Tiley from Hall Payne Lawyers spoke about the "Right of Entry for WHS", informing the audience that a Right of Entry notice does not always need to be given prior to entry, as



long as it is provided within a reasonable period of time. He also advised that a third party can provide reasonable suspicion of a breach.

Workplace Investigations:

The afternoon concluded with a presentation by Helen Donovan, Workplace Inspector & Mediator (Q Workplace Solutions) on "Workplace Investigation: How to get it right (or try to!)", and Peter McKay, Deputy Commissioner (QPS Commission) on Investigations in the Public Service.

Helen as an investigator, ran through an overview of the necessary steps involved with a successful investigation. The process begins with the consideration of when and why the situation needs to be investigated, this includes the exploration of alternatives to a full investigation, such as a preliminary enquiry. If it is concluded that an investigation is necessary, it is important to follow the appropriate policies that dictate the process, this must be communicated throughout the entirety of the process. This should be included in the brief given to the investigator as well as any other notes that might be of use to the investigator. This brief will also clearly outline the conduct of the investigators and the participants of the investigation such as the witnesses, such as the use of non-disclosure agreements. Lastly it is important to observe an often-overlooked mechanism, that is to provide support for the participants. It can be a very stressful period where they might be unaware the investigations progression causing unnecessary anxiety. In the cases where the claims are not substantiated, much of the stress can be exacerbated by poor case management, this can easily be

mitigated via communication and an open and transparent investigative process.

Peter then gave an insight into the practices of the public sector. He outlined the systems and statistics from 2016/17 year. Of which, there were 2,866 matters reported with 580 of them proceeding to a disciplinary process. The majority of cases were conducted internally as their systems and size allow them to handle complaint internally. He also mentioned that a duty of care is owed to the investigators, there is a large amount of stress placed on the investigators which is often overlooked. The process of investigating poor behaviour can cause serious mental stress and thus needs to be managed carefully and monitored for change.

In regard to what can go wrong, Peter said the two main underlying factors that cause an issue in an investigation are a failure to manage the investigation and, choosing to investigate when some other form of management may resolve the matter. An unnecessary investigation can produce many unintended repercussions, as the process can often take up to 12 months it is important to



consider the necessity of putting both the

employees and the investigators through the ordeal, this of course comes with the proviso that this should not be used as an excuse to avoid investigating serious issues.

In summary, it was a very informative day with the majority of participants acknowledging the value of the topics covered and the expertise of the presenters involved.

Social Media

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Notable Quotes

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

[2] ...In light of the experience of Mr Palpal-Latoc in this matter, one can only hope that the Respondent takes better care of the puppies at their farm, than they do of the humans in their employ.

[45] The procedures in this matter were non-existent. It could be said that the Respondent's procedures had "gone to the dogs". Consequently, I find the size of the employer's enterprise did impact on the procedures followed in effecting the dismissal.

[51] In fact, so obvious was the unfairness experienced by the Applicant that (to use the idiom frequently used in Ireland) "even the dogs in the street know" that it occurred."

Decision of Commissioner Johns in Lance Palpal-Latoc v Cloud Catcher Pty Ltd [2018] FWC 3746



IRSQ 2018 Patrons Lunch Wrap

Julia Grant-Vicig – State Government Representative, IRSQ

The 2018 IRSQ Patron's Lunch was a massive success following a great tradition of insightful presentations from eminent professionals for a broad spectrum of industrial relations backgrounds.

This year saw the opportunity to have Natalie Wakefield, Director, Labour Hire Licensing Compliance Unit, Office of Industrial Relations to present a timely summary of the impacts following the release of the Labour Hire Licensing Regulation 2018 (Qld) in April supporting the Labour Hire Licensing Act 2017 (Qld), which was passed late last year.

Natalie was engaging and astute in her summary of the impact since the introduction of new labour hire licensing laws, the first in the country and in Queensland, providing her perspective on how compliance with the laws are being administered as head of the Labour Hire Licensing Compliance Unit.

Her perceptive observations and entertaining antidotes conveyed passion and commitment and reflected the hard work being undertaken in a challenging field of industrial regulation.

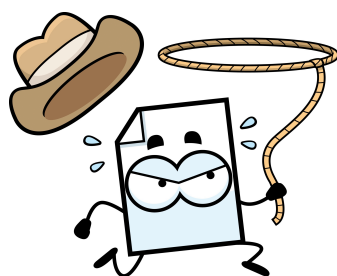
Feedback from audience members has been immensely positive, that the timely and relevant presentations provided insight into an ever changing and challenging regulatory body and its impacts in the field of industrial relations.

Lunch was followed in the usual inimitable Society style with some keenly anticipated networking between old colleagues and new over drinks at the bar downstairs. Yet another successful Patron's Lunch done and dusted!

The Society's Management Committee would like to thank our sponsors for this year's event – Australian Super and Griffith University.



Natalie Wakefield addresses the Patron's Lunch



IR World Roundup

Nate Burke – Conciliator, Fair Work Commission

Full Bench confirms mandatory to warn employment at risk under the Code

Mr Miller applied to the Fair Work Commission alleging that he had been unfairly dismissed. The Commission at first instance found that Mr Miller's dismissal was consistent with the Small Business Fair Dismissal Code. Mr Miller appealed the Commission's decision.

Relevantly to the appeal, the Full Bench recorded the Commissioner's findings as follows:

- In addition to the 16 November 2017 letter, the Respondent had sent a series of earlier emails concerning the Appellant's performance issues. The breadth of these performance issues indicated that the Respondent had a sound, defensible and therefore valid reason for dismissing the Appellant from his employment.
- • "Whilst the issues raised with [the Appellant] over his period of employment are constant, [the Respondent] did not, until the letter of 16 November 2017, unequivocally advise the Appellant that his employment was at risk."
- • The Appellant was "given an opportunity to respond to the reasons set out in the letter of 16 November 2018 [sic] both in writing and in person on 20 November 2017. In doing so he was well aware of the concerns with respect to his performance might lead to his dismissal."

Mr Miller's appeal focussed on the correct application of the Code to the circumstances. Mr Miller contended that it was not until the letter of 16 November 2017 that he was

advised his employment was at risk, that he was dismissed on 22 November 2017 and, not in conformance with the Code, he was not given a chance to show improvement.

The Full Bench agreed.

The Full Bench stated that given the Commissioner's finding of fact that the Respondent had not "*unequivocally advised the Appellant that his employment was at risk*" until the letter of 16 November 2017 it could not properly have been determined that the Code had been complied with.

The Full Bench noted that on the findings of fact made by the Commissioner Mr Miller had 4 days between the first occasion of being unequivocally warned that he risked dismissal and being dismissed. Given that the Applicant did not perform duties during this time Mr Miller was not provided with "*reasonable chance to rectify the performance issues raised*" in the letter.

Further, the Full Bench found that the Commissioner was in error in finding that Mr Miller "*should have reasonably understood the implications of a failure to perform*" holding that the Code does not contemplate whether an employee "*should or should not*" have understood the risk of dismissal but that the Code expressly provides that the employee *must* be warned either verbally or preferably in writing "*that they are at risk of being dismissed*".

<https://www.fwc.gov.au/documents/decision/signed/html/2018fwcfb4166.htm>

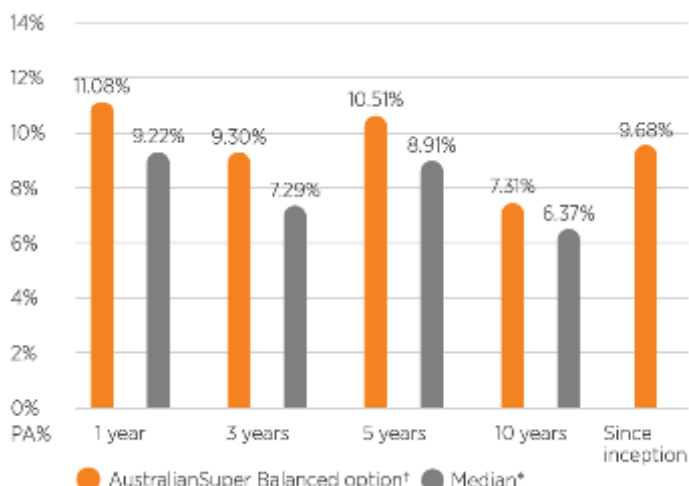
Investment strategy and outlook from AustralianSuper

Another year of strong returns for members

It's been another great year for AustralianSuper members with all investment options delivering positive returns for the year to 30 June 2018.

The Balanced option for super accounts – where the majority of member's funds are invested – produced its ninth consecutive year of positive returns and the fifth year in the past six of double digit returns. The option ranked in the top three performing funds for the 1,3,5 and 20 years to 30 June 2018 in the SuperRatings survey*.

Balanced investment option returns to 30 June 2018



Stable global economic growth and low interest rates supported investment markets, with global shares, Australian shares and private equity the best performing asset classes.

AustralianSuper's strategy of maintaining a diversified portfolio has added to returns, particularly our relatively high weightings to unlisted assets (infrastructure, property and private equity) and international shares. All major share markets produced double digit returns for the financial year. The largest weighting in the Balanced option is to international shares, which has been one of the strongest performing asset classes over the last five years to 30 June 2018.

Key themes

Returns resilient despite increased volatility

Returns proved to be resilient despite an increase in share market volatility in the second half of the financial year. In a similar scenario to 2016/17, global political uncertainty, rising US interest rates and noise over increased trade protectionism didn't have a sustained negative affect on markets.

In fact, Australian and International share markets ended the year higher in the aftermath of President Trump and North Korea's Kim Jung-un historic summit in June.

This manifested itself in a 'risk on' tone re-entering markets and benefited the overweight exposure to growth assets in the Balanced option and our other PreMixed investment options. It was also why the DIY Single Asset Class options, International Shares and Australian Shares were the two highest performing options for the financial year.

US interest rates on the rise as growth improves

Stronger US growth has given the US Federal Reserve confidence to maintain its course of normalising interest rates. In June it raised its benchmark interest rate, the Federal Funds Rate, by another 25 basis points to 2.0%. This is the seventh interest rate hike since this cycle of increases started in late 2015.

Further increases are anticipated with the Fed signalling it will raise rates to 2.5% by the end

of 2018, 3.0% in 2019 and 3.5% in 2020. For the first time since 2000, short term rates in the US are now above those in Australia, which is the main reason we see further weakness in the Australian dollar ahead.

Australian economy constrained but growing

Australian growth is being lifted by strong government consumption spending, rising non-mining investment, housing and infrastructure spending and firmer commodity prices. Growth for some of 2017 had been constrained by weakness in household demand growth. Household consumption growth has since displayed some strength.

House price declines are moderate, but accelerating. There are concerns that a consequence of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry may be a further tightening of lending standards. The RBA is broadly optimistic about this risk, believing it to be mostly the deliberate result of a number of macro-prudential policy measures that could be re-loosened if required. We're watching these developments very closely.

Outlook

Another year of strong returns has us more cautious about the prospects for FY19. A number of assets classes have been producing returns above their long-term averages and this causes us to be wary.

We're entering the mature stage of the economic cycle and interest rates and bond yields are expected to move higher. This will create a more challenging environment for growth assets, such as shares, infrastructure and property.

Despite this, developed and emerging market economies are both continuing to experience positive growth, which is supportive for the outlook for company earnings and corporate profitability. As such we'll continue to maintain a positive stance on listed and unlisted equity markets as they offer good returns for members' portfolios.

Nonetheless, we know that at some point in the future, investment returns will be more subdued. AustralianSuper is closely monitoring key policy makers, particularly the US Federal Reserve in relation to interest rates while also monitoring any action in relation to tariffs or other measures which may impact global trade. For us, there are the warnings signals that will help us to decide when it's time to start rotating out of shares and growth assets and take a more defensive stance. We don't think we are at that point yet.

*SuperRatings Fund Crediting Rate Survey, SR50 Balanced (60-76) Index 30 June 2018. AustralianSuper Balanced option inception August 1985. Returns from equivalent investment options of ARF and STA are used in calculating returns for periods that begin before 1 July 2006.

†Returns are net of fees and taxes. Investment returns are not guaranteed and past performance isn't a reliable indicator of future returns.

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We welcome the following new members:

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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
Kylie 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
Jason Gibbons, Office of Industrial Relations
Tony Schostakowski, Office of Industrial Relations
Karen Bow, Qld Trucking Association
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Kathy Pham, Watpac
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Betania Passos, Kentz
Sam Dodd, Mater Misericordiae Limited
Greg Arnold, Effective Workplace Solutions
Cheri Taylor, Together
Rebecca Girard, The Services Union
Cate Hartigan, Barrister
Anna Ferrett, United Voice
Zebedee Sugden, Qld Teachers' Union
Mandy Kennedy, My Pathway
Patricia Kirkman-Scroope, Barrister
Nina Watson, Griffith University Student
Tania Kabel-Pluck, Surf Life Saving Foundation
Nicole Thompson, Protech Group
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Kathryn Burke, APA Group
Nikolina Palasrinne, Aitken Legal
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Sandra Terera, Community Management Solutions
Sarah Mangan, Together
Fiona Ryan, Rheinmetall Defence Australia & NZ
Zhara Nash, Ukoo
Elouise Carey, Ukoo
Angela Lamb, Coles
Kimberley Maclean, Bechtel
Sewar Mitanis, LGAQ
Laura Regan, Housing Industry Association Limited
Kate Ruttiman, Qld Teachers' Union
Tim Daley, Goodstart Early Learning Ltd
Sam McIvor, Mullins
Rana Watson



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

Upcoming events



The year is rapidly drawing to a close and we've had an exciting array of events so far that have included networking, educational and social events. Keep an eye on our website for further details on this year's remaining activity.

[FWC Mock Hearing](#) 23 October 2018

[Women in IR](#) 26 October 2018



IRSQ Management Committee

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