

NEWSLETTER

JULY 2007



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Note: the views of the contributors are not necessarily those of the IR Society of SA.

PRESIDENT'S MESSAGE

The recent significant changes in industrial relations in Australia have led to various and hopefully informative seminars and functions as conducted by the Society in the last few years. However, they have also changed the demands upon those operating in the profession and consequentially, their expectations and requirements. The Committee has recognised these developments and has recently conducted a comprehensive planning exercise designed to commence the renewal of the Society.

Details of the outcomes of the planning exercise will be finalised and unveiled in the next few weeks and months. However, I would indicate that the Committee is looking to reinvigorate the activities of the Society, including the level and quality of information made available to members, whilst retaining the value for money membership and seminar arrangements. Further, the committee will also be consulting the broader membership before any significant changes are implemented.

The first element of this process is the proposed adoption of a new logo and image. I would encourage members to take an active interest in the consultation process and to ensure that the Society continues to provide benefits and value to your professional work.

In the lead up to this year's federal election there is intense interest in industrial relations as one of the significant policy battlegrounds. In that light, the Society has given an open invitation to Hon Joe Hockey MP, Minister for Employment and Workplace Relations and Ms Julia Gillard MP, Deputy Opposition Leader and Shadow Minister for Employment and Industrial Relations, to address our Society at their convenience. Discussions are presently underway with Ms Gillard's office and we await a response from the Minister.

Finally, I would like to encourage members and guests to attend the Society's AGM which is scheduled for the evening of Wednesday 29 August 2007. We have secured Associate Professor Rosemary Owens, Acting Dean of Law at the University of Adelaide, to be our guest speaker. The evening is intended to have as few formalities as possible and represent an opportunity for members to enjoy some good wine, beer and nibbles and some great company. Please join us and also consider nominating for the Committee of management. Your contribution would be valued by the Society. Formal notices have recently been distributed.

Peter Hampton
PRESIDENT
IRSSA

REMINDER MEMBERSHIP SUBSCRIPTIONS

Membership subscriptions are now due and payable.

Subscription rates for the 2007-2008 year are:

Full Member:	\$100.00	(incl GST	\$9.09)
Student Member:	\$30.00	(" "	\$2.72)
Retired Member:	\$50.00	(" "	\$4.54)

If you have not received your renewal form please contact the Secretariat on 8278 9666

ANNUAL GENERAL MEETING

This year the Society will hold its Annual General Meeting on Wednesday 29 August 2007 (5.30 p.m. for 6.00 p.m.) at the Holiday Inn, 65 Hindley Street, Adelaide.

Our speaker this year will be Ms Rosemary Owens, Associate Professor of Law and Acting Dean of the School of Law, University of Adelaide.

We extend thanks to the retiring IRSSA committee for their work in the past year.

STATE COMMISSION INQUIRY INTO WORK CHOICES

by Peter Hampton

As advised in our previous newsletter, on 27 March 2007, the Minister for Industrial Relations directed the Commission to hold an inquiry into the impact of the Commonwealth Work Choices and independent contractors legislation on the regulation of industrial relations in South Australia.

The Commission initially called on interested parties to register their interest in being involved in the Inquiry by 10 April 2007. As at 31 May 2007, 47 registrations were received, of which 13 were from unions, 6 from employer organisations and 9 from Government bodies, with the remainder from professional or community organisations or individual members of the community.

A Preliminary Statement was issued by the Commission on 10 April 2007 that identified the preliminary issues and the proposed process for the Inquiry.

A preliminary sitting of the Commission was held on 11 April to enable parties to identify their proposed involvement in the Inquiry and to discuss the issues arising out of the Commission's Preliminary Statement.

On 24 April 2007, the Commission provided an Issues Paper to all parties who had registered an interest in the Inquiry. The Issues Paper discussed the terms of reference of the Inquiry in detail, and lists a number of issues that may have arisen as a result of the changes to industrial relations in South Australia since the commencement of Work Choices.

The submissions, witness statements and other material filed by the various parties are available on the Commission's website:

www.industrialcourt.sa.gov.au

The current timetable for the inquiry is:

- all witness statements filed by 29 June 2007
- all oral evidence taken by 6 July 2007
- an interim report provided by the Commission by 20 July 2007
- final written submissions to be received by 10 August 2007; and
- the Commission will set aside the week commencing 13 August 2007 to hear from those participants wishing to make oral submissions to supplement or expand upon written submissions.

WORKPLACE AGREEMENTS: THE NEW FAIRNESS TEST

Reproduced courtesy of Finlaysons

The Federal parliament has now enacted a "Fairness Test" against which all workplace agreements made or varied after 7 May 2007 will be assessed.

The Fairness Test requires employers to provide fair compensation to employees earning less than \$75,000 per annum (or an equivalent amount for part time and casual employees) for the loss of protected award conditions including rest breaks, incentive-based payments and bonuses, annual leave loading, public holidays, allowances, shift penalties and outworker conditions. Compensation can be monetary or non-monetary, but must have a monetary value.

Protected award conditions will be drawn from any award which governs the employee's employment. If there is no binding award, the Workplace Authority may designate an award. This is an unusual arrangement because in practice, it may require employers to compensate employees for the loss of conditions to which they are not strictly entitled in the first place. However, there will be a mechanism by which parties can ask the Workplace Authority to indicate the likely designated award in advance.

The Workplace Authority will be responsible for deciding if workplace agreements are fair. If an agreement is deemed to be unfair, the Workplace

Authority will provide the parties with 14 days in which to vary the agreement and make it fair. If not altered satisfactorily, the agreement will cease to operate at the conclusion of the 14 day period and the employee will revert to the conditions which applied prior to the creation of the agreement. Again somewhat unusually, employees allocated a designated award will retain an entitlement to the protected award conditions from the designated award.

In comparison, if an unfair agreement is adequately amended within the 14 day period the employer must pay the employee compensation or back pay for any loss sustained while the agreement was unfair.

Whilst it will be possible to obtain a pre-lodgement fairness assessment from the Workplace Authority, it is unclear precisely what mechanisms will be available for challenging disputed assessments. It is also unclear whether employees have any avenue for challenging workplace agreements which initially pass the Fairness Test but become unfair over time.

These arrangements herald significant changes for the manner in which workplace agreements are made and remove some of the agreement-making flexibilities introduced with the WorkChoices reforms. Given the risks associated with non-compliance and the existing detailed procedural requirements for making workplace agreements, employers would be well advised to seek advice about any agreements made on or after 7 May 2007 to ensure they meet their legal obligations in full.

Other Significant Changes

In addition to the Fairness Test, the Federal Government has implemented the following significant changes to workplace relations law:

- employers will be required to issue a "Workplace Relations Fact Sheet" published by the Workplace Authority to all new employees within seven days of commencement, and within three months to existing employees
- following termination of a workplace agreement, redundancy entitlements will now be preserved for a period of up to 24 months (an increase from the current period of 12 months)
- in a transmission of business situation, it is now unlawful to make continued employment conditional upon signing an Australian Workplace Agreement
- the Office of the Employment Advocate will now be known as the Workplace Authority, while the Office of Workplace Services has changed its name to the Workplace Ombudsman.

WORKPLACE RELATIONS FACT SHEET

Reproduced courtesy of Finlaysons

Recent amendments to the Workplace Relations Act require employers to provide a Workplace Relations Fact Sheet to all employees. The Fact Sheet contains information about minimum employment entitlements and the role of the Workplace Authority and Workplace Ombudsman.

Copies of the fact sheet can be ordered from the Workplace Authority's website at

www.workplaceauthority.gov.au.

When Must the Fact Sheet be Provided?

The Fact Sheet must be given to new employees within 7 days of commencing employment.

Existing employees must receive a copy by no later than 20 October 2007.

Penalties for Non-Compliance

Failure to comply with these requirements could result in a penalty of \$110 per breach.

NEW REMUNERATION AND COMPENSATION LIMITS

Reproduced courtesy of Finlaysons

Every year, there are CPI changes to important financial limits in employment matters. From 1 July this year, the following changes will apply.

Remuneration Limits

Employees not covered by an award, workplace agreement or industrial instrument and whose remuneration exceeds \$101,300.00 per annum are excluded from making unfair dismissal applications. This is an increase from the current limit of \$98,200.

Compensation Limits

The maximum amount of compensation that may be awarded to employees who are dismissed unfairly will increase from the current amount of \$49,100 to \$50,700.00. If the Commission orders reinstatement, it still has power to order lost wages between the time of dismissal and reinstatement, even if it exceeds \$50,700.

CHANGES TO TAX TREATMENT OF TERMINATION AND SUPERANNUATION PAYMENTS

Reproduced courtesy of Finlaysons

A number of changes to the tax treatment of termination and superannuation payments will also take effect July 1st. The changes announced by the ATO are:

Termination Payments

The tax free limit for Genuine Redundancy Payments (formerly known as Bona Fide Redundancy Payments) and Early Retirement Scheme Payments will be a base of \$7020.00 plus \$3511.00 for each completed year of service.

Employment Termination Payments (formerly known as an Eligible Termination Payments) can include:

- amounts for unused rostered days off;
- amounts in lieu of notice;
- a gratuity or 'golden handshake';
- an employee's invalidity payment; and
- certain payments after the death of an employee.

Employment Termination Payments do not include:

- payments for unused annual leave or unused long service leave;
- the tax-free part of Genuine Redundancy Payment; or
- an early retirement scheme payment.

The Employment Termination Payment cap amount for life and death benefit termination payments will be \$140,000.00 per annum.

Superannuation Payments

In general, Employment Termination Payments made after 1 July 2007 will not be able to be contributed directly by the employer or rolled over into a superannuation fund.

The aged-based limits for deductible contributions will be abolished, and such contributions may be made for an employee up to 75 years of age. Each employee will have a concessional contributions cap of \$50,000.00 per annum.

The maximum superannuation contributions base on which the superannuation guarantee is calculated will be \$145,880.00 per annum.

"OUR WORK OUR LIVES"

The "Our Work Our Lives" National Conference on Women and Industrial Relations is being held in

Adelaide on 20 and 21 September 2007 at the Lakes Resort.

The 2007 Conference is proudly presented by South Australian Working Women's Centre and the University of South Australia.

The 2007 National Conference on women and work welcomes policy makers, industry, HR/IR practitioners, academics, unionists, activists, community stakeholders, and postgraduates.

Further details are available from the Conference Secretariat, Jackie Thompson Inclusive, 2 Martens Avenue, FULLARTON SA 5063, Phone: 08 8338 4186 Email: jackie@jackiethompsoninclusive.com.au

IT'S OFFICIAL: WOMEN GET A RAW DEAL FROM WORKCHOICES

Reproduced courtesy of the National Foundation for Australian Women

What Women Want, the Report, released on 2 June, shows that under the WorkChoices industrial relations system women are worse off in pay terms compared with men, since WorkChoices was introduced. This is so whatever their occupation or education status, and includes professional and managerial women as well as those in lower paid, less skilled work.

The impact is worst for young women with fewer bargaining skills, and for all women living in regional and country areas away from mining developments. The impact on indigenous women and those from culturally and linguistically diverse backgrounds was also negative.

The National Foundation for Australian Women (NFAW) conducted Australia wide consultations with over 60 women's organisations from December 2006 through May 2007. These round table forums have shown that Australian women, whatever their occupation and income status, are sceptical about the claims made for a better workplace for women under WorkChoices as it is now operating.

What Women Want, the Report from the NFAW, based on these consultations, was launched in Melbourne on June 2 by Judith van Unen, a Melbourne businesswoman and past president of Business and Professional Women Australia. The launch followed a two day meeting of those involved in its research and compilation to finalise the report and its recommendations.

WWW provides evidence that individual workplace agreements result in a growth in the gender wage gap.

In WA, which has been to the forefront of current political debate about the value of Australian Workplace Agreements (AWAs), women there now earn \$0.75 for every \$1 earned by men in comparable occupations.

The gender wage gap is worse in casual and part time employment, where wage levels have stagnated in sectors such as retail and hospitality where women predominate. WA women in professional and managerial occupations also are doing less well than their male counterparts.

Professor Alison Preston from Curtin University, who conducted research for NFAW, Womens Electoral Lobby and the Human Rights and Equal Opportunities Commission (HREOC) showing the gender gap in wages, has passed it onto the Australian Fair Pay Commission established by the Government under WorkChoices .

But there has been no response from the Commission or the Government on how to rectify this situation.

“Even though the Commonwealth has now decided to strengthen the ‘safety net’ for workers earning less than \$75,000 p.a., there’s no evidence of any Government recognition of the issue, nor of plans to deal with the growing gender gap in wages,” Marie Coleman of NFAW said at the launch of the Report.

Marie Coleman, who attended all the public meetings and helped write the report , said that a similar loss of wages and in family friendly conditions occurred in New Zealand following the introduction by the National Government of an individual workplace agreement regime similar to WorkChoices.

“The New Zealand experience shows that a return to collective bargaining at the workplace during the Clark Labour Government marginally improved the gender wage gap, but didn’t overcome the losses women had experienced under the former individual workplace agreement regime,” she said.

“NZ women never did recoup all of the family friendly conditions they had been forced to trade-off.”

The What Women Want report makes 10 recommendations to meet the WorkChoice goals of a ‘more flexible, simpler and fairer system of workplace relations for Australia...to improve productivity, increase wages, balance work and family life and reduce unemployment.’

They cover more auditing and recording of pay data, more information on workplace rights, safeguards for lower paid workers, reinstatement of penalty rates and holiday work compensation, and paid maternity leave, which is ‘critical to women’s participation in the workforce, but is in danger of being traded off against other terms and conditions enjoyed by men.’

Report and papers

The NFAW website has additional information on how women are being treated in the workplace under WorkChoices:

www.nfaw.org

Vale Hilda Margarette Beattie

The Society notes with sadness the passing of Hilda Beattie.

Hilda had a long and successful career in human resource management, first in the state Public Service, then with the Community Employers Association where she was an Employee Relations Advisor when she joined the Society in February 1999.

During this period she became involved with Pathways to Independence Inc, a not-for-profit body helping to provide accommodation and other support for intellectually disabled people. She later became a valued member of its Board.

Of more recent years Hilda and husband Laurie Bolton (also a Society member), were partners in Workplace Horizons Pty Ltd, an HR-IR consultancy.

Hilda was widely respected in both business and government circles, and a loving and loved person among her own family and friends. Her death on 4 June 2007 resulted from a major illness which impacted significantly on her life in the last four years, but which she managed with great courage, and always with a cheerful and positive outlook, as she continued on with her daily activities.

We offer thoughts and condolences to husband Laurie, son Nathan and daughter Dayna.
