

IRS

Industrial
Relations
Society of
South Australia Inc

NEWSLETTER

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SECRETARIAT

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PRESIDENT'S MESSAGE

The IRS Committee members are happy to present our second Newsletter for 2012.

The changes to membership I flagged in our last Newsletter have now been ratified and will be implemented for the beginning of the next financial year. Robyn Howard, our Secretariat will be notifying members and prospective members of these changes. A big thanks to the sub Committee who took the lead on this work.

I encourage you to speak to colleagues and contacts in your networks and let them know about the benefits of membership of IRS SA. The Convention planned for 19 October 2012 will be well worth attending, as current trends and developments in industrial relations will be highlighted and debated.

I had the pleasure of representing the Society, along with Jodie Bradbrook and Stephen Brennan at the Australian Labour and Employment Relations Association (ALERA) Committee meeting in Brisbane on 8 June. The national body is currently working through a range of options that will deliver the best model for representation of the State and Territory bodies at the peak level. Once this is considered a Constitution will be finalised.

The ALERA meeting coincided with the Industrial Relations Society of Queensland (IRSQ) Patron's dinner, a very well attended event with former President of Fair Work Australia, Justice Geoffrey Giudice as guest speaker. Geoffrey Giudice's address was interesting and lively. He questioned whether the existing protections for the public from the effects of industrial action are adequate. There was a great opportunity for networking post the event, given that the national IRS committees were all in town.

Continues over

DID YOU KNOW?????

The South Australian Law Society has confirmed that all IRSSA seminars are recognised as CPD activities for the purposes of Practising Certificate requirements in South Australia. Legal practitioners in South Australia can claim 1 CPD unit for an active hour at an IRSSA seminar.

*****SAVE THE DATE*****

IRSSA STATE CONVENTION

FRIDAY 19 OCTOBER 2012

NATIONAL WINE CENTRE

**Show your support for our State
Convention this year by reserving
this date.**

**Our Convention will showcase a
range of talented speakers on
contemporary HR and IR topics
followed by a Cocktail Reception,
themed with local South Australian
produce and wines.**

There will be a large amount of work conducted by email between ALERA and IRS SA with Peter Hampton now chairing ALERA and a further national meeting planned for September in Darwin. This meeting will coincide with the NT IRS Conference.

I trust that you enjoy this Newsletter and find it informative. As always, if you have suggestions for activities and/or articles please communicate with one of the Committee members or with Robyn, our Secretariat.

Thanks again to all Committee members.

Sandra Dann
President IRSSA

REVISED FAIR WORK AUSTRALIA PANEL SYSTEM

His Honour Justice Iain Ross AO, President of Fair Work Australia (FWA) recently announced changes to the panel arrangements within FWA. Much of the work of the Tribunal is dealt with according to a panel system.

Except in the case of the minimum wage panel, there is a member of the Tribunal, known as a panel head, who has the main administrative responsibility for the work of each panel. Most applications are allocated to the relevant panel and dealt with according to established procedures under the administration of the panel head. The operation of the minimum wage panel is different. That panel has particular functions in relation to minimum wages.

These recent changes introduced a number of new panels and panel heads.

The panels now being utilised by FWA are:

- Major resources/infrastructure projects panel
- Industry panels, of which there are six
- Termination of employment panel
- Organisations panel, and
- Minimum wage panel.

Details of the new panels, including the scope of work covered by each panel, the relevant panel head and the Members of FWA assigned to each panel can be found on the Tribunal's website: <http://www.fwa.gov.au> .

DISPUTE SETTLEMENT WITHIN THE WORKPLACE

BY SORNA NACHIAPPAN - SENIOR ASSOCIATE, ANDERSONS SOLICITORS

Many industrial matters begin as a conflict between people who have a direct working relationship - such as between co-workers or between a superior and subordinate. It is therefore quite important that every workplace has a suitable and effective dispute resolution policy (DRP). A good DRP, especially when supported with suitable policies, will often short-circuit matters and prevent situations developing into larger-scale disputes or court proceedings.

The model dispute settlement clause for enterprise agreements at reg 6.01 of the *Fair Work Regulations 2009* (Cth) outlines what disputes it covers. It clearly states that employees may appoint a representative, outlines the first step - discussions with a supervisor or manager - and then outlines Fair Work Australia's powers if those discussions are ineffective. It also states what is to happen in the workplace while the dispute is being resolved - the affected parties are to keep working unless a persuasive reason exists for them not to do so.

Many issues that do arise will not fit under this sort of dispute settlement clause, because it is specific to issues arising from the enterprise agreement and the National Employment Standards - generally, terms and conditions of employment. However, the existence of policies in the workplace which are similarly clear can have much the same effect on issues that arise out of other conflicts. These policies can be incorporated by reference into an enterprise agreement, or enforced within the agreement's disciplinary procedure. However, issues arising out of the disciplinary procedure could be raised as an issue relating to the enterprise agreement if the disciplinary procedure is not followed correctly - this is an issue often arising in unfair dismissal proceedings.

When drafting effective policies for a workplace, it is important to keep in mind the structure of the workplace and the aim of the policies. Following the example set in the model clause above, let's consider the example of a harassment policy.

Characteristics that will need to be addressed with respect to the individual workplace include:

- Who is in charge of dealing with disputes? Is there a designated officer? If employees are referred to their supervisor, is there an alternative for if their supervisor is involved in the dispute?
- What steps will be followed in investigating and resolving a harassment complaint? What are the possible outcomes? Will situations be monitored?
- What happens if it can't be resolved at the first instance? If Fair Work Australia is involved, what powers will they have?

Characteristics that may impact on future proceedings include:

- Explicitly allowing employees representation and/or a support person.
- Records of any meetings should be kept on file and provided to employees.
- Employees should be able to expect confidentiality if they make a complaint.

The efficacy of any dispute settlement policy or procedure, however, is not only dependent on its clarity, but also on how it is implemented. Employers should be advised that adhering to a clear and well-drafted policy may improve their position in the event of proceedings, while employees should be made aware of their rights and encouraged to use proper channels.

DEVELOPMENTS AT THE NATIONAL LEVEL

This Society is an affiliate of the Australian Labour and Employment Relations Association (ALERA) which was formerly known as the Industrial Relations Society of Australia. This year, one of our long-standing committee members, Commissioner Peter Hampton is the National President.

ALERA's objective is to organise and foster discussion, research, education and publication within the field of industrial and workplace relations. ALERA is governed by a National Council made up of representatives from the affiliated States and Territory bodies. The Association aims to bring together representatives of trade unions, employers, Government, the legal profession and academics - all of whom have contributed to the promotion of better labour and employment relations. At the National level this is achieved through the administration of the Journal of Industrial Relations and participation in the Annual Kingsley Laffer Lecture and a biannual National Conference. Participation enables a free exchange of opinions, an understanding of another person's point of view, and new friendships - all factors designed to create goodwill and understanding in the field of Industrial Relations. ALERA is also affiliate with the International Labour and Employment Relations Association (ILERA).

ALERA is presently undertaking a number of functions and initiatives to improve both its governance arrangements and the services it provides to each of the State and Territory affiliates. These include:

- Moving to incorporate as an Association under the *Associations Incorporation Act 1991 (ACT)* and to adopt a modern constitution consistent with the national role;
- Leveraging off the existing Laffer Memorial Lecture to establish a national profile including hosting the lecture each year in two States or Territories - in addition to NSW which hosts the event;
- Launching a new more modern ALERA website and directly assisting any of the State and Territory bodies who wished to, in upgrading and linking their own websites;
- Organising (through our Victorian colleagues) the 8th Asian Regional Congress of the International Labour and Employment Relations Association to be held in Melbourne in April 2013;
- Working with the editors of the JIR to ensure that as well as maintaining its first class academic standing it also contains material of particular interest to practitioners; and
- Raising the profile of ALERA, as a portal to each of the State and Territory bodies, at a national level with relevant national institutions and other professional bodies.

More details about ALERA may be found at its website: <http://www.alera.asn.au/>.

THE LINK BETWEEN DOMESTIC VIOLENCE AND WORK

There is currently some interesting work being conducted by the Safe at Home, Safe at Work Domestic Violence Workplace Rights and Entitlements Project. A range of resources have been developed for use by employers and unions as the impact of domestic violence on workers and their workplaces becomes better understood and strategies for addressing and managing this issue are shared.

The website www.dvandwork.unsw.edu.au has valuable resources and information, including a growing list of enterprise agreements which have incorporated domestic violence clauses in them.

The following information comes from the “dvandwork” website.

What is domestic violence?

Domestic violence (sometimes called 'family violence') can take many different forms including intimidation, coercion or isolation, emotional, physical, sexual, financial and spiritual abuse.

If you feel scared of a partner, ex-partner or a family member, you may be experiencing domestic violence. Around one in three Australian women will experience domestic violence in their lifetime.

Is domestic violence a workplace issue?

It can be. Domestic violence can impact on you at work in different ways:

- Being prevented or delayed from getting to work or being followed to work.
- Crying at work.
- Being harassed or intimidated by a partner or ex whilst at work eg constant phone calls, emails or text messages or the abusive person coming in to or hanging around your workplace to intimidate you.
- Covering up for what is happening at home.
- Not managing a full workload.
- Being afraid to talk about your experiences to work colleagues or the boss, even when there are threats to you or your co-workers at work.
- Threats to tell your boss embarrassing personal information.
- Being questioned about coming in late or not getting your job done.

Domestic violence can be stressful, upsetting and distracting. It can make it hard to perform your duties and can also be a workplace safety risk.

You may need to tell your workplace about things that directly affect or impact on your work. This includes anything that could pose a workplace safety risk.

Another thing to consider is whether you need to negotiate time off to go to court, arrange accommodation or attend appointments with support services, your child's school or your bank. You may need to organise temporary safety measures such as changes to your working times and patterns.

Attitudes to domestic violence vary. Some workplaces are supportive, providing leave and flexible working arrangements, others are less supportive.

The following information also comes from the “dvandwork” website - www.dvandwork.unsw.edu.au

DOMESTIC VIOLENCE AND THE WORKPLACE: INFORMATION FOR UNIONS AND EMPLOYERS

What is domestic / family violence?

Domestic or family violence is an abuse of power by a partner, ex-partner or family member. It takes many forms including intimidation, control, isolation and emotional, physical, sexual, financial or spiritual abuse.

Domestic violence usually increases over time becoming more serious and more frequent. It harms the both victim and any children who witness the abuse.

Domestic violence and the impact on work

The abuser may make it hard for the victim to get to work or target the victim at work, the most common form of domestic violence experienced at work is abusive calls and emails.

Additionally, the strain of dealing with domestic violence at home can undermine a worker's productivity, performance and wellbeing.

Domestic violence can also create problems for other staff and managers, who may also be targeted, posing a workplace safety, and ultimately, a liability issue. In extreme cases, a number of women in Australia have been stalked and eventually killed by violent ex-partners whilst at work.

Why does domestic violence come into the workplace?

The abusive person may target the victim at work in order to try and get them fired or force them to resign. This is in order to increase their control over the victim - increasing the victim's economic dependency, undermining the victim's self-confidence or in order to punish the victim for attempting to leave the violent relationship.

Women are particularly vulnerable at work. This is due to predictability of their location and/or working hours. Where combined with easy public access to many workplaces (e.g. retail, hospitality, healthcare and community services), this places victims at significant risk of stalking and harassment.

Barriers to providing support for staff experiencing domestic violence

Domestic violence does not easily fit the definitions and circumstances of other forms of workplace violence, such as workplace bullying or violence from customers and clients. For this reason, it can be hard for a workplace to recognise it is happening or understand what can be done about it. For more information see the publication "Domestic Violence and the Workplace - Employee, Employer and Union Resources" on the “dvandwork” website.

Two contrasting cases:

A woman had to pack up and leave her workplace at very short notice when she was in danger. Her employer told her she abandoned her work and sacked her. She was too scared and embarrassed to let anyone know why she had to leave.

Another woman was given paid leave by her employer to attend court on a domestic violence matter. The employer also sent a work colleague on paid time to support her, telling them both to take as much time as they needed.