



## MAY 2020 NEWSLETTER

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## COMMITTEE OF MANAGEMENT

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Justin Ward

### Secretary

Stephanie Gheller

### Treasurer

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### Committee Members

Commissioner Peter Hampton  
Darryl Anthony  
Abbey Kendall  
Kaye Smith  
Craig Stevens  
Luke Faulkner  
Sharaze Pentland

**Note:** The views of the contributors are not necessarily those of ALERA SA

### Patron:

Mr Greg Stevens

## PRESIDENT'S MESSAGE



Dear Members

Zoo, zoom zoom ... society, especially in SA, is emerging from the COVID-induced gestalt shift. We wake up and wonder if this was real or just a vivid dream. I am assured by the “experts” that this was all very real and it will be interesting to see in the employment sphere how much normalcy reappears and how quickly.

The JobKeeper scheme has given rise to a new area of disputation. Morrison’s new “rapprochement” between employers and unions will, if nothing else, open up discussion in our field of endeavour. The balance between social human contact and the “efficiencies” of zoom meetings from the kitchen table will hopefully re-establish more to the F2F side. ALERA SA is trying to balance that need with our seminar program which will be back on track after our mini-hibernation.

As always the committee welcomes member input and comments, because after all we are a member-based organisation rather than a committee-based organisation.

Onward and upward

Glen Seidel, President – ALERA SA

## UPCOMING ALERA SA WEBINAR 29 JUNE 2020 – JOB KEEPER AND COVID-19



ALERA SA is pleased to present a webinar for its members concerning the Fair Work Commission's new JobKeeper jurisdiction and other developments impacting upon the Commission as a result of Covid-19.

The operations and experience of the new JobKeeper jurisdiction, and other initiatives such as changes in hearing arrangements, the new enterprise agreement variation provisions, and the changing nature of matters coming to the Commission, will all be of great interest to our members.

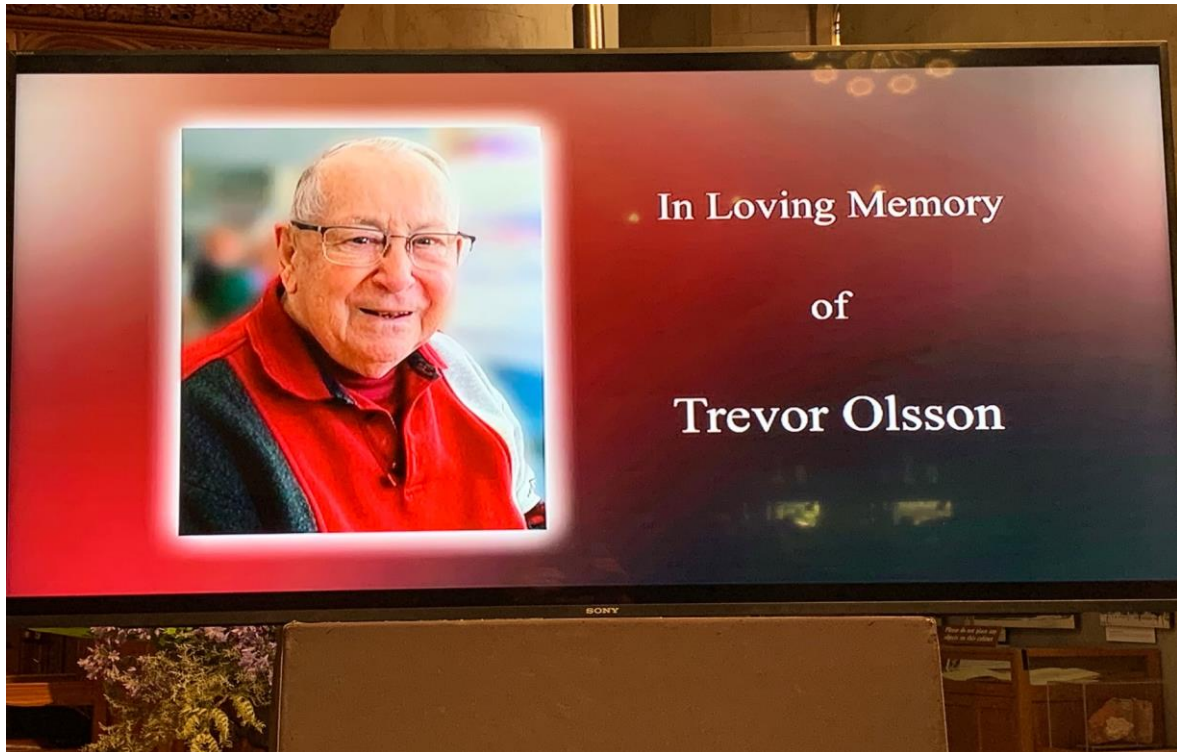
**Our speaker will be Deputy President Val Gostencnik.** Amongst many other roles in the Commission, the Deputy President is the National Practice Leader of the JobKeeper disputes jurisdiction and has been pivotal in setting up the new arrangements for that work. He is also the Commission's regional coordinator for Victoria and Tasmania, and National Practice Leader of Registered Organisations matters, Chair of the Rules and Benchbooks Committee and a Member of the Future Directions Committee.

**The webinar will be conducted using the Zoom platform starting at 3.30pm SA time on Monday 29 June 2020.**

**Registrations are essential and details about this will be sent to ALERA SA members shortly.** A link to join the webinar will be supplied in advance of the event to those who have registered.

In the present circumstances, **this webinar will be provided to ALERA SA members free of charge.**

## VALE TREVOR OLSSON AO MBE RFD ED



### *A TRIBUTE TO TREVOR OLSSON*

*BY COMMISSIONER PETER HAMPTON, COMMITTEE MEMBER, ALERA SA*

Members of ALERA SA will recall that I previously advised of the passing of Hon Trevor Olsson AO MBE RFD ED. As you would be aware, Trevor was a long-standing Life Member (since 1989), and up until relatively recently, was the Patron of the IR Society of SA/ALERA SA.

Trevor made a significant contribution to our community in many capacities including as a leading jurist and through his service to the army reserve and many community and service organisations. Trevor's contribution to the development of industrial law in his capacity as Judge and later President of the Industrial Court and Commission of SA and as a Judge of the Supreme Court of SA is nationally and internationally recognised.

Trevor's significant contribution to our organisation in many capacities will also be missed, both personally and professionally.

Our current Patron, Greg Stevens, a number of our other Life Members, along with myself and other members of the ALERA SA committee of management attended Trevor's funeral which was conducted at St. Peter's Cathedral on Saturday, 18 January 2020. This was a fitting recognition and celebration of Trevor's life and family and was also attended by many from the industrial relations community, the legal profession, and a variety of organisations and service groups with whom he had an involvement.

On behalf of the committee and members of ALERA SA, I again express condolences to Trevor's family, including Elizabeth Olsson, who is a well-known member of our Society.

## *SOME REFLECTIONS ON THE LIFE OF TREVOR OLSSON*

*BY GREG STEVENS  
PATRON, ALERA SA*

*Greg Stevens was Commissioner 1976-1994 and Deputy President 1994-2000*

Our former Patron, the late Trevor Olsson, made a remarkable contribution to the field of Industrial Relations, not only in this State, but also nationally.

I first met him in 1969, when he joined the Industrial Court and Commission of SA as Deputy President. He also held appointments as Public Service Arbitrator and as Chair of the Teachers Salaries Board.

I was an Industrial Officer with the Public Service Association at the time, so our paths crossed frequently for the next 7 years, as there was a great deal of arbitration in those days, particularly in respect of wage rates.

Trevor was completely new to the industrial field, but he took to it decisively and energetically, and was soon leading the Commission in particular into a groundbreaking era, establishing new standards in areas such as unfair dismissals.

He also was one of the first State Commission leaders to recognise the need for closer co-operation between State and Federal tribunals, a concept that took hold and led to referral of Federal assignments to State tribunal members, and then to members of both tribunals holding joint appointments.

In 1976 I was appointed to the State Commission as a member and Trevor became my leader. He kept an eye on me from a distance, and generally only offered advice if I sought it.

We sat together on various Full Benches including State Wage Cases. I referred the Milk and Cheese Industry Redundancy case to him to constitute a Full Bench after having heard all of the evidence myself, and his leading judgment became the foundation for Termination, Change and Redundancy provisions in SA awards ahead of other states and the Australian Commission.

He took a great deal of practical interest in the professional development of lay Industrial Advocates.

A series of lectures he gave together with then Industrial Magistrate Frank Cawthorne and then Industrial Registrar Bryan Shillabeer led to the publication in 1980 of the first ever text book on the subject, entitled 'Handbook for Industrial Advocates'

Trevor played a prominent role in the then Industrial Relations Society during the whole of his term of office. He was our first and only Patron until recently.

However, by 1984 his fine judicial record in the industrial field had captured the attention of Government and Victoria Square, and he accepted an appointment as a Supreme Court Judge.

Still only 53 years of age at the time he had another 17 years of judging ahead of him.



He had always held true in his industrial work to the principle enshrined in our State Industrial Act of adjudicating in accordance with 'equity, good conscience and the substantial merits of the case without regard to the technicalities or legal forms or the practice of courts', see *Walkley v Dairyvale Co-operative Ltd* 39 SAIR 327 at 342.

Vale Trevor



## Update from the Fair Work Commission

### *Response to Australian Government JobKeeper payment scheme*

The *Fair Work Act 2009* has been amended to help employers who qualify for the JobKeeper payment to deal with the economic impact of the coronavirus (COVID-19) pandemic.

The Fair Work Commission has a role helping parties resolve JobKeeper disputes about:

- temporary and partial stand downs
- temporary changes to an employee's usual duties and locations of work
- agreements about altering an employee's days and times of work
- agreements about use of annual leave
- employee requests for secondary employment and training.

The Commission has power to deal with the dispute by mediation or conciliation, making a recommendation or expressing an opinion, or arbitration.

The Commission has established a new application form ([Form F13A](#)) for an employee, an employer, an employee organisation (eg a union), or an employer organisation to apply to the Commission to deal with a JobKeeper dispute.

The Commission has also published and now updated information about its role on a new [JobKeeper disputes](#) page on its website. Different government agencies are responsible for different parts of the JobKeeper payment scheme. To help people find the information they need, the Commission has included common questions and links to relevant information on the websites of other agencies.

### *Other changes associated with COVID-19*

The Commission has established a dedicated email inbox ([COVID19Applications@fwc.gov.au](mailto:COVID19Applications@fwc.gov.au)) and workflows to deal with urgent applications related to the COVID-19 pandemic.

Visit the [Coronavirus \(COVID-19\) updates & advice](#) page on its website for information about specific application types and any changes to our operations in response to COVID-19.

To find out more about measures taken to restrict gatherings and non-essential business, and support for businesses, please read the latest [Information note –Government responses to COVID-19 pandemic](#).

The Fair Work Commission's ongoing focus is to ensure continued service provision to employees, employers and their representatives during the COVID-19 pandemic.

The Commission has published a [statement](#) that sets out how it is responding to the COVID-19 pandemic.

The Commission has also introduced measures to limit social interactions, to keep our workforce safe and to ensure the continuity of our services. This includes [closing our counters and no longer accepting applications in person or by post](#). In the interim, the Commission is conducting proceedings by telephone including video-based telephone conferencing to deal with matters. Some applications requiring in-person hearings are being delayed pending further developments concerning the community's response to the pandemic.

*Changes to modern awards in light of the COVID-10 pandemic*

Amongst other variations to modern awards, the FWV has recently made the following changes:

- 99 modern awards have been varied to temporarily give an estimated 4.4 million workers access to two weeks unpaid "pandemic leave" and enable them to take annual leave at half pay. The Commission excluded almost 20 awards covering construction, maritime and resources sectors that have been relatively less affected by COVID-19 and also have low award-reliance. The new provisions will apply until June 30.
- A number of modern awards have been varied to insert special COVID-19 flexibility schedules that will operate for defined periods. These schedules deal with various matters including the capacity to have employees work across classifications, alterations to ordinary hours of work arrangements, working from home provisions, permitting employers to direct employees to take annual leave upon 24 hours' notice, while employer and employees may agree to taking twice the duration of annual leave at half the rate of pay, as envisaged under s55(4) of the Act.
- The Commission is also hearing applications insert paid pandemic leave in a number of modern awards in the broader health sector.
- Details of these developments are available from the Commission's website <https://www.fwc.gov.au/health-sector-awards-pandemic-leave>

*Changes to the Fair Work Commission Rules 2013*

The Fair Work Commission has registered the *Fair Work Commission (Miscellaneous Measures) Rules 2020* (the Rules Amendment).

The Rules Amendment amends the [Fair Work Commission Rules 2013](#) (Rules) with effect from 1 May 2020. The changes alter:

- the rule that requires notice that a lawyer or paid agent acts for a party to be given, to make giving such notice voluntary and the responsibility of the party
- the way in which bargaining representatives are invited to advise the Commission about whether they support the approval of an enterprise agreement or disagree with statements in an employer declaration lodged in relation to the agreement, and
- the rules that required a statutory declaration to be lodged with the Commission, to instead require the lodgment of a signed, but not witnessed, declaration.

A copy of the [Rules Amendment](#) and the [Explanatory Statement to the Rules Amendment](#) are available on the [Federal Register of Legislation website](#). A compilation of the amended Rules will be available there shortly.

A change has also been made to [Form F23A – Employer's statutory declaration in support of variation of an enterprise agreement](#), to reflect that the *Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020* have temporarily shortened the access period for variations to enterprise agreements (see [COVID-19 & variations to agreements](#)).

Updated forms incorporating the amendments have been published on the [Forms page](#) of the Commission's website.



*12 modern awards extensively varied – 4 yearly review*

The Fair Work Commission is extensively varying existing awards as a result of the 4 yearly review of modern awards. The modern awards will be varied in 3 tranches during 2020.

The technical and drafting matters for the second tranche of awards have been completed. The varied awards were published on 14 February 2020 and the first group commenced operation on **13 April 2020**.

Any outstanding substantive or common issues claims that have not yet been determined will be incorporated into the varied awards by way of a subsequent variation determination.

To find out which awards have been varied, and to access the new versions of the awards, go to the [Modern awards list](#) on the Commission's website.

To see the decisions relating to these awards, go to [2019 FWCFB 8569](#) and [2020 FWCFB 690](#).

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## JOHN LEWIN'S BRILLIANT CAREER - ADVOCATE, COMMISSIONER, MENTOR

*BY GREG STEVENS  
PATRON, ALERA SA*

*Greg Stevens was Commissioner 1976-1994 and Deputy President 1994-2000*



The late John Lewin (1950-2020) probably only had one employer and one other appointment in the course of an illustrious career in Industrial Relations spanning some 43 years.

After graduating from Macquarie University he moved straight into an Industrial Officer's position with the New South Wales Branch of the Australian Workers Union. Before very long however he came to South Australia in the same capacity with the same Union and spent the next 14 years advocating before both the State and the Australian Commissions.

Those who knew him describe him as a brilliant advocate, a natural, always well prepared, and dedicated to the interests of his members.

Whilst he could have readily made a parliamentary career in either the State or National spheres, he joined the then Australian Industrial Relations Commission as a Commissioner in 1987 and remained on the Bench both here and in Melbourne for the next 28 years.

The reading of his many decisions over that period would give the IR practitioner an insight into the intellectual gifts and common sense nous that John possessed.

John led a full, active and rounded life. In his younger days it was camping, surfing, soccer and volleyball, mainly with fellow advocates from other Unions.

He also engaged with trade union training in Adelaide and at Clyde Cameron College. Together with Chris White they successfully advocated for leave for such training to be included in SA Awards in 1978.

In later years he chaired the SA Remuneration Tribunal.

A life well lived and cut short all too soon.

