

IRS

Industrial  
Relations  
Society of  
South Australia Inc

# NEWSLETTER

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## SECRETARIAT

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**Hon Trevor Olsson, LL.B, MBE, KSJ,  
RFD,ED**

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## PRESIDENT'S MESSAGE

*Dear colleagues,*

*The Society was grateful that Mr Bruce Lander QC, Independent Commissioner Against Corruption presented a seminar in respect of his role and that of the Office for Public Integrity on 12 March 2014. The presentation was well received by attendees.*

*Committee member and Commissioner in the Fair Work Commission, Peter Hampton will present another seminar on the anti-bullying jurisdiction of the Fair Work Commission on 2 April 2014.*

*The Committee has been busy planning events for members and detail of further seminars will be provided as soon as possible.*

*I was pleased to represent the Society at a prize giving ceremony for graduates from the University of South Australia, School of Management on the evening of 19 March 2014. The prize from the Society was presented to a Ms Lauren Guest, who secured top marks in the Human Resources component of her studies.*

*Best wishes,*

*Craig Stevens  
President IRSSA*

## Consultation about workplace change

**BY KYLIE DUNN, IRSSA COMMITTEE MEMBER**

A recent decision of the Federal Circuit Court of Australia serves as a useful reminder that employers must take care to comply with their consultation obligations prior to implementing major workplace changes to avoid liability.

In *Australian Licenced Aircraft Engineers Association v Qantas Airways Limited* [2013] FCCA 592, the Federal Circuit Court found that Qantas had breached the terms of a workplace determination which applied to its engineering employees by failing to consult with those employees regarding workforce changes.

### Facts

Qantas decided to introduce a new operating system for the maintenance of its aircraft which would result in 30 engineers being made redundant.

As is typical of most awards, Qantas was required under the *Licenced Aircraft Engineers (Qantas Airways) Limited (Workplace Determination) 2012* to notify and consult with affected employees in circumstances where it had made a definite decision to introduce major changes.

In particular, the obligation of consultation required Qantas to provide all relevant information (bar confidential information) regarding the proposed changes to employees and their representatives. Qantas was also required to give prompt and proper consideration to any matters raised by employees or their unions or representatives.

### Breaches

The Court found that Qantas had already made the decision to implement the new operating system by the time it consulted with affected employees.

Judge Raphael found that Qantas had approached the consultation process as a means to assess whether any employees would accept voluntarily redundancies and was not a genuine consultation as required under the terms of the workplace determination.

The Court further held that Qantas had contravened the workplace determination by failing to provide the employees' representative with relevant information that had been requested.

Qantas was fined \$41,250.

## 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.

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## Implications

Employers must ensure that they abide by any consultation requirements contained in employees' contracts of employment or any modern award or enterprise agreement that applies to employees.

Consultation requirements typically provide that where an employer makes a definite decision to introduce a major change in the workplace the employer must notify any employees who may be affected by the proposed changes and their representatives (if any) and consult with them before implementing the changes.

Failure to comply with these obligations may expose employers to unfair dismissal claims brought by terminated employees (because one of the elements of the genuine redundancy exclusion is that the employer has complied with its consultation obligations) in addition to financial penalties for breach of employment obligations.

## Fair Work Commission's Anti-bullying jurisdiction commences

The *Fair Work Amendment Act 2013* amended the *Fair Work Act 2009* to provide the Fair Work Commission (the Commission) with the power to make orders to stop bullying at work.

From 1 January 2014 a worker in a business or undertaking has been able to apply to the Commission for an order to prevent them from being bullied at work. Applications can be made by a worker who 'reasonably believes that he or she has been bullied at work'. A worker is 'bullied at work' if, while at work, an individual or group repeatedly behaves unreasonably towards the worker and that behaviour creates a risk to health and safety.

The Commission has released a 'Benchbook' which deals with the new statutory provisions in more detail, as well as a summary of the way the Commission deals with these matters. These documents, together with further information and guidance material, are available on the [Commission's website](#).

Each application is assessed at an early stage to decide whether it falls within our jurisdiction, the parties involved, the nature of the alleged bullying and how the application should be dealt with. Where mediation or conciliation is undertaken, the emphasis will be on the resolution of issues so that constructive and cooperative relationships can resume. Monetary settlements are not promoted or recommended by the Commission.

The Commission received 86 applications during the first two months of the new anti-bullying jurisdiction. The Commission has commenced to deal with all applications within the 14-day period required by the Act.

Some applications have already been dealt with by a Commission Member, while others were being expeditiously dealt with through the process outlined in the Commission's case management model. A number of applications have been withdrawn during the preliminary assessment process and some jurisdictional decisions and orders have been issued.

The Commission has indicated that it was too early to say whether the figures for January and February were indicative of the likely number of applications the Commission would receive throughout the year. In particular, January and February traditionally see a smaller number of lodgments with the Commission, particularly in relation to other individual-based rights disputes such as unfair dismissals and general protections. In addition, the time of year and the fact that this is a new jurisdiction means that the number of applications received to date is not necessarily indicative of the lodgment trends we will see in future.

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The Commission has also stated that it expects there to be some fluctuation in the number of applications received and that it would be monitoring the numbers closely and providing quarterly reports. It was also reported by the Commission that the process for dealing with anti-bullying applications was achieving its intent of engaging with the parties early and progressing matters promptly and in a practical, efficient and fair manner.

**The Panel Head responsible for the administration of the new jurisdiction, Commission Peter Hampton, will be speaking at the IRSSA Seminar on Wednesday 2 April 2014.** No doubt this will provide members with an opportunity to hear further about the new jurisdiction and how the Commission is dealing with these applications.

## Major Cases in the Fair Work Commission

Recently, the President of the Fair Work Commission, Justice Iain Ross, recently issued a [Statement](#) outlining the range of proceedings and other activities being undertaken by the Fair Work Commission (the Commission). As well as informing the community of the Commission's activities, the Statement was intended to make the tribunal's processes more transparent and to encourage greater participation in the work of the Commission. The Statement dealt with the following matters:

### A. The modern awards safety net including:

- 4 yearly review of modern awards
- Annual Wage Review 2013-14
- Superannuation review of default fund terms
- Modernisation and termination of enterprise instruments
- Modernisation and termination of State reference public sector transitional instruments

### B. Other significant cases involving:

- the Equal Remuneration Case
- application to vary the Supported Employment Services Award 2010
- Bankruptcy
- Legal representation
- Notice of representational rights

### C. New jurisdictions

- Anti-bullying jurisdiction
- Consent Arbitration of General Protections matters

### D. The Australian Workplace Relations Survey

### E. Future Directions

Members of the Society with an interest in these matters should access the Statement and the updated information that is available from the Commission's website: [www.fwc.gov.au](http://www.fwc.gov.au)