



OCTOBER 2020 NEWSLETTER

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COMMITTEE OF MANAGEMENT

President

Glen Seidel

Vice President

Justin Ward

Secretary

Commissioner Chris Platt

Treasurer

Chas Cini

Committee Members

Simon Bourne
Abbey Kendall
Scott Cowen
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

Welcome back to quasi-normalcy as F2F returns with our recent AGM. I think members appreciated the opportunity to network in person even if they had to be seated for the post-meeting conviviality.

Our guest speaker was Abbey Kendall who talked on Sexual Harassment and Industrial Relations: The need for a structural and cultural shift. Abbey answered questions and was thanked for her topical and personal analysis and commentary.

The President's report was spoken to briefly as it had been circulated earlier and the key aspects of the audited financial statements were explained before acceptance by the meeting.

The composition of the Committee has changed. Life member Peter Hampton, Immediate Past President Kaye Smith and Secretary Stephanie Gheller did not stand. This made way for two new faces in Commissioner Chris Platt as Secretary and Scott Cowen. The new committee make-up is:

President: Glen Seidel

Vice President: Justin Ward

Treasurer: Chas Cini

Secretary: Christopher Platt C.

Committee Members:

Simon Bourne
Scott Cowen
Luke Faulkner
Abbey Kendall
Sharaze Pentland
Craig Stevens

Glen Seidel, President – ALERA SA

GETTING TO KNOW ALERA SA'S NEW COMMITTEE MEMBERS

SCOTT COWEN



Current occupation – Assistant Secretary. Australian Services Union, SA and NT Branch

How long have you been in industrial relations/how did you start in this field?

I started as a youth project officer in 2008 at SA Unions and have since worked in primarily in advocacy roles for two unions over the past decade. Prior to becoming a paid union official, while I was studying at University I also worked Part Time in retail for a major supermarket chain. After about 3 years on the job I was elected to become a workplace union delegate so I guess that's how you could say I 'started' in the field.

Career highlights?

I find working for the trade union movement is a real privilege. Most weeks I would find something in my work that has had either a direct beneficial impact for a member I may be representing or, in more recent years as an elected official, the broader sectors our union represents. I can't go into details of course but one particular individual matter I recall was assisting a member with a long-term degenerative medical condition be able to negotiate adjustments to her role that ultimately enabled her to return to work part time. If it wasn't for this person's union membership I doubt they would have been in a position to obtain the advocacy they required to navigate the situation with their employer in order to be permitted to return to work and regain some financial security for them and their family.

More recently I think the way our union has been able to respond to the Covid-19 pandemic and its impact, both in terms of WHS matters and the economic impact on the sectors we represent in our union, has been very pleasing for me. The term 'unprecedented' has been thrown around so much now it has almost become a cliché, but the circumstances facing workers and the labour market in general I think have demonstrated the importance of organised labour in responding to these types of crises, not only for workers individually but as we together as a nation grapple with the worst economic conditions in most of our lifetimes in a manner that is not a race to the bottom when it comes to Australia's standard of living.

What are some of the key industrial relations issues/challenges that you are currently encountering (obviously COVID-19 issues are a big part of these)?

There hasn't been a sector of our union that hasn't been impacted by Covid-19. Unfortunately I think many of the challenges in the system that were prevalent before the pandemic will only become heightened as we move forward from here. It will be very interesting to see the outcome of the Federal Government's roundtables and what consensus has or has not been able to be reached. We need to make sure that our collective responses to Covid-19 don't further enshrine inequality. Industries with a predominantly female workforce in particular have been proportionately negatively impacted by Covid-19 in their work – so we need to make sure that supports are put in place for these sectors and not just the more traditional 'blue-collar' or high vis road to recovery only because our politicians might like the photo opportunities that accompany them.

Covid-19 aside, fundamentally I think there are some real challenges for the IR system to face. The buying power for example of the minimum wage, or an award wage in 2020 compared to what it may have been 20 or 30 years ago should concern everyone. A continuation of that trend will ultimately be bad for everyone, but it's only going to be more difficult to overcome in a recession.

COMMISSIONER CHRIS PLATT, FAIR WORK COMMISSION



What led to your career in industrial relations?

I think my parents were really pleased in 1977 when I left school and home for a two year cadetship at Fort Largs Police Academy with a goal of becoming a forensic scientist. I graduated in 1980, spent six weeks walking the beat, six weeks in the cars at Para Hills and then talked my way into a day shift job in Legal Branch so that I could go to the South Australian Institute of Technology and complete a science technician's certificate.

This was a turning point in my life. As a police prosecutor I finally found a job where I could get paid for talking instead of told off. Don Tepper who is here today was one of my police sergeants who had to put up with me at a time when my confidence more than filled my knowledge gaps.

Some of you might know that during my police force I was really concerned with some restrictions being placed on police access to firearms in public places such as Rundle Mall and the impact on our safety, and this led me going to an industrial meeting, moving a resolution to stop issuing traffic infringement notices, and then that resulted me becoming the union delegate for the legal branch. So that was my first ever venture into industrial relations.

How did your career progress after your first venture into industrial relations?

South Australian Chamber of Commerce

I really enjoyed working in the field of law, particularly criminal law at that time, and needed a degree to get me to be considered to go into law school. So I left the police force and started an arts degree at Adelaide University. A couple of years later I met now ex Sergeant Don Tepper at a function and he told me of his work as an industrial relations advocate with the South Australian Chamber of Commerce and Industry and said I'd really enjoy it. So I applied for a vacancy and soon after Richard Huxter who later became a Commissioner employed me as an industrial advocate.

The chamber was an absolutely fantastic training ground for industrial relations and I had the benefit of people like Kym Porter who gave me extremely practical advice on how disputes could be solved. I learned a lot of time at the SA Commission, particularly from people like Commissioner Greg Stevens.

In addition my work in the food industry allowed me to travel to Melbourne where I regularly appeared in then the Australian Industrial Relations Commission before Commissioner Bob Merriman. Bob had a wealth of experience and gave me a lot of advice, including the suggestion to go and get a law degree.

Australian Wool Selling Brokers Employers Federation

In '92 I moved to Melbourne to become the executive director of the then Australian Wool Selling Brokers Employers Federation. At this time the reserve price scheme had just collapsed and the agricultural sector couldn't afford to purchase bullets to cull the flock. I worked with the National Union of Workers to improve productivity in their wool stores via the newly introduced enterprise agreement process.

I certainly found that in Melbourne industrial relations was much more of a contact sport than it was in Adelaide. I learned a lot from Bryan Noakes and from Reg Hamilton who is also now a member of the Commission at the Australian Chamber of Commerce and Industry. But in '95 I was lucky enough to be selected to go to the International Labour Organisation conference in Geneva and that's where I first met Steve Knott's predecessor, and soon after that the Australian Wool Selling Brokers and AMMA co-located and began working together and Steve was appointed as the CEO of Australian Mines and Metals and I became employed by them.

Australian Mines and Metals Association (AMMA)

I took the opportunity in '98 and returned to Adelaide and opened the AMMA office here and also servicing the agricultural sectors, and in 1999 I met and married my wife Lena, a commercial lawyer who got me more organised, proof read my essays and was my personal tutor during my law studies.

Andrew Stewart from Flinders and now Adelaide University was responsible for my formal industrial relations education at undergraduate and postgraduate levels.

I recall at the time Andrew was marking my master's assignment he was consulting to the government on the Fair Work Bill. Andrew was recommending a sunset date for all of the pre Fair Work agreements. Steven Knott and I were lobbying to keep all of the existing agreements there for perpetuity. In the end the pre-existing agreements were retained and yet I still passed the subject.

I should note that this legislative outcome adds a level of complexity in dealing with transitional agreements that in my new role I may yet regret. Stuart Wood QC taught me I didn't need to fight everything to the death, particularly in the WorkChoices era. Henry Skene provided invaluable assistance and guidance on a range of matters including the modern award project, and Steve taught me lots of things, the most memorable was that my ears were not just painted on.

BHP Billiton's Olympic Dam project

In 2011 I left the employer association world to work for BHP Billiton who was then preparing for the multibillion dollar expansion of Olympic Dam (OD). OD is a very, very professional organisation. Before anything is done strategies are carefully thought out, precise plans are completed, contingency plans are reviewed and then the project is executed with precision. For the first time in my life I spent more time planning than executing. However these are valuable skills and I will take them with me.

Despite the heat and the flies OD is a great place to work, and whilst I will miss my OD family I know that you will be working to make Olympic Dam into the world's largest copper mine and your success will benefit the entire South Australian community.

Fair Work Commission

My life experience and my legal training will be of great use to me in my role with the Commission.

What do you hope to achieve as a Commissioner at the Fair Work Commission?

My goal is to use my knowledge and experience to assist parties, many of whom are unrepresented, to understand industrial relations laws and how they apply to their circumstances. I will encourage and assist parties to resolve their own disputes and where that fails to determine the facts and apply the law fairly and sensibly. I believe that the Commission has an important role in facilitating cooperative and productive workplaces that will facilitate Australia's economic growth and prosperity and I look forward to playing my part in the achievement of this objective.

VALE LINDSAY BOWES AM



Lindsay Bowes is pictured above on the left

The Society was recently advised of the passing of one of our Life Members, Lindsay Bowes AM.

Lindsay was born on 27/8/1921 & died on 13/8/2020 at the age of 98 years. A private funeral was held due to Covid 19 restrictions.

Lindsay was heavily involved in the foundation of the Industrial Relations Society in South Australia in 1961 and later with the National body. He was the first State Vice President and the Fourth National President of our Society.

His career highlights include that he joined the Public Service in August 1937 and worked for the Engineering and Water Supply Department before joining the 2nd AIF where he served overseas. Returning from the war he re-joined the Engineering and Water Supply and was then transferred to the Public Service Commissioner's office in the Industrial Relations branch where he became Senior Industrial Officer and in 1959 was appointed Secretary for Labour and Industry (Department of Industrial Affairs and Employment).

Lindsay served the Government in many and various ways, representing the Government both in South Australia and interstate on various boards and committees. He was a member of the Public Service Board when it was a part-time board and was honoured by Her Majesty the Queen in June 1979 by being awarded Membership of the Order of Australia (AM).

Whilst employed by the Government he served with distinction seven Cabinet Ministers in various Governments.

Hedley R. Bachmann AM followed Lindsay as Director Department of Industrial Affairs and Employment.

On a personal note, our Patron, Greg Stevens, recalls that in 1965 as a Public Service Association Industrial Officer, he had to appear before Lindsay in his capacity as a Member of the then Public Service Board. Lindsay required Greg to specify in detail his understanding of the 'principles of comparative wage justice'!

A few weeks later Greg had to inform Lindsay in his other capacity of Head of the Department of Labour that Inspector members of the PSA had instructed Greg to tell him they would all be withdrawing their personal motor vehicles from their employment in protest at the failure of the said Public Service Board to increase the Motor Mileage Rates for the use of their vehicles.

They got to know each other on a more personal level through the then Industrial Relations Society, and even in recent years enjoyed meeting up at their local Probus Club.

Members will also recall Lindsay attending a number of recent AGM's and his starring role in the recently completing video history of the Society where his wit, wisdom and great memory was on show.

We send our sincere condolences to Lindsay's family and record our appreciation for his service to this Society and to the community more generally. He will be sadly missed by us all.

Is employee behaviour on social media any of an employer's business?

Huge changes to our social and working lives in 2020 have meant that we have spent a lot of time online. Many of us have maintained connections with the outside world through social media: joining groups, supporting causes; uploading funny videos of our pets and our kids and sharing our sour dough failures. The line between our working and personal lives has also become increasingly blurred and means that employers in Australia want to control what employees say and do on social media to protect their brand and reputation.

The dispute in 2019 between Israel Folau and Rugby Australia was the most high-profile case in Australia to test the rights of an employer to control an employee's behaviour on SM, but it's not an isolated case. High-profile employees, such as Folau, are said to be obliged to follow social media policies because their job involves being a 'brand ambassador'. But where does that leave ordinary employees? Can an employer control what employees do on social media even in their personal time? And does this mean employees are never 'off the clock'?

Social media, employees and the law

Often, when this issue is discussed in the media, there is little attempt to distinguish between different types of behaviour on social media, and it is important to understand that employers have greater rights to control some forms of behaviour than others.

Put simply 'trash talking' your employer, their clients or your fellow workers on any social media platform is unacceptable, as this breaches your duty of fidelity to your employer.

The law is also clear that bullying or harassing your fellow employees on any social media platform is something that an employer can control, even when you do it away from work. This type of behaviour may result in the employer being legally liable for your actions and may constitute workplace bullying.

The grey area

There is, however, a third category of behaviour: where an employee engages in conduct on social media that has no direct connection to their employment but may embarrass the employer.

In early 2015, [SBS dismissed](#) sports journalist, Scott McIntyre, for comments he posted in relation to ANZAC Day on his Twitter handle. In late 2015, the [Meriton Group dismissed](#) a maintenance manager for 'trolling' feminist writer Clementine Ford. In 2018, there were media reports of a teacher at Geelong Grammar who was investigated by her employer for participation in a private anti-vaccination chat group. In mid-2018, [Angela Williams was dismissed](#) from Cricket Australia following Twitter comments relating to the lack of abortion services provided by the Tasmanian Government. None of these cases reached a hearing, so the law on this issue remains unclear.

What about a right to a private life?

Before social media, employment law consistently reinforced that employees have a right to a personal life. But now how far that right extends is in question, given so many of us conduct our personal lives in such a public way on social media. The ability to dissent, to argue, and to comment on our institutional systems, is what sets democratic societies apart from autocratic or fascist regimes. Freedom of speech and the curtailment of freedom of speech is an important human right, as recognised by the Universal Declaration of Human Rights.

The laws that protect the right to free speech

Freedom of speech in Australia is not a Constitutional right and Australian law has less protection for freedom of expression than the UK or the US. We have freedom of political communication, which is implied in our Constitution, but it's not absolute. While we have privacy legislation in Australia, it does not apply to all employers and does not protect employees from employers examining behaviour on social media.

How do the General Protections provisions of the *Fair Work Act 2009* (Cth) work?

If an employee is disciplined for making political or religious comments on social media, they may be able to seek a remedy under anti-discrimination legislation. A popular avenue for employees has become the General Protections (GP) provisions of the Fair Work Act.

These have broader application, and prevent an employer taking adverse action against an employee for 'prohibited reasons', including religion or political opinion. Employees who are not covered by the GP provisions are protected by similar provisions relating to unlawful termination of employment, which is the route being taken by Israel Folau against the ARU.

However, the 2014 High Court case of *CFMEU v BHP Coal* shows that an employer can argue the reason an employee was disciplined was not for *holding* particular beliefs, but for the way they were *expressed*.

In the BHP case an employee was dismissed for waving an offensive sign at other workers who crossed a picket line during an industrial dispute. The employee claimed he had been dismissed for participation in a lawful picket, but BHP successfully argued the employee was dismissed for the expression on the sign, contravening workplace policies requiring workers be respectful and courteous towards each other.

Is social media an employer's business?

For ordinary employees, it's possible to argue an employer's social media policy that is not directly related to employment is not a lawful and reasonable direction.

In Australia, an employer can give directions through workplace policies, and employees have an obligation to follow them. However, the Courts state that the situations where a workplace policy can control what an employee does in their personal time is limited.

Where social media policies intrude too far into an ordinary employee's personal life, or lack any rational connection to the employee's duties, they become harder to enforce.

Some employees, especially high profile employees, may have an obligation to conduct themselves at all times in a manner which will not harm the reputation of their employer.

Most employees are not paid to be their employers' brand ambassadors in their personal time, and this means that any social media policy requiring them to do so may be open to challenge.

For more information see: Sarah Hook and Sandy Noakes (Western Sydney University, School of Law) 'Employer Control of Employee Behaviour Through Social Media', (2019) 1 *Law Technology and Humans* 141-161: <https://lthj.qut.edu.au/article/view/1302>

ALERA SA AGM August 17, 2020 SA Police Club





