



## **Annual General Meeting 2012**

### **President's Report**

*Montague Hotel, 355 Park St, South Melbourne, 3 December 2012*

This report to members on the activities of the HR Nicholls Society is this year also addressed to the prime minister as I will explain towards the end.

The HR Nicholls Society is an incorporated association. Its object is freedom of employment, a type of industrial relations reform or a type of workplace reform. This object does not typically embrace safety at work (a very large, separate and historically important topic); nor does it embrace slush funds or funds for the election or re-election of officials of the association, or funds simply for the payment of officials.

IR reform or workplace reform varies with the problems workers and employers face. In the middle of this year, with the benefit of three expert papers we commissioned for our submission to the government's Fair Work Act review and with the comprehensive analysis of the working of the Act by six experts who addressed our June annual conference, we published on 12 June the six reforms required ranging from employment terms not including independent contractor or labour hire matters, to employees to be able to choose their union freely and to, on a transfer of business, the new employer being free to apply its own employment terms. The list is attached to this report.

The society's very experienced board of 10, the eight experts, the discussion at a large annual conference all contributed to this result.

We were not alone. AIG, ACCI, AMMA and BCA, the big mining companies, small business all want the Fair Work Act system changed.

However the government has moved in the opposite direction by commissioning a review, published on 1 August, that affirmed and extended the system, for example by allowing more right of entry disputes and by allowing strikers to use company accommodation. The review contained no analysis of cost and benefit of the system. Last month parliament enacted 197 pages of additional provisions.

What is to be done? It has been said that the opposition in government should not overhaul industrial relations laws and that it should not take a strong position on the issue before the election (Premier Colin Barnett, Richard Goyder). That when in government it should hold an inquiry into changes, whether an economic inquiry into the system, or a judicial inquiry into union governance scandals (Paul Kelly). The opposition has now also foreshadowed that in government it would hold a judicial inquiry into what is now called the AWU slush fund affair. It has also been said that both government and opposition should not play politics on the practical and simplifying measures required to stop excessive labour cost blow outs (Steve Knott).

Each of these suggestions is rooted in experience. The context is that Work Choices is as discredited as my predecessor Ray Evans said it would be. On the other hand Tony Abbott as industrial relations minister last decade soundly tackled union thuggery in the construction industry. No one wants to be doctrinaire and people are tired of reform. In other words the scene is set for only practical measures, for the removal of burdens in the Fair Work Act. Whether the removal is of the six egregious failings in the present system that the society has identified or whether the fuller list of other parties, a new government will be entitled to limit the scope of the Fair Work Act and to hold a proper enquiry (unlike the McCallum/Edwards/Moore one) into its notorious failings.

May I now report on our operations.

### **The board**

The board comprises Alan Anderson, Tim Andrews, Kyle Kutasi (vice president), Des Moore, Michael Moore (secretary and treasurer), James Paterson, Ken Phillips, John Osborn, Peter Reith and Rob Thompson, and myself.

We met eight times over the last year by phone but generally with the Melbourne members in one room.

Our diverse interests and experience give us a practical perspective on 'freedom of employment', the society's objective. May I particularly thank Des Moore for his tireless work, agitation and practical promptings and Michael Moore for almost daily member updates, and his control of the finances. We were assisted by the return to Australia of Alan Anderson and Tim Andrews from assignments in London and Washington.

Three board members are retiring: Rob Thompson, until recent months a long serving member from Hobart and earlier in Sydney; James Paterson, who is also Director, Communications and Editor, IPA Review, a job which is taking more of his time; and John Osborn who has been Director, Public Affairs, of the Plastics and Chemicals Industries Association and is now moving to another industry association. Thank you for your considerable work.

Early in the year Bob Day AO retired to devote himself to wider causes including seeking a Senate seat for South Australia. Bob's 23 year service on the board and

his financial and secretarial support of the society was especially acknowledged at the society's dinner on 12 June.

I look forward to Theresa Moltoni, managing director of the IR consulting firm IRIQ Pty Ltd in Brisbane, joining the board.

Members were advised before this meeting that may wish to nominate for the board. The board itself will consider further appointments especially from outside Melbourne.

### **Finance**

We hold \$70,625.03 at the bank. We made a surplus of \$7,468 on our annual conference. The main expenditures in the coming year will be media, the website, executive support and specialist research.

We have 99 paid up members. Annual membership is \$70.

Some 220 letters were sent at the end of May to the largest companies in Australia seeking donations to the society. This resulted in some four acknowledgements but no donations.

### **Website**

The layout of a new website has been ready for some months. The technical issues for it to be married to our existing website need to be resolved this month. Otherwise we will revamp the website in some other way.

### **Media**

During the year Ian Hanke, Director Communications and Strategy, again produced a very steady stream of media releases and arranged superb tv, radio and paper coverage of our annual conference in June (the best ever in recent years) and the Perth breakfast function in September.

A flow on of his work appeared in the Sydney Morning Herald of 16-17 June where we received an equal quarter of a page on the issue of union registration, along with the leader of the opposition, the secretary of the ACTU and a labour law professor.

Ian's role is part time and he has commitments outside Australia. The importance of his role was indicated with our Brisbane function on 21 November when Ian was out of the country and regrettably the event did not get coverage.

The elections next year are likely to require that we devote more to media.

Ian produced the society's first E Bulletin a few months ago and this format will be used to supplement emails to members and supporters.

## **Politicians**

Through Peter Reith and other members of the board we have made contact with a number of newer opposition members of parliament to acquaint them of our work. We would like a meeting with several of them next year.

Robert McClelland, the Attorney General in the Rudd government and an industrial lawyer himself who had advised the AWU in about 1996 in relation to the present fraud allegations and who has recently spoke on the matter, has also been contacted to indicate the society's interest in the industrial relations aspects of the fraud.

## **Annual conference – “Cost, loss and disruption; Another year of the Fair Work Act”**

This time we followed a mid week, half day format for the conference which was held on 12 June at the Travelodge hotel in Docklands, Melbourne. As Ian advised, this gave us much better media. The six speakers included:

- Doug Williams the former industrial registrar who painted a picture of a legalistic, unproductive and costly industrial registry (the same registry that took 39 months to investigate Craig Williams for misspending Health Services Union funds).
- Stuart Wood SC on the cost heaped on mining projects, and the effective return to compulsory arbitration.
- Alex Robson, economist of Griffith University, on the absence of macro economic benefits from the Fair Work regime.
- Mark Textor, the national pollster, who gave the public's very practical view of unions (protect me but allow my aspirations to be fulfilled) and of government (set standards but don't micro manage).

The dinner speaker was Kathy Jackson, then still National Secretary of the Health Services Union. She had instigated investigations of that union that have now resulted in its being placed in administration, its former president being charged and further charges being likely. She said Fair Work Australia was a proven failure and it was time to treat unions like corporations and subject them to a much tougher policing regime. The workplace relations minister Bill Shorten she likened to "Dracula in charge of the blood bank".

The society a number of times pressed the Australian ombudsman to direct FWA to speed up its then 30 month investigation of Craig Thompson MP and the HSU. The ombudsman steadfastly resisted.

## **Other events**

*Breakfast address 12 September at Maurizio's restaurant, North Perth, by Christian Porter, MP for Bateman in the Western Australian Legislative Assembly and the former Treasurer of the state.*

Mr Porter surveyed the Western Australian economy and IR issues for resource projects, the poor mobility of workers from east to west and the ineffective and out of

date taxation zone allowance. Peter Reith's closing remarks encouraged release of opposition IR policy.

*Evening addresses 21 November at Tattersall's Club, Queen St, Brisbane on developments in the civil service and for business under the Newman government.*

Ross Musgrove, Deputy Commissioner, Workforce Reform, Queensland Public Service Commission and John Crittall, Director – Construction Policy, Master Builders Association Queensland, gave excellent presentations on respectively the encouraging and measured reduction in public servant numbers and the linking of modest wage increases to productivity increases, and, on the other hand, alarming wage growth and lawlessness in the building industry and its flow on to resource developments in Queensland.

## **2013**

I expect we will have our annual conference around May next year. It is time to look outside Australia for models on employment dispute resolution and minimum wage fixing and we will investigate bringing an overseas expert here.

We plan further smaller functions in Melbourne and elsewhere.

We also have underway projects on trends in Fair Work Australia full bench decisions, on superannuation and the property and companies controlled by unions.

We would also be grateful for your nominations for a worthy recipient of the Copeman Medal.

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I wish to thank all members, donors and the board for making possible the work of the society. Please keep it up in the important year ahead.

## **Advice to a lapsed lawyer**

The prime minister was a practising solicitor until she was abruptly terminated in 1996 from Slater and Gordon, where she was employed, over what is now called the AWUslush fund affair.

To launch what became that affair Ms Gillard set up the "Australian Workers Union Workplace Reform Association" as an incorporated association.

The HR Nicholls Society's own structure and activities show the activities you might expect from an incorporated association that is a workplace reform association. The aim of those activities may be less workplace regulation – as is HR Nicholls' aim – or more or different regulation or the status quo. But whatever the aim you would have a smaller or larger board or committee, you would have a pool of members, you would have debate by the board and the members, and research would be carried

out on reform issues. The reform objects would be financed by subscriptions or donations. And the association would advocate its position on reforms.

Everyone of these features is absent from the workplace reform association established by Ms Gillard and as so far described by the parties who would know. To set up a body called "Australian Workers Union Workplace Reform Association" or "The Australian Workers Union (WA) Branch Workplace Reform Association" (as it is called in the advertisement Ms Gillard has displayed) without any of these features is seriously misleading.

Knowing that what she was setting up was a slush fund for election of union officials or simply to pay them, or being wilfully blind to such matters (as her former law partner Nick Styant-Browne has said), is another seriously misleading aspect of her conduct.

Her conduct was wrong because it was misleading (and this can be a criminal offence) and because it was an affront to the Australian Workers Union (her then firm's then client). Ms Gillard cannot say as she has "I didn't do anything wrong". She did.

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There is still another aspect of her conduct she has to explain. The AWU or its Western Australian branch or entity in that state would have been registered under the Australian Industrial Relations Act 1988 or the Western Australian Industrial Relations Act 1979. These are the bodies she may have acted for or whose names she invoked in the association she set up. Did she follow the requirements of these Acts for committees and office holders and for disbursement of moneys in setting up the incorporated association? These are important requirements to ensure the democratic control of unions and the proper use of union funds.

Ms Gillard as a partner in the industrial practice of her firm should have known whether these important requirements were complied with. Prime minister, were they? If so please explain.

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## **IR reforms required in Australia**

### **1. Terms of employment can relate to issues that are not genuine employment issues**

- Terms can include independent contractor, labour hire or union matters that are not relevant to employment.
- Terms can include discrimination, safety, health and annual and other leave, unnecessarily duplicating other legislation on these matters.

### **2. Employment agreements are not treated as binding**

- 'flexibility terms' are non-binding
- agreement on greenfield employment terms is effectively subject to union veto
- there is no option for statutorily binding individual employment contracts
- the antiquated awards system remains pervasive.

### **3. Specious disputes are encouraged**

- adverse action provisions with a reverse onus of proof promote specious claims
- unfair dismissal jurisdiction over small business deters employment growth in this vital sector of the economy.

### **4. Employees are denied the opportunity to choose their union freely**

- employees are restricted from forming new unions or other representative bodies such as enterprise-specific unions
- unions have anti-competitive muscle-in rights to greenfield projects and in employment situations where there is no dispute.

### **5. Union power is prioritised above the national interest**

- there are insufficient powers to prevent irresponsible action where the national interest is threatened, as in the recent Qantas dispute
- the vital role of the ABCC in investigating misconduct in the building and construction industry has been abolished.

### **6. Transfer of business arrangements impede business transactions**

- industrial arrangements for transferring employees are not allowed to lapse
- new employers cannot apply their own industrial terms to incoming employees.

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