



November 2012



The Review

2012



Australian Institute of
Employment Rights Inc.

A reflection from our President

Recent developments give us heart that the lessons evolving from AIER's work are resonating with decision makers.

The Minister for Employment and Workplace Relations, Bill Shorten, recently announced the formation of a new Centre for Workplace Leadership. AIER welcomes this development which is in line with policies, submissions and recommendations of the AIER in the recent past.

The AIER strongly supports efforts to improve workplace culture, including through improved leadership and management, but also through the promotion of rights for employees and employers and the re-establishment of genuine tripartism in Australian workplaces.

AIER looks forward to working closely with the new Centre, when it is established, on improving the quality of the culture in Australia's workplaces for the benefit of all.

While narrower in focus than the AIER's proposed Centre for Workplace Citizenship, a Centre with an emphasis on workplace leadership which focuses on improving workplace culture in its broadest application will be very important to the future of Australian enterprises, their employees and to Australian society as a whole.

Appropriate values are at the heart of any approach to improving workplaces including joint efforts to improve health and safety, eliminating poor workplace experiences like bullying, encouraging decent work for all and

ultimately to improving enterprise and economy wide productivity.

Values must be supported by a clear understanding and implementation of employee and employer rights and responsibilities. Elimination of rights does not improve workplace culture or outcomes, it has a tendency to foster ineffective management practices including the resort to command/control and intimidation models.

The AIER believes the **Australian Charter of Employment Rights** will be a seminal tool that Centre for Workplace Leadership can draw upon in its work.

We are hoping that throughout 2013 and in the lead up to the next federal election this emphasis on collaboration and tripartite engagement will continue.

I thank the AIER membership; its Executive; participants in AIER projects and events; and, in particular, its Executive Director, Lisa Heap, Business Manager, Jane Ponton and Researcher Keith Harvey for all of their work over the past year and in anticipation of their continued efforts to fairly calibrate the Australian workplace relations system in the years ahead.

All the best for the coming season.

Michael Harmer

Establishing blueprints for the future

Throughout 2012 AIER has continued to contribute to the public discourse about what constitutes fair and decent work. workplaces through our submissions to various public inquiries.

Review of the Fair Work Act

In its submission to the Federal Government's review of the Fair Work Act, AIER debunked the myth that deregulation and "flexibility" is the source of productivity gain stating that there is no research that verifies the link between lower labour standards (via deregulation) and productivity gain. On the contrary this orthodox neo liberal view of productivity and the labour market has been well and truly superseded by research, including from organisations like the OECD and IMF that now accept that strong core labour rights including respect for freedom of association, collective bargaining and less disparity in access to minimum standards, is key to social cohesion and sustainable economic development.

AIER called on the Federal Government to establish a **National Centre of Workplace Citizenship** that will help employers and workers to make the move to implement genuine fairness within the workplace and improve productivity.

We note that the establishment of the Centre for Workplace Leadership is a good first step in this direction.

Stories of insecurity

On Wednesday 21 March, AIER Executive Director, Lisa Heap appeared before the Independent Inquiry into Insecure Work, an initiative established by the Australian Council of Trade Unions.

AIER submitted a detailed written submission entitled.

In this submission AIER encouraged the Inquiry to take a broad definition of insecurity into account. The submission identified eight forms of insecurity that impact on workers in today's workplaces:

- Employment insecurity—when workers can be dismissed or laid off or put on shorter time without difficulty
- Functional insecurity — when workers can be shifted at will or where the content of the job can be altered or redefined
- Work insecurity — when the working environment is unregulated polluted or entails other things making it dangerous to continue
- Income insecurity — when earnings are unstable, contingency based or not guaranteed or near poverty
- Benefit insecurity — when access to standard benefits is limited or denied
- Working-time insecurity — when hours are irregular and at the discretion of the employer or insufficient to generate adequate income
- Representation insecurity — when the employer can impose change and need not, or may refuse to, negotiate with the workers' representatives; and
- Skills reproduction insecurity — when opportunities to gain and retain skills

through access to training and education are limited.

During her appearance at the Inquiry Lisa presented further oral evidence including a case study of the experience of a group of workers engaged in the food processing/manufacturing industry which demonstrated the lengths that some employers were taking to avoid obligations and create a culture of vulnerability.

Lisa also presented detail about the Work Right resource. AIER's tool for educating Year 9 and 10 school students about workplace rights and responsibilities. AIER believes that educating Australia's future workers and employers is key to changing workplace culture to one that respects the dignity of every person.

Parliamentary Inquiry into Workplace Bullying

The AIER Submission to the Parliamentary Inquiry into Workplace Bullying was submitted to the Standing Committee on 29 June 2012.

In its submission the AIER indicated that it believes that there is an urgent need to address factors that are negatively impacting on the experience of work in Australia, including bullying. Workplace bullying is one of the outcomes from negative workplace cultures, accentuated in many cases by employee vulnerability and insecurity at work.

A range of initiatives to combat this are required. These includes initiatives in the area of workplace laws; changes in workplace culture itself; education of young people entering the workforce; industrial relations measures; and through creating more secure and sustainable jobs.

Our submission highlighted that any effective response to the problem of workplace bullying must be seen as part of a multi-dimensional approach. Workplace bullying emerges in the context of workplaces which lack a consensus for, and a commitment to

- A culture of safety and security, including occupational health and safety in all its facets

General and effective workplace rights, including industrial relations protections

- A managerial culture in which management takes responsibility for realising the rights and dignity of all within the workplace.
- The AIER proposed that such workplaces can best be encouraged by:

Adopting the Australian Charter and Standard of Employment Rights in each Workplace

Adopting and implementing the ILO's definition of Decent Work a public policy objective

The establishment of a Centre for Workplace Citizenship to promote excellence in the realization of workplace rights and building collaborative culture

A National Accreditation System to support and promote healthy workplace cultures.

Promoting good faith relationships

AIER was asked to present to the *2012 Fair Work Summit* on good faith in the employment relationship.

In her address entitled: Good Faith One Day Bad Faith the Next? Can you carry out good faith bargaining when you have bad faith relationships? AIER Executive Director challenged summit attendees to be inspired by the work of philosopher Hannah Arendt and “think what we do” when looking at how we construct the relationships within our workplaces in order to consider how we can get more out of them.

Lisa examined in detail the good faith bargaining systems concluding that what is important is the relationships that you create on a day to day basis and how if these are not of a good faith character, the current enterprise bargaining system is fraught with difficulty for all involved.

Ron McCallum debate leads a responsible, rational debate on workplace law and productivity

The Ron McCallum Debate continues to draw a large audience of the key parties and participants involved workplace relations including members of the judiciary and the tribunal.

The Institute’s second Debate in the Justice at Work series held on 2 August 2012 closely examined the key issue of productivity in

Australian workplaces, asking: is productivity the imperative and if so at what cost?

The debate attracted a panel of four speakers willing to try to rationally discuss productivity moderated by the Centre for Policy Development’s Miriam Lyons.

Panelists were:

- Peter Wilson – National President, Australian Human Resources Institute
- Tim Lyons – Assistant Secretary, ACTU
- Steve Vamos – President, Society for Knowledge Economics
- Lisa Heap – Executive Director, AIER.

The AIER produced a substantial discussion paper for the debate. This paper provides a comprehensive overview of the key issues in the ongoing discussion and is a valuable resource for all involved in workplace relations.

All speakers at the Debate agreed that changing workplace relations law was not the key to unlocking further productivity within Australian workplaces.

Voices at Work

AIER has continued to advocate around the use of the Charter of Employment Rights as a key tool for founding good workplace relations policy and action.

AIER’s Lisa Heap presented a paper to the Australasian regional meeting of the *Voices at Work* project held in Melbourne on Friday 20 to Saturday 21 July, 2012.

Lisa’s paper addressed the issue of utilising human rights frameworks as a new tool for training & organising around workplace rights.

In particular the paper examined case studies utilising the Australian Charter of Employment Rights and the Workright resource within this context.

Voices at Work is an international project, supported by the Leverhulme Trust, that seeks to examine the role of law both in the decline of collective worker representation and in a potential reversal of this trend. It aims to bring together scholars and policy makers from five common law countries (Australia, Canada, New Zealand, United Kingdom and United States) to promote comparative reflection on these important issues.

Workplace rights as human rights

AIER continues to explore using human rights frameworks to help employers and workers create decent work and respectful relationships at work.

Throughout the year AIER has embarked on a number of initiatives in this area including:

- Providing an in house consultancy on creating respectful relationship in the workplace using a human rights based approach for a Victorian Primary School.
- Presenting at the Melbourne Law School Masters of Law Summer School on Corporate Social Responsibility and Labour Rights.
- Presenting to the ACTU Trans-Tasman Educators Conference (October) on using human rights framework to educate workers about workplace rights and responsibilities.

Workright - the reputation continues to grow

The Workright resource is the result of a three year collaboration between the Teacher Learning Network (TLN) and the AIER. Recognising the urgent need to raise awareness about workplace rights and responsibilities amongst those entering the workforce for the first time, TLN and AIER have brought together classroom practitioners with some of Australia's leading industrial relations experts. The result is a comprehensive package of resources that support teaching and learning about workplace rights and responsibilities.

The brief for this project was to develop a rich and comprehensive resource that would help young people understand, appreciate and be able to manage workplace culture and their rights and responsibilities in the workplace.

The package contains:

- A Curriculum Resource (containing more than 70 rich classroom activities)
- A teacher resource (a 36 page booklet written specifically for teachers to provide them with critical knowledge to support their teaching)
- A student resource with critical information and contact details for support organisations
- A website exploring web 2.0 applications (www.teachworkright.com)
- iPad applications for teachers
- Smartphone applications for students (iPhone application available now).

The Workright resource is built around ten workplace themes:

1. Everyone should have a fair go at work
2. Everyone has a right to be treated with dignity
3. Discrimination and harassment are against the law!
4. Everyone has a right to a safe and healthy workplace
5. Everyone should get a say about the things that affect them
6. You should always be able to ask someone to speak on your behalf
7. No one should be asked to leave without a fair reason
8. Everyone is entitled to fair basic conditions
9. You (or your representative) should be allowed to bargain for a fairer deal
10. Disputes should be resolved quickly and fairly.

As well as being utilised in the classroom Workright is now being used by various unions as the foundation for training union workplace representatives about rights and responsibilities in the workplace. We have also commenced discussion with those involved in adult migrant education on the possible use of Workright in this context.

New edition of *The Debate*

The third edition of AIER's magazine The Debate has been published to coincide with our AGM.

With a lead article from former President of the AIRC and FWA Justice Giudice this edition explores current trends in the debate about workplace relations reforms.

Editions 4 & 5 will be published in 2013.

The Debate is available free to AIER members and member organisations.

Projects 2013

AIER has been commissioned by the State School Teachers Union of Western Australia (SSTUWA) to provide the research secretariat for a major inquiry into the work of school leaders in Western Australian schools.

Entitled, *Leading and Learning: An examination of work, contextual complexity, systems and community expectations of the roles of Principals and Deputy Principals in Western Australian public schools*, the Inquiry will examine amongst other things the changes in the work of those in educational leadership positions (Principals and Deputies), including the increasing complexities in the type and nature of the work performed, the environment within which it is performed and the expectations within the Department, state and federal governments and the community of these roles, since 1991.

The Inquiry will report its findings in the first half of 2013.

Barclay again

On 1 November 2012 AIER and ALLA jointly hosted a seminar in Melbourne examining the implications of the High Court decision in Bendigo Regional TAFE v Barclay.

AIER Executive member and Counsel for Mr Barclay, Mark Irving, discussed the decision and its implications.

Following Mark's presentation a lively discussion took place about the general protections provisions within the Fair Work Act.

Ongoing partnerships

During 2012 AIER has worked to consolidate existing key partnerships.

AIER would like to thank

- The team at the Teacher Learning Network (TLN) for continued support with Workright
- IIPA Directors Peter Maguire and Stuart Burgess for their ongoing support
- Steve Vamos for his engagement around the Workplace Leadership Centre
- John Howe – Centre for Employment and Labour Relations Law (Melbourne Law School, University of Melbourne)
- Anthony Forsyth – RMIT University
- Samantha Bond - ACTU Organising Centre

- Peter Wilson – National President, Australian Human Resources Institute
- Tim Lyons – Assistant Secretary, ACTU
- Miriam Lyons – Centre for Policy Development
- Marilyn Pittard – Monash University & ALLA.

AIER governance

Our Executive Committee is based on the principle of tri-partite representation of employees, employers and independent persons, as exemplified by the International Labour Organisation (ILO).

The following were members of the Executive throughout 2012

Michael Harmer – President

Fiona Hardie – Vice President - Employer

The Hon. Paul Munro – Vice President - Independent

Paul Richardson – Vice President Employee

Mark Perica – Treasurer

Tim McCauley – Ordinary Member

Mark Irving – Ordinary Member

Gary Rothville – Ordinary Member

Sean Reidy – Ordinary Member

Anthony Lawrence – Ordinary Member

Lisa Heap – Executive Director

Funding

The AIER is a membership organisation, independent of government or any particular interest group. Membership is open to individuals and organisations. During 2012 our individual membership has continued to grow – we would love this to continue! We are indebted to our members whose ongoing financial support underwrites the cost of running the organisation.

In addition AIER would like to acknowledge the generous support of the following organisations:

- Harmers Workplace Lawyers
- Civil Air
- Hardie Grant Publishing
- Australian Education Union
- National Union of Workers
- Community and Public Sector Union – SPSF
- Australian Manufacturing Workers Union
- Australian Nurses Federation
- Sincerruty Trust.

Making Contact

Office: 214 Graham Street, Port Melbourne
Victoria 3207

Phone: 03 96479102

Website: www.aierights.com.au