

In this Issue -

May 2010

- **Note from ALLA's Secretary**
- **ALLA's Fifth Biennial Conference and Workshops: Adelaide, November 2010**
- **NZ Labour Law Association**
- **2009 ISLSSL World Congress**
- **ALLA AGM: 16 November 2009**
- **State Chapter Developments**

Note from ALLA's Secretary

Welcome to the May 2010 ALLA Newsletter. Thank you for your continued involvement with ALLA this year.

From 1 to 4 September 2009, the Australian Labour Law Association hosted the 19th ISLSSL World Congress in Sydney. Held at the Sofitel Wentworth Sydney, around 300 delegates enjoyed presentations from esteemed academics and practitioners from around the world. ALLA commissioned the preparation of the Australian national reports for the World Congress of Labour Law 2009. Each report addresses the state of Australian labour law and its economic and social context in response to questionnaires issued on each theme of the Congress. These reports can be found on the ALLA website; a summary is included below.

I am delighted to mention a major honour for Professor Rosemary Owens, a previous member of the ALLA Management Committee. Rosemary has been appointed by the International Labour Organization to its Committee of Experts on the Application of Conventions and Recommendations. The appointment was made by the Governing Body of the ILO at its 307th Session in Geneva in March.

Our volunteer State Chapter Convenors have been busy, continuing to arrange an interesting array of State Chapter Seminars. You will find an overview of recent and upcoming events below.

In addition to these various State Chapter events, this year the fifth **ALLA Biennial Conference** will be held in **Adelaide** on **Fri 19 and Sat 20 November**. The conference will run all day on the Friday, with a dinner that night, then conclude at lunchtime on the Saturday. The venue is the Stamford Grand Hotel, located on the beachfront at Glenelg.

The main theme of the conference will be the ongoing changes that are occurring to Australian labour law. In particular, the conference will examine the way in which the new Fair Work legislation is being interpreted and applied, and also the process for harmonising Australia's occupational health and safety legislation.

Finally, I would like to thank Catherine Dow, who has resigned as ALLA administrator for her hard work and commitment to ALLA, and would like to welcome our new administrator Bethany King. Best wishes for the upcoming year.

Shae McCrystal, Secretary, ALLA

ALLA's Fifth Biennial Conference: 19-20 Adelaide 2010

The ALLA National Committee is pleased to announce that the Fifth Biennial Conference will be held in Adelaide on Friday 19 and Saturday 20 November of this year.

The conference will run all day on the Friday, with a dinner that night, then conclude at lunchtime on the Saturday. The venue is the Stamford Grand Hotel, located on the beachfront at Glenelg.

The main theme of the conference will be the ongoing changes that are occurring to Australian labour law. In particular, the conference will examine the way in which the new Fair Work legislation is being interpreted and applied, and also the process for harmonising Australia's occupational health and safety legislation.

ALLA invites practitioners, judges, tribunal members, administrators and academics to submit papers for presentation on these or any other areas of labour law. Without wishing to constrain presenters, ALLA is especially interested in papers that look at one or more of the following topics:

- minimum labour standards (including the National Employment Standards, the modern award system, wage fixation, pay equity, and individual flexibility arrangements),
- the new enterprise bargaining system,
- unfair employment practices (including unfair dismissal rights and the 'general protections' against wrongful or discriminatory treatment), and

- the development and national implementation of the model OHS laws.

Submissions should include the name, title and affiliation of the author(s), a short biography and an abstract of no more than 250 words. Please email them by 30 June 2010 (extended from the original deadline of 31 May) to the Chair of the Organising Committee, Andrew Stewart, at andrew.stewart@adelaide.edu.au.

Full information about the conference, including registration and accommodation, is now available at the conference website: <http://www.alloccasionsgroup.com/ALLA2010>.

The conference is presented with the support of the University of Adelaide.

DEADLINES / IMPORTANT DATES

Submission of abstracts: 30 June 2010

Notification of outcome to authors: 16 July 2010

Final paper submission: 1 November 2010

PHILLIPA WEEKS PRIZE

This prize recognises the contribution of Professor Phillipa Weeks to Australian labour law scholarship and her unwavering support of young and upcoming scholars. It is awarded at each ALLA National Conference for the best paper presented by an emerging scholar. Any person contributing a paper by the deadline for the submission of papers will be eligible, unless they hold the academic post of Associate Professor, Professor or an honorary professorial position. The Phillipa Weeks Prize is co-sponsored by ALLA and the Federation Press.

Pre- Conference Workshops – Teaching and Research

Prior to the formal commencement of the ALLA National Conference, two workshops will be held at the University of Adelaide Law School, on Thursday 18 November 2010.

Academics and others interested in teaching and/or researching labour law are invited to attend one or both of these workshops. There is no charge, but registration is essential.

The workshops are presented with the kind support of the University of Adelaide, the Centre for Employment and Labour Relations Law at the University of Melbourne, the Workplace and Corporate Law Research Group at Monash University, and the Sydney Law School Labour Law Cluster.

2010 Labour Law Teaching Workshop

When: Thur 18 November, 11:30am – 1:30pm

Where: Moot Court, Level 1, Law School (Ligertwood Building), University of Adelaide

The Teaching Workshop will provide a forum for teachers of Australian labour law – broadly construed to include employment law and industrial law, and taught to law and/or non law students – to come together in a collegial environment and discuss the challenging questions we face in our teaching, such as:

- What are the purposes of teaching Australian labour law?
- What are the core areas to be taught?
- How should I structure the syllabus?
- Which text best suits my students' learning needs and styles?
- What innovative forms of assessment have other teachers used?
- How can I best engage my students in current debates and issues?

For any enquiries about the Teaching Workshop, please contact Joo-Cheong Tham (j.tham@unimelb.edu.au).

To register to attend, please e-mail moira.groves@adelaide.edu.au.

Lunch will be provided after the conclusion of the Teaching Workshop at 1:30pm.

Those attending only the second workshop are welcome to join us.

Doing Empirical Research in Labour Law

When: Thurs 18 November, 2:15 – 5:30pm

Where: Moot Court, Level 1, Law School (Ligertwood Building), University of Adelaide

Australian labour law scholarship has significantly broadened its focus over the past fifteen years, but, apart from the field of health and safety at work, relatively few empirical studies have been conducted. Empirical research is about 'what happens in practice' and studying issues empirically – rather than purely conceptually or doctrinally – would greatly enrich labour law scholarship.

This workshop is designed as an introduction to empirical research for labour lawyers who are interested in undertaking this kind of research. It will include an introduction to socio-legal research and empirical research methods. There will be presentations by researchers who have completed empirical studies using a variety of empirical methods, followed by discussion. Participants will also receive a list of publications to consult in order to further develop a capacity to undertake empirical research.

For enquiries about the Empirical Research Workshop, please contact Richard Johnstone (r.johnstone@griffith.edu.au) or Belinda Smith (belinda.smith@sydney.edu.au).

To register to attend, please e-mail moira.groves@adelaide.edu.au.

New Zealand Labour Law Society

ALLA is pleased to announce that the launch of the New Zealand Labour Law Society will take place on 3 June 2010. The New Zealand Labour Law Society was formed in late 2009 and has just held its first AGM. The purposes of the Society are to promote the study of, and exchange of ideas about, labour law and social security in New Zealand and at the

international level, and to provide lawyers and others working in the fields of labour law and social security with a forum for discussion and debate. All persons with an interest in labour law are welcome to join for \$25. Contact Michelle D'Souza for more information michelle.dsouza@aut.ac.nz.

2009 International Society for Labour & Social Security Law (ISLSSL) World Congress in Sydney

The ISLSSL, housed in the International Labour Organisation in Geneva, was formed in the 1950s to provide (among other things) a forum for discussion about the relationship between national systems of labour law, and how international and national labour law influence each other. For further background information, visit the web-site: <http://www.asociacion.org.ar/ISLLSS/>.

ALLA's affiliation with the ISLSSL means that ALLA members have opportunities to become involved in the World Congress, Regional Congresses, and Study Groups of ISLSSL.

ALLA was chosen to host the 19th World Congress of the International Society for Labour and Social Security Law (ISLSSL), which was held in Sydney in from 1 - 4 September 2009. Held at the Sofitel Wentworth Sydney, around 300 delegates enjoyed presentations from esteemed academics and practitioners from around the world.

ALLA commissioned the preparation of the Australian national reports for the World Congress of Labour Law 2009. Each report addresses the state of Australian labour law and its economic and social context in response to questionnaires issued on each theme of the Congress. The Australian Reports can be downloaded here:

[Theme 1](#): Regulatory frameworks and law enforcement in new forms of employment

[Theme 2](#): Workers' Representation and social dialogue at the workplace level

[Theme 3](#): Emerging patterns of social protection in light of structural changes (ageing population, changing family structures, immigration, budgetary constraints, political and ideological realignments)

More information is available on the [ALLA website](#).

ALLA AGM: 16 November 2009, ALLA National Committee

ALLA's 2009 AGM was held at 5.30pm on 16 November at the offices of Blake Dawson via web conferencing in Melbourne, Sydney, Canberra, Brisbane, Perth and Adelaide.

ALLA would like to thank Blake Dawson for hosting this event.

The following committee members were elected at the AGM:

President: Professor Andrew Stewart (University of Adelaide, SA)

Vice-President: Professor Marilyn Pittard (Monash University, VIC)

Treasurer: Mr Michael Tamvakologos (Blake Dawson, VIC)

Secretary: Dr Shae McCrystal (University of Sydney, NSW)

Ordinary Members:

Associate Professor Amanda Coulthard (Bond University, Qld)

Mr Rob Durbridge (Australian Education Union, VIC)

Mr Nicholas Ellery (Corrs Chambers Westgarth, WA)

Associate Professor John Howe (University of Melbourne, VIC)

President Patricia Leary (Tasmanian Industrial Commission, TAS)

Ms Shelley Marshall (Monash University, VIC)

Professor Ron McCallum (University of Sydney, NSW)

Mr Arthur Moses SC (NSW)

Mr Peter Punch (Carroll & O'Dea Lawyers, NSW)

Mr Michael Rawling (Australian National University, ACT)

Mr Cameron Roles (Australian National University, ACT)

Ms Natalie Van der Waarden (Murdoch University, WA)

There have been several changes to the new committee and the ALLA executive.

In particular, ALLA's inaugural President Ron McCallum and Vice President Richard Mitchell stepped down from their respective positions at the AGM. ALLA would like to thank Ron and Richard for their intellectual leadership, hard work and efforts to establish ALLA as the vibrant and active organisation that it is today. Both Ron and Richard will continue to be involved with ALLA, Ron as a member of the ordinary committee and Richard through his efforts in the VIC state chapter and in other ALLA events.

Further, John Howe stepped down as Secretary after serving ALLA in this capacity for four years. During John's term, the Organisation held two successful national conferences and the 2009 World Congress. It also increased its membership base and range of State Chapter activities. John will continue to be involved with ALLA as an ordinary member of the national committee and we thank him for his time, energy, enthusiasm and level-headedness throughout his time as Secretary.

Finally, the national committee said farewell to two long standing members of the national committee who did not stand for re-election.

Professor Joellen Riley and Ron Baragry have both left the national committee after long terms of service and extensive involvement in the 2009 World Congress. Both Joellen and

Ron will continue their involvement in the NSW State Chapter and we are grateful for their longstanding commitment to ALLA.

State Chapter Developments

ACT

Recent Events:

The ACT Chapter held a seminar in conjunction with the ANU College of Law and the Industrial Relations Society of the ACT on 24 March 2010. **Associate Professor Andrew Lynch**, the Director of the Gilbert + Tobin Centre of Public Law and member of the Faculty of Law of the University of New South Wales gave a fascinating seminar on the referrals power in the context of the recent Fair Work Act referrals by five out of the six States. As well as examining the particulars of the Fair Work referrals, Associate Professor Lynch situated this discussion in the broader context of State referral of powers more generally.

Participants thoroughly enjoyed the seminar, and we look forward to holding two more seminars later this year.

Convenors:

Michael Rawling, Australian National University: michael.rawling@anu.edu.au

Cameron Roles, Australian National University: cameron.Roles@anu.edu.au

New South Wales

Upcoming Events:

The NSW State Chapter will hold its next seminar in early June 2010 (exact date to be confirmed shortly) at which the **Hon. Geoffrey Giudice**, President of Fair Work

Australia, will speak. The seminar will be held at the offices of Thomson Playford Cutlers Lawyers located at Level 25, Australia Square Tower, 264 George Street, Sydney.

On Thursday 5 August 2010, the University of Sydney Law School will host a seminar to be presented by **Professor Keith Ewing** from Kings College, University of London.

On Wednesday 1 September 2010, **Professor Breen Creighton** from the University of Melbourne will address the Transfer of Business provisions in Part 2-8 of the *Fair Work Act 2009*. Professor Creighton's seminar will also be held at the University of Sydney Law School.

Recent Events:

The NSW State Chapter held its most recent seminar on Tuesday 20 April 2010 at the offices of Carroll & O'Dea Lawyers. **Bruce Hodgkinson** SC and **Lea Constantine**, partner at Blake Dawson, addressed the topic of 'Life after *Kirk*: What is the future of OHS prosecutions in NSW?'

The seminar was well attended and the excellent presentation by Bruce and Lea was followed by a lively discussion across several issues including the likely effects of the decision on the conduct of OHS investigations, the manner in which charges under the OHS Act will be laid, and the likely changes to the way in which the Industrial Court will exercise its criminal jurisdiction in applying the rules of evidence in contested hearings.

The first seminar of the year was held on 4 February 2010 at the University of Sydney Law School, in conjunction with Fair Work Australia, on the topic of the US experience of good faith bargaining under the *National Labor Relations Act*. The entertaining and informative speakers were **Mr George Cohen**, Director of the Federal Mediation and Conciliation Service and **Mr Ronald Meisburg**, General Counsel of the National Labor Relations Board.

Convenors:

Professor Joellen Riley, University of Sydney,
Ms Jacque Seemann, Thomson Playford
Cutlers
Ms Janine Smith, Carroll & O'Dea Lawyers
Mr Ingmar Taylor, State Chambers

Contact - ingmar.taylor@statechambers.net

Queensland

Recent Events:

The QLD State Chapter held a seminar on 26 November 2009. **Professor Joellen Riley** (Professor of Labour Law at Sydney Law School, University of Sydney) discussed 'Mutual trust, good faith and fair dealing: fact or phantom?'

Convenors:

Ms Amanda Coulthard, Franklin
Athanasellis: amanda.coulthard@mac.com

Mr Vince Rogers, Blake Dawson:
vince.rogers@blakedawson.com

South Australia

Upcoming Event:

On Tuesday 22 June from 5:30 to 7pm, the SA State Chapter will hold a seminar at the offices of Piper Alderman located at 167 Flinders St, Adelaide. **Erin McCarthy**, Senior Associate at

Piper Alderman, will address the topic 'Great Expectations? The New Rights to Parental Leave'.

Erin will briefly review the changes that have been made to an employee's right to unpaid parental leave under the National Employment Standards, and then go on to examine in more detail the Rudd Government's proposed new scheme for paid parental leave (PPL). She will consider in particular how the new entitlement, expected to commence in 2011, interacts with existing rights to parental leave; and more broadly how the NES, PPL, adverse action and discrimination laws interact to regulate how employers deal with employees who are pregnant, on maternity leave or have returned to work.

The event is open to anyone who is a member of ALLA, or who is seriously considering joining the Association. To register to attend, please e-mail rinfante@piperalderman.com.au.

Recent Events:

On November 17 2009, the SA Chapter held a Seminar at the University of Adelaide. **Natalie James**, General Counsel, Fair Work Ombudsman addressed the topic 'What is the FWO's Role?' Drawing on her wealth of knowledge about the Fair Work legislation, the drafting of which she oversaw in her position as Chief Counsel for the Workplace Relations Legal Group within the Department of Education, Employment and Workplace Relations, Natalie gave an engaging talk about how the Office of the Fair Work Ombudsman is adjusting to its responsibilities under the Fair Work Act 2009.

Convenor:

Professor Andrew Stewart, The University of Adelaide: andrew.stewart@adelaide.edu.au

Tasmania

Upcoming Events:

The next function of the Tasmanian chapter of ALLA will be Friday 4th June, when **Dr Shae McCrystal** will give a lunchtime seminar titled "Protected industrial action under the Fair Work Act – Recent Developments".

For details with respect to the timing and location of the seminar and to RSVP please contact Sharyn Haas at sharyn.haas@education.tas.gov.au or by phone (03) 6233 7116.

A one day conference will be held at the Woolstore in Hobart on Friday 5 November, 2010. Further information will be provided to members closer to the event.

For information please contact Sharyn Haas at sharyn.haas@education.tas.gov.au or by phone (03) 6233 7116.

Recent Events:

Some 46 members of the Tasmanian Chapters of ALLA and the IR Society attended a luncheon at the Tasmanian Law Society premises on 22 April 2010 to hear a presentation from **Tim Lee**, general manager, Fair Work Australia. Consistent with the usual practice of the Tasmanian chapter, members of the Law Society were in attendance.

Tim discussed his role as General Manager and provided information as to the role of the Fair Work Australia Tribunal (formerly the Australian Industrial Relations Commission) and the role and work of the Fair Work Australia Ombudsman.

Convenor:

President Pat Leary, Tasmanian Industrial Commission: pat.leary@justice.tas.gov.au

Victoria

Upcoming Events:

The focus of the next event will be 'The *Fair Work Act 2009* (Cth) One Year On' and a member of Fair Work Australia will be involved in this seminar. Date, venue and speakers will be confirmed and notified to members later this month.

The Convenors plan to hold another event towards the end of the year, taking into account the timing of the national conference in November 2010. The convenors have a proposal for an event but suggestions are always welcome from Victorian chapter members. Please email or phone any suggestions for events to Professor Marilyn Pittard (phone: 9905 3378; see email address below).

Recent Events:

The Victorian State Chapter held a seminar on Wednesday 31 March 2010. **The Honourable Justice Alan Boulton** (Senior Deputy President, Fair Work Australia) discussed 'Understanding industrial relations challenges in developing ASEAN countries'.

For the past eight years, Justice Boulton was Country Director of the International Labour Organisation in Jakarta with responsibility for Indonesia and Timor-Leste and the ILO's relations with the Secretariat of the Association of South East Asian Nations (ASEAN). He was involved in many important labour law and relations developments in the Asian region and addressed the Victorian chapter seminar on how countries are adapting to the challenges, and the problems being faced with new institutions and arrangements. After discussion and questions, refreshments followed and there was further opportunity to talk to the speaker who generously gave his time.

Convenors:

Professor Marilyn Pittard, Monash University:
marilyn.pittard@law.monash.edu.au

Mr Michael Tamvakologos, Blake Dawson:
michael.tamvakologos@blakedawson.com

Note: Ms Shelley Marshall has recently resigned as convenor due to her work commitments.

Western Australia

Recent Events:

A seminar titled Fair Work Dismissals was held on March 23 at the Perth office of Clayton Utz. Commissioner **Bruce Williams**, from Fair Work Australia's Perth Registry, and Downings Legal partner **Steve Heathcote**, presented on

changes to practice and procedure of dismissal law in the federal system. The Industrial Relations Society of Western Australia co-hosted the seminar. Approximately 45 attendees enjoyed a timely discussion of issues relating to Fair Work Act 2009 (Cth) provisions on termination of employment, including the introduction and use of designated conciliators. A lively eats and drinks session followed.

The next WA seminar is pencilled in for October.

Convenors:

Mr Nicholas Ellery, Corrs Chambers Westgarth, Perth: Nicholas.Ellery@corrs.com.au

Ms Natalie van der Waarden, Murdoch University: n.vanderwaarden@murdoch.edu.au