**Broad and in-depth knowledge of industrial laws is important in industrial dispute resolution**

Senior Deputy President Jennifer Acton

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Like many women of my generation, as a young girl I presumed I would work as a teacher. However, circumstances led me to becoming an economist and lawyer in the alternative world of industrial relations or, as it is now more fashionably called, workplace or employment relations. And what an interesting world it is!

Over more than 30 years as an industrial relations practitioner and then member of Fair Work Australia (FWA) and its predecessor, I have had the opportunity to be involved in negotiating, conciliating and arbitrating workplace matters for individuals and enterprises, across various industries and also nationally. Amongst other things, I have:

- Flown at low level across northern Australia to examine the work of coastal surveillance officers;

- Presented equal pay cases for nurses, as an advocate and decided them for social and community service workers, as a tribunal member;

- Inspected aluminium smelters in the course of arbitrating disciplinary procedures;

- Modernised Australia’s system of national awards, as a member of the Award Modernisation Full Bench;
• Been Panel Head for, and revolutionised the processing of, unfair dismissal applications;

• Presided on appeal Full Benches against first instance decisions of the tribunal;

• Decided national wage case adjustments;

• Advocated in work value and anomalies cases for clerks, munitions workers, retail workers and the like;

• Conciliated disputes over matters such as redundancies at glass works and accommodation for flight attendants; and

• Determined the scope of enterprise agreements in areas such as the paint industry.

I have also had the opportunity to conduct a study tour of industrial relations institutions in the United Kingdom, Canada and the United States of America for the purposes of measuring Australia’s national industrial institution against world practice.

My experience has led me to conclude that the modern industrial relations practitioner is required to be quite multi-skilled. They need more than just legal knowledge. They also need sound communication skills and expertise in negotiation, advocacy, alternative dispute resolution and court and tribunal proceedings. In terms of legal knowledge, they must have knowledge of many Acts of Parliament and their accompanying regulations and rules, including the:

• *Fair Work Act 2009* (Cth)
• *Fair Work Regulations 2009* (Cth)

• *Fair Work Australia Rules 2010*

• *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

• *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* (Cth)

• *Fair Work (Registered Organisations) Act 2009* (Cth)

• *Fair Work (Registered Organisations) Regulations 2009* (Cth)

• *Workplace Relations Act 1996* (Cth) - pre and post Work Choices!

• *Workplace Relations Regulations 2009* (Cth) ...

They also need knowledge of relevant constitutional law, corporations law, contract law, health and safety law, human rights law ... and so the list goes on.

The relationship between these laws can be complex. For example, a “valid reason” for termination of employment under the unfair dismissal provisions of the *Fair Work Act 2009* (Cth) (FW Act) and its predecessor is not limited to repudiation of the contract of employment at common law.¹

Of course, in many industrial relations matters concerns other than legal rights and obligations prevail in their resolution. For example, political, relational or economic imperatives may dictate a resolution which is contrary to that which a strict adherence to legal rights and obligations would deliver. To that extent, a detailed knowledge of industrial relations laws might seem superfluous.
In some recent major industrial disputes, however, a detailed knowledge of industrial relations laws has been critical.

In the Qantas Airways Limited (Qantas) disputes over enterprise agreements with licensed aircraft engineers, transport workers and pilots, Qantas responded to protected industrial action by its employees by giving them notice under s.414(5) of the FW Act that it would lock out the employees. It then grounded its fleet worldwide. As a result, the Minister for Tertiary Education, Skills, Jobs and Workplace Relations applied to FWA under s.424(2) of the FW Act for an order terminating or suspending all the relevant protected industrial action, including that foreshadowed by Qantas.
A Full Bench of FWA, acting under s.424(1) of the FW Act, terminated all the protected industrial action. They did so largely on the basis that the response action of Qantas, if taken, threatened to cause significant damage to the tourism and air transport industries and, indirectly, to industry generally.

Subsequently FWA commenced to exercise its powers under s.266(1) of the FW Act to make industrial action related workplace determinations or, in effect, to determine “enterprise agreements” between Qantas and the employees. In the result, a Full Bench of FWA issued a consent determination concerning Qantas and the licensed aircraft engineers. The process of making workplace determinations concerning Qantas and its transport workers and Qantas and its pilots is still proceeding.

In the Victorian nurses’ dispute, regarding an enterprise agreement between the nurses and Victorian government related employers, the nurses ultimately engaged in unprotected industrial action. Thereby, they avoided the potential of FWA exercising the very powers the tribunal has exercised or is exercising in the Qantas disputes and FWA making an industrial action related workplace determination for the nurses and their employers. A workplace determination which the nurses thought could not deal with a major issue between the parties concerning “nurse-patient” ratios. It being considered a workplace determination could not deal with such ratios because of the implied Constitutional limitation on the exercise of Commonwealth legislative power and the exclusion of such subject matter from the matters referred to the Commonwealth Parliament under the *Fair Work (Commonwealth Powers) Act 2009* (Vic).
The strategies adopted by the parties in these disputes suggest the parties possessed or were provided with a very sophisticated understanding of industrial relations law — How many industrial relations participants really appreciated that an employer could use a lock out to resolve a bargaining dispute through FWA arbitration? Or that employees could avoid FWA arbitration of a bargaining dispute by taking unprotected industrial action?

Such knowledge enabled the parties to make fully informed choices about their options for dealing with their disputes.

In the 20 years I have been a member of FWA and its predecessor, I have facilitated the resolution of many industrial relations matters. Often the parties have been willing to settle their matters without insisting that their rights or the other party’s obligations be met. However, I have always thought it important that the parties understand the extent of the compromises they are making. That can only happen if the parties are aware of their legal rights and obligations. In that regard, a specialist practitioner with broad and in-depth knowledge of industrial relations law can be of help.

I am not suggesting that no industrial relations move should be made by a party without an industrial relations lawyer by their side. However, it can be prudent for a party to consider whether the industrial matter they are dealing with warrants, at least, advice from such a specialist.

Accordingly, the Law Institute of Victoria’s Workplace Relations Accredited Specialist program is to be supported. It can be expected that a lawyer who has received specialist accreditation under the program will be able to provide a very high level of legal analysis, advocacy and other skills for their clients.
As an FWA member who has been involved in assessing candidates in the program, I am aware there are stringent requirements to be met in order to be successful in achieving the specialist accreditation. However, I am also aware the program organisers take steps to protect the privacy and professional standing of those seeking such accreditation.

I therefore encourage lawyers who want to make a real contribution to the world of industrial relations to give serious consideration to undertaking the Law Institute of Victoria’s Workplace Relations Accredited Specialist program.

**Endnotes:**

1. *Annetta v Ansett Australia Ltd*, Print S6824.
5. *Re Australian Education Union and Others; Ex-parte the State of Victoria and Another*, [1994] 184 CLR 188.