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## Note from ALLA's Secretary

Welcome to the June 2011 ALLA Newsletter. Thank you for your continued involvement with ALLA this year.

### Report on 2010 Conference

ALLA's fifth Biennial Conference was held in Adelaide on Friday 19 and Saturday 20 November. The main theme of the conference was the ongoing changes that are occurring to Australian labour law, in particular, the way in which the new *Fair Work Act 2009* (Cth) is being interpreted and applied, and also the process for harmonising Australia's occupational health and safety legislation. The conference was well attended and prompted a productive and stimulating exchange of ideas. For the second time since its inception in 2008, the Phillipa Weeks Prize for the best conference paper by an emerging scholar was awarded at the Conference Dinner. The winner for 2010 was Richard Naughton for his paper 'The Low Paid Bargaining Scheme: An interesting idea, but can it work?'

Prior to the formal commencement of the ALLA National Conference on Thursday 18 November 2010, two workshops, '2010 Labour Law Teaching Workshop' and 'Doing Empirical Research in Labour Law', were held at the University of Adelaide Law School. A more detailed account of the conference and workshops appears below.

CPD accreditation is available for conference attendance. For more information, contact the ALLA Administrator at [law-alla@unimelb.edu.au](mailto:law-alla@unimelb.edu.au).

### ISL&SSL

ALLA continues to be an active affiliate of the International Society for Labour and Social Security Law. ISLSSL is planning regional conferences in Seville and in the Philippines for late 2011, and will hold their 20<sup>th</sup> World Congress in Santiago, Chile in September 2012. ALLA was sad to note the passing of Professor Clyde Summers, former President of ISLSSL, in October 2010.

### Vale Ron Baragry

The labour law community was greatly saddened to hear of the passing of Ron Baragry, a distinguished labour lawyer, foundation member of ALLA and extremely active member of both the NSW Chapter and National Committee. He will be greatly missed.

### Professor Ron McCallum: Senior Australian of the Year 2011

We're very pleased to announce that Professor Ron McCallum AO, founding member and former President of ALLA, has been named the 2011 Senior Australian of the Year. We warmly congratulate Ron for this award.

### State Chapter Events

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.

Best wishes for the upcoming year.

*Shae McCrystal, Secretary, ALLA*

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**Report on ALLA's Fifth Biennial Conference: 19-20 November 2010**

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The Fifth Biennial Conference was held in Adelaide from Friday 19 to Saturday 20 November last year. It took place at the Stamford Grand Hotel on the beachfront at Glenelg, and ran all day Friday with a dinner that night, concluding on Saturday at lunch-time.

The conference was held at a time when the new Fair Work legislation was still in the process of being bedded down, and there remained many questions as to how it was being, or should be, interpreted or applied. Many of the sessions at the conference considered those questions, featuring some of the leading experts in the field.

Also examined was the rocky road towards the harmonisation of occupational health and safety laws – a long-cherished goal of many reformers, but one that continues to present tremendous practical and political challenges, despite the Inter-governmental Agreement that has led to the creation of Safe Work Australia and the drafting of a Model Work Health and Safety Bill.

ALLA was excited to host Leigh Johns as Keynote Speaker on Friday morning, in his new capacity as Australian Building and Construction Commissioner. There followed a panel discussion on the Fair Work Act in Operation, and two concurrent sessions on 'Enforcement and Dispute Resolution', and 'Enterprise Bargaining'. After lunch, the afternoon's concurrent sessions addressed 'General Protections and Discrimination', 'Special Types of Worker', 'Minimum Standards', and 'National and International Perspectives'. The Saturday program began with a panel discussion on the Harmonisation of Australia's OHS Laws, and concluded with concurrent sessions on 'OHS and Regulatory Complexity', and 'Work, Freedom and Mobility'. Saturday's sessions were followed by the ALLA AGM, and the conference was officially closed at 1pm.

Copies of all conference papers are available to ALLA members via the ALLA website.

**BOOK LAUNCH**

ALLA and the Federation Press were very pleased to host a launch for *the Right to Strike in Australia*, written by ALLA Secretary Dr Shae McCrystal. The book was launched during pre-dinner drinks on Friday 19 November, by Justice Peter Gray of the Federal Court of Australia.

**FRIDAY NIGHT DINNER**

Following the delicious conference dinner on Friday night, attendees were entertained by Adelaide party band Orange Whip, featuring ALLA's own Andrew Stewart and with guest appearances by former and current ALLA Administrators Catherine Dow and Bethany King. Much spirited dancing ensued, with some of ALLA's finest hitting up the dance floor.

**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, and is co-sponsored by ALLA and the Federation Press. The 2010 Phillipa Weeks Prize was awarded to Richard Naughton for his paper 'The Low Paid Bargaining Scheme – An interesting idea, but can it work?' Richard was presented with a copy of *Comparative Labour Law and Industrial Relations in Industrialized Market Economies (10<sup>th</sup> Edition)* edited by Roger Blanpain, and a book voucher from Prize co-sponsors Federation Press.

**CONFERENCE SPONSORS**

ALLA is proud to thank principal sponsors the Fair Work Ombudsman, The Department of Education, Employment and Workplace Relations, and Safework SA. ALLA would also like to acknowledge conference supporter Workplace Express and conference exhibitor The Federation Press.

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## Report on Pre-Conference Workshops: 18 November 2010

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*Dr Belinda Smith*

For the third time now, the biennial ALLA conference has been preceded by a number of workshops. Last year's workshops were held the day before the conference and were on Teaching Labour Law and Empirical Research. Both were very well attended, practical and thought provoking.

The Teaching Labour Law workshop, organised by Joo-Cheong Tham, provided a forum for teachers of Australian labour law – broadly construed – to come together in a collegial environment and discuss challenging questions faced in 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? And, how can I best engage my students in current debates and issues?

The Empirical Research workshop, organised by Richard Johnstone and myself, was designed to address a growing interest among labour law researchers in questions of how to do empirical studies - in asking 'what happens in practice'.

There were presentations by researchers who have undertaken different types of empirical studies. Richard Johnstone introduced the workshop, discussing participant observation, documentary research and theory building. Andrew Frazer spoke on theory and socio-legal research, Richard Mitchell on assessing the impact of employment legislation, Liz Bluff on qualitative interviewing and theory building, and John Howe on researching the impact and effectiveness of employment regulation. A fruitful discussion followed, and participants also received a list of publications to consult in order to further develop their capacity to undertake empirical research.

The workshops were 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.

ALLA thanks all those who took the opportunity to participate in this informative and productive day.

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## New Zealand Labour Law Society Inaugural Conference: 2 Dec 2011

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The recently founded New Zealand Labour Law Society is pleased to invite ALLA members to its inaugural conference, to be held at the Victoria University of Wellington on Friday 2<sup>nd</sup> December 2011.

The conference organisers intend to run three workshops on the following themes:

1. Good Faith Bargaining,
2. Employment Security,
3. National Employment Standards for NZ?

It is also intended to have a session devoted to workplace health and safety. In addition, the conference will provide an opportunity for showcasing student work.

The final programme is not yet fully developed but highlights will include Professor Andrew Stewart from the University of Adelaide, who will give an address on

the current state of labour law in Australia. Andrew was actively involved in the Australian government's Fair Work reforms. The organisers are also seeking to invite a speaker to discuss the Australia's proposed model OHS law.

The organisers invite papers and proposals for papers from academics or practitioners (including student papers) on any area of labour law. All full papers will be refereed and suitable papers selected for publication in a special Labour Law issue of the *New Zealand Journal of Employment Relations* in early 2012. Papers on the conference themes are particularly welcome.

Please submit paper proposals or register your interest in attending at [labourlawconference@vuw.ac.nz](mailto:labourlawconference@vuw.ac.nz). Full registration information will be available shortly.

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## International Society for Labour and Social Security Laws

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### European Congress of Labour and Social Security Law, Seville, 21-23 September 2011

The webpage for this upcoming ISL&SSL regional conference is now online and can be viewed [here](#) (in Spanish). Click [here](#) to view the conference program in English. Registrations made until 30 June 2011 will benefit from a reduced rate.

### Regional Conference in Manila, Philippines, 16-18 November 2011

The Philippine Society for Labour and Social Security Laws (an affiliate of the ISL&SSL) is holding a Regional Conference from 16<sup>th</sup> to 18<sup>th</sup> November 2011 at the Century Park Sheraton Hotel in Manila. The conference theme is *The Uncertain Road: Social Security in a Globalizing Asia*, and will explore the following areas:

- I. Social Security Reform
- II. Labour Law Reform
- III. Informal Workers and Forms of Worker Organizations

The conference aims to bring together academics and practitioners from all perspectives and many countries to help form or shape a better, if not deeper, understanding of the challenges of social security in a globalizing Asia, with policy reforms, informality of work and worker organization as focal points. Click [here](#) to view the conference program and call for papers.

#### Call for Papers:

Interested scholars/practitioners are invited to submit original paper proposals (in English). Theoretical, analytical, empirical or policy-oriented papers, national or comparative in orientation or scope, may be submitted. Paper proposals should be a maximum of two pages and should outline the nature of the study, the methodology and the main lines of analysis to be developed. All participants must cover their registration fees and other expenses. All proposals should be sent by electronic mail to: [reneofreneo@yahoo.com](mailto:reneofreneo@yahoo.com).

For further information please contact Mr Bach Macaraya, President of The Philippine Society for Labour and Social Security Laws, at [bmacaraya@live.com](mailto:bmacaraya@live.com).

### XX World Congress of ISL&SSL, Santiago, Chile, 25-28 September 2012

The next ISL&SSL World Congress will be held at Hotel "W", Isidora Goyenechea 3000, Las Condes, in Santiago, from 25<sup>th</sup> to 28<sup>th</sup> September 2012.

The Congress webpage is currently available at [www.congresomundialtrabajo2012.com/?lang=en](http://www.congresomundialtrabajo2012.com/?lang=en).

The following agenda has been agreed upon:

- Theme I: The effectiveness of Labour Law and the role of the Labour Inspection.  
General Reporter, Giuseppe Casale (Italy/ILO)
- Theme II: Mobbing and sexual harassment at the workplace. General co-reporters: José Luis Ugarte and Sergio Gamonal (Chile)
- Theme III: Strike as a fundamental right and its possible collision with other fundamental rights of the citizens.  
General reporter: Bernd Waas (Germany)

#### Round Tables:

- Social Security: Its present and future.
- Labour Law: Its present and future
- Litigation on labour law issues: present and future.

### International Seminar on Labour Law and Industrial Relations, Lyons, June-July 2011

The Institut d'Etudes du Travail de Lyon, IETL is organizing an International Seminar of Labour Law and Industrial Relations from 17 June 2011 to 8 July 2011. The theme of the Seminar will be: *The transformations of the collective representation of the workers: the role of the Law*.

Please, [click here to download the program](#). Our Society can offer several fellowships to help young scholars and researchers to attend the Seminar. For more information and to apply, please e-mail [semil@univ-lyon2.fr](mailto:semil@univ-lyon2.fr)

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## ALLA AGM: 10 November 2010, ALLA National Committee

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ALLA's 2010 AGM was held at 12.30pm on Saturday 20 November at ALLA's Biennial Conference, held at the Stamford Grand Hotel in Glenelg, South Australia.

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:*

Professor Ron McCallum (University of Sydney, NSW)

President Patricia Leary (Tasmanian Industrial Commission, TAS)

Mr Ingmar Taylor (State Chambers, NSW)

Dr Paul Harpur (Griffith University, QLD)

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

Mr Vince Rogers (Blake Dawson, QLD)

Associate Professor John Howe (University of Melbourne, VIC)

Mr Nicholas Ellery (Corrs Chambers Westgarth, WA)

Ms Natalie Van der Waarden (Murdoch University, WA)

Mr Cameron Roles (Australian National University, ACT)

Mr David Johns (McConnell Dowell, SA)

Ms Victoria Lambropoulos (Deakin University, VIC)

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

The national committee said farewell to five members who did not stand for re-election, Mr Michael Rawling, Associate Professor Amanda Coulthard, Mr Robert Durbridge, Ms Shelley Marshall and Mr Arthur Moses SC. We are grateful for their longstanding commitment to ALLA.

The national committee also welcomed new members Mr Ingmar Taylor, Mr Paul Harpur, Mr David Johns, Mr Vince Rogers and Ms Victoria Lambropoulos.

## State Chapter Developments

### ACT

#### Recent Events:

*3 May 2011*

The ACT Chapter, the ANU College of Law and the Industrial Relations Society of the ACT jointly sponsored a seminar held on 3 May 2011 from 5:30 to 6:30pm at the ANU College of Law. Associate Professors Anthony Forsyth of Monash University and Sara Slinn of Osgoode Hall Law School, Canada discussed 'Good Faith Bargaining: Recent Australian developments viewed through a Canadian prism.' Click [here](#) to view the flyer.

*4 August 2010*

On Wednesday evening, 4 August, ALLA, the ANU College of Law and the Industrial Relations Society of the ACT jointly sponsored a seminar by Professor Keith Ewing of Kings College London concerning the landmark ruling in *Damir and Baykara v Turkey*. Professor Ewing unpacked this key labour law decision, and speculated as to what it may mean for trade union litigation strategies into the future. The seminar was extremely well attended, and Professor Ewing's engaging and thought provoking presentation was thoroughly enjoyed by all.

#### Convenors:

Cameron Roles, Australian National University:  
[cameron.Roles@anu.edu.au](mailto:cameron.Roles@anu.edu.au)

### New South Wales

#### Upcoming Events:

Planning is underway for seminars in July and August. Details will be sent to members shortly.

#### Recent Events:

*1 September 2010*

On Wednesday 1 September, Professor Breen Creighton from the University of Melbourne addressed the Transfer of Business provisions in Part 2-8 of the *Fair Work Act 2009*. The seminar began at 5.30pm and was held at Thomsons Lawyers in Sydney.

*5 August 2010*

On Thursday 5 August 2010, the University of Sydney Law School held a seminar on the topic of 'The Failure of Politics and the Paradoxical Emergence of Litigation as a Strategy for Trade Unionism': A discussion of the *Demir* and *Baykara* cases and their progeny' presented by Professor Keith Ewing from Kings College, University of London. There were 22 attendees. Click [here](#) to view the flyer.

#### Convenors:

Professor Joellen Riley, University of Sydney  
Ms Jacquie Seemann, Thomsons Lawyers  
Ms Janine Smith, Carroll & O'Dea Lawyers  
Mr Ingmar Taylor, State Chambers

Contact - [ingmar.taylor@statechambers.net](mailto:ingmar.taylor@statechambers.net)

### Queensland

#### Upcoming Events:

*July 2011*

A seminar is currently being planned for July featuring Neil Foster, who will speak on the OHS harmonisation. Neil is a senior lecturer at Newcastle Law School, a Member of the National OHS Regulatory Research Consortium, and a Member of the WorkCover NSW Research Centre of Excellence.

#### Recent Events:

*5 May 2011*

The second Qld State Chapter seminar for 2011 was held on Thursday 5 May at 5:30pm at the offices of Blake Dawson in Brisbane. Tim Hawks, Partner with the United States law firm Hawks Quindel, addressed the topic: "The Right to Collective Bargaining Under Fire: Experiences from the United States". His speech discussed the struggle to resist recent amendments which will result in a loss of bargaining rights, loss of revenues and the obligation to undergo annual elections to justify the right to represent workers. Tim has been heavily involved with the labour movement's efforts to resist these laws and is involved with a



constitutional challenge before the United States Supreme Court. Click [here](#) to view the flyer.

*24 March 2011*

The first Qld State Chapter seminar for 2011 was held on Thursday 24 March at 5:30pm at the offices of Blake Dawson in Brisbane. Barrister Max Spry addressed the topic: "Adverse Action: What the Full Court of the Federal Court has had to say" regarding the recent decision in *Barclay v The Board of Bendigo Regional Institute of Technical and Further Education*. He discussed how recent Federal Court judgments have interpreted the adverse actions provisions in the Fair Work Act, drawing from his personal experiences and the judgments in the *Barclay* and *Jones* cases. Click [here](#) to view the flyer.

*7 October 2010*

The QLD State Chapter held a seminar on Thursday 7 October 2010 at the offices of Blake Dawson on the topic 'Adverse Action: Principles and Trends', presented by Ms Geraldine Dann. With the implementation of the Fair Work Act, one new area of claims is that involving alleged adverse action. There are now several Federal Court decisions which give some guidance on the proper interpretation of the statutory provisions. They also illustrate what will be necessary to successfully prosecute or defend such a claim. This seminar will analyse the current case law, with a view to highlighting early principles, issues and trends in the application of the adverse action provisions. Geraldine Dann is a member of the Queensland Bar. She advises and appears for federal and state government bodies, corporations and private citizens across the spectrum of employment and industrial law, discrimination and workplace health and safety. Click [here](#) to view the flyer.

#### **Convenors:**

Ms Amanda Coulthard, Franklin Athanasellis: [amanda.coulthard@mac.com](mailto:amanda.coulthard@mac.com)

Mr Vince Rogers, Blake Dawson: [vince.rogers@blakedawson.com](mailto:vince.rogers@blakedawson.com)

## South Australia

#### **Recent Events:**

*ALLA National Conference 2010*

The SA Chapter hosted the fifth Biennial ALLA Conference, held from 19-20 November in Adelaide, and the Pre-Conference Workshops – both of which were a great success. For more information, please refer to the above report.

*22 June 2010*

On Tuesday 22 June the SA Chapter held a seminar at Piper Alderman. Erin McCarthy, Senior Associate at Piper Alderman, addressed the topic 'Great Expectations? The New Rights to Parental Leave'. Erin briefly reviewed the changes that have been made to an employee's right to unpaid parental leave under the National Employment Standards, then went on to examine in more detail the Rudd Government's proposed new scheme for paid parental leave (PPL). She considered 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.

#### **Convenor:**

Professor Andrew Stewart, The University of Adelaide: [andrew.stewart@adelaide.edu.au](mailto:andrew.stewart@adelaide.edu.au)

## Tasmania

#### **Recent Events:**

*2 May 2011*

The Tasmanian Chapter held an informal morning tea with the Honourable Michael Kirby AC, CMG, at 10:30am on Monday 2 May 2011. Michael Kirby is, amongst many other appointments, a former Judge of the High Court of Australia and a former member of the Australian Conciliation and Arbitration Commission. Click [here](#) to view the flyer.

*5 November 2010*

A one day conference was held at the Woolstore in Hobart on Friday 5 November, 2010. Click [here](#) to view the flyer.

**Convenor:**

President Pat Leary, Tasmanian Industrial Commission: [pat.leary@justice.tas.gov.au](mailto:pat.leary@justice.tas.gov.au)

## Victoria

**Upcoming Events:**

*16 June 2011*

The Victorian State Chapter will hold their next seminar on Thursday 16 June 2011. The seminar will be on issues in the new proposed Model Workplace Health and Safety legislation. It will be presented by Professor Richard Johnstone of Griffith University Law School, accompanied by a panel including Dr Felicity Lamm, Co-Director of the Centre for Occupational Health and Safety Research and Associate Professor at AUT, New Zealand. Click [here](#) to view the flyer.

**Recent Events:**

*2 March 2011*

The Victorian State Chapter together with the Australian Institute of Employment Rights held a seminar on 2 March 2011 at 6pm. Mark Irving, AIIR Executive member and Counsel for Mr Barclay, discussed the recent Full Federal Court decision in *Barclay v Bendigo Regional TAFE* and its significant implications. Click [here](#) to view the flyer.

*20 September 2010*

The Victorian State Chapter held a seminar on 20 September 2010 at 5:45pm. The Honourable Jennifer Acton (Senior Deputy President Fair Work Australia) discussed 'Negotiating the Bargaining Highway'. Click [here](#) to view the flyer. To view the presentation, click [here](#).

Please email or phone any suggestions for events to Professor Marilyn Pittard (phone: 9905 3378; see email address below).

**Convenors:**

Professor Marilyn Pittard, Monash University:  
[marilyn.pittard@law.monash.edu.au](mailto:marilyn.pittard@law.monash.edu.au)

Mr Michael Tamvakologos, Blake Dawson:  
[michael.tamvakologos@blakedawson.com](mailto:michael.tamvakologos@blakedawson.com)

## Western Australia

**Convenors:**

Mr Nicholas Ellery, Corrs Chambers Westgarth, Perth: [Nicholas.Ellery@corrs.com.au](mailto:Nicholas.Ellery@corrs.com.au)

Ms Natalie van der Waarden, Murdoch University:  
[n.vanderwaarden@murdoch.edu.au](mailto:n.vanderwaarden@murdoch.edu.au)