It was Kingsley Laffer who established the IR Society of NSW in this institution. The purpose was to provide a forum where academics and practitioners could meet, discuss and establish co-operative relationships.

Kingsley Laffer had a passion for Industrial Relations and it is a great honour to have the opportunity as a practitioner to share my passion for IR with you here.

Early in my IR career a senior colleague advised me that I should broaden my career into HR/ER as Industrial relations was a dying profession or worse, a dying club, focused on conflict and deals rather than engagement and leadership. This has been a pervasive view in much of the management literature for the last 20 years and has also been reflected in the reduced availability of IR as a speciality in its own right in some Universities.

To a degree I did follow this advice to broaden my interests, moving in 1994, after some 10 years in industrial relations, to performing both corporate and line HR roles, to managing the Qantas Retail Sales Outlets and then joining the executive team for the start up of the new leisure carrier Australian Airlines. But in 2002 I arrived back in industrial relations and I can assure you I do not feel these days as if I am part of a dying professional at all – IR is back and at centre stage and as we all know, industrial relations was one of the defining issues of the last Federal election campaign. On reflection perhaps it is not surprising that in an increasingly complex and individualistic world, the techniques and skills of negotiation and conflict resolution have lost none of their relevance.
In the Aviation business of course industrial relations has always been very relevant, and I would go so far as to say that you can’t run a successful Airline unless amongst other things you get your Industrial relations right.

Airlines have also been a fertile area for the academic study of differing approaches to human resources and industrial relations. For example, the article by Dr Troy Sarina and Professor Russell Lansbury, ‘Flying High and Low Strategic Choice and Employment Relations in the Airline Industry’, also the recent book by Greg Bamber and his colleagues, ‘Up in the Air’ compares the widely contrasting management styles of a wide range of airlines. Interestingly, the two most financially successful airlines in the sample – SouthWest Airlines and Ryan Air - were in this model at the opposite extremes of the ‘commitment’ versus ‘control’ and ‘avoidance’ versus ‘partner’ spectrums. But whichever strategy you might believe delivers the result, the one thing that is clear from where I stand as a practitioner is that labour in airlines matters.

As Rigas Doganis – Visiting Professor Of Air Transport At Cranfield University - wrote in his book, ‘The Airline Business’ “…because the unit price of labour differs significantly between airlines – even neighbouring airlines on the same continent – labour cost is a major factor in differentiating costs between competing airlines. In short, reducing labour costs is critical because they are the highest single cost and because they are a major cost differentiator between airlines.” (p119)

Below the surface of the three key trends in global aviation: the consolidation and struggle for survival faced by many legacy carriers, the rise of the ‘low cost’, ‘value added’ or ‘leisure sector’ and the shift in global dominance from America and Europe to Asia and the Middle East; are important differences in unit labour costs, in productivity, in pay rates and in the level of service provided. In airlines, unlike many other capital intensive industries, it is not possible to ‘buy your way out of trouble’, at least not if the aim is long term survival. Circumstance does shape the industrial relations options that are available and the price of getting it wrong, as many US carriers have discovered, is bankruptcy.
I want to do two things today. The first is to lay out enough information about my industry to provide a specific perspective on the function of industrial relations in a highly competitive and complex industry such as Aviation. The second is to reflect on the outcome of the recent intense national debate over industrial relations: to explore the consequences of that debate for my industry and to make some observations on what I see as some key issues that remain in play. From my perspective as a practitioner, although the Fair Work Act may have come about as a reaction to what many perceive as the ‘excesses’ of work choices, it is less about a winding back of the clock and more represents a significant new development in Australia’s long and unique industrial relations history. In discussing recent developments I will be looking at how the Fair Work Act has provided a significant development and enhancement of the ‘safety net’, of the way that it has struck a new compromise between the role of the collective and the role of the individual and at how this particular compromise has the potential to fundamentally change the nature and structure of bargaining.

But first, some background and comments on my industry, to set aside some of the popular myths about Qantas industrial relations and to provide a context for the wider comments I make about what I see as the emerging issues in industrial relations.

Starting with the economics, airlines are a low margin, low return, labour intensive and highly competitive business, requiring high levels of investment. Cost control, wage control and industrial relations outcomes are central to the business and there is very limited capacity to ‘buy out’ disputes. This is why Qantas sometimes appears to run a tough industrial relations policy – not in any way as a result of advancing a particular ideological or political perspective, but simply trying to address how to best operate under the rules that apply on any given day to maintain a competitive advantage and to provide a sustainable rate of return to fund investment, maintain job security and reward investors.

Competition for Qantas means in the domestic setting competing with new ‘low cost’ entrants - currently VirginBlue and Tiger. Internationally competition means adjusting to an increasingly open marketplace where there is not a level playing field, with many of our competitors being State owned or State sponsored. Qantas and Jetstar together only hold
32% of the international market (with Qantas Airways holding less than 20% of the market in and out of Australia) and this share has been in long term decline.

Established or legacy carriers such as Qantas have a labour cost disadvantage to new entrants such as Virgin and Tiger. This is common across the industry and is not unique to Australia. In a sense the labour arrangements in legacy airlines owe their origins to when aviation was a luxury good, not a mass market product. In addition, Qantas awards and enterprise agreements have their origins in public ownership and in a protected aviation market.

When considering what money is available to distribute through industrial settlements we also need to take account of the significant long term decline in the price of a ticket. The figures are dramatic. In 1965 an employee earning average weekly earnings took almost 6 months gross pay to earn the price of a fare to London, by 2009 the price of this fare could be earned in less than 2 weeks. Over the last 40 years, the price of that lowest available return economy London ticket has fallen by 85% in real terms.

This decline in the real price of our product poses a particular problem for industrial relations because labour is a key part of our total cost structure – averaging around 25% of total business costs in an environment where the other significant costs – such as fuel, Government charges and aircraft ownership costs – are largely beyond the direct control of any one company.

Finally, running a competitive airline requires substantial investment. For example, the Qantas Group invested $A10.8bn over the last 5 years and plans to invest $15.3 bn over the next 5 years. The Group has 168 new aircraft on order over the 9 years from FY08/09, with a list price exceeding $20 billion. Obtaining a viable rate of return on investment in aviation is always a challenge and often a challenge that airlines do not meet. One of the best known observations in this industry is that the cumulative losses of US airlines over their long history has exceeded their cumulative profits, or as Freddie Laker, who initiated low cost air travel on the Atlantic, put it: the best way to become a millionaire is to start as a billionaire and buy an airline.
Wages Policy

In this competitive and shifting environment control of wages is fundamental to the future of an airline. For example in Qantas each 1% across the board wage increase adds $37m per annum to total costs. Over the last 10 years:

- QF has sought to narrow the labour cost gap to domestic competitors by controlling the rate of wage increases, generally to 3% per annum,
- This has meant that real wages have been maintained over the decade while reducing (but not closing) the cost gap between Qantas, Virgin and Tiger, and
- This control of wages growth has been fundamental to the performance of the Group – if QF has followed general community wage movement over the last decade the cumulative effect of this would have been that Qantas would have lost money last financial year.

But to keep the ability to change legacy arrangements in perspective, even after a decade of a tough Qantas wages policy, Virgin and Tiger labour rates on average are still well below those applying in Qantas mainline with, for example, gaps remaining of over 20% for pilots and over 10% for airport check in staff. Qantas has also been one of the few legacy airlines to maintain real incomes through the last turbulent 10 years. As Bamber et al note in their book ‘Up in the Air’, “…Qantas unlike many other legacy carriers has maintained real wages.” (p161)

In this industry there are no lack of examples of what happens when an airline loses control of its costs – investment declines, resulting in aging aircraft, uncompetitive product and a spiral of decline.

Ansett Airlines is an Australian example that no airline, or business has an inherent right to survive. I worked at Ansett for several years and watching its demise whilst at Qantas was for me and many others in the industry a watershed moment.
This is why Qantas appears to run a tough Industrial relations policy. It is the pragmatism of staying profitable and in so doing being able to provide employment for over 30,000 Australians.

It is against this backdrop of labour costs being a key differentiator between competitor Airlines, of the centrality of industrial relations outcomes to corporate survival and success and the inability to simply buy quick and congenial outcomes that Qantas takes an intense interest in changes in the industrial relations landscape.

In considering the latest legislative changes to the bargaining landscape, I will confine my observations to three issues: the safety net, the new balance between individual and collective arrangements and the potential changes that have been made to the fundamental structure of bargaining itself. And all of this is of course happening in the context of broader social change. Although the focus of the debate on Workchoices was on the alleged vulnerability of the individual when apparently deprived of the protection of the collective when dealing with the employer – in other words the debate over AWA’s and their (claimed) potential to lead to the exploitation of employees along with the removal of unfair dismissal protection in smaller companies - the real changes in my view that have resulted from that debate relate to the safety net and to a fundamental change in how the ‘collective’ is conceived – in ways which are still very much ‘work in progress’, where the long term ramifications of these changes is certainly not yet fully apparent.

Starting with the safety net.

The strengthening of the safety net under the Fair Work Act includes an expansion of legislated National Employment Standards and the reach of unfair dismissal protection and the establishment of a comprehensive network of modern awards and a special arbitration stream for “low paid” employees. This is supplemented by other protections for employees such as legislation governing occupational health and safety, anti-discrimination, superannuation and potentially paid maternity leave.
These developments raise a number of issues for practitioners. First, it has introduced a degree of complexity in reconciling legislative minimum standards with some long standing entitlements in enterprise agreements, as well as in effect removing from the scope of bargaining a number of core employment conditions. Whereas in the past the industrial parties had full discretion on how they structured benefits such as annual leave and personal leave in enterprise agreements, since WorkChoices, and similarly under the Fair Work Act, this is no longer the case. Second, having accessed the Corporations power for the direct federal regulation of employment conditions there is the potential to further blur and expand entitlements based on social and employment policy such as paid maternity leave. Third, despite having expanded the safety net there is not yet a settled consensus on whether this safety net is indeed an acceptable set of minimum conditions to apply to the workforce, though the modern award process in Fair Work Australia has certainly advanced this understanding. Finally, in effect this expanded safety net has changed the territory in which the debate over the respective role of individual and collective agreements under Work Choices occurred – that is the expanded safety net has reduced – or arguably removed - the vulnerability of the individual when bargaining directly with an employer.

The recent review of Modern awards was an opportunity for the distinction between a safety net and conditions bargained in individual enterprises to be tested. The Qantas group played a significant role in the review of the aviation industry awards. Although it might appear that an easy approach for Qantas would have been to stand back from the process because raising the industry standard would impact on our ‘low cost’ competitors more than on Qantas mainline, our view was that the long term competitiveness of the industry in Australia required that aviation industry awards remained as true Industry minima. Otherwise, we would have become potentially less competitive with international carriers operating to Australia, and we also needed to protect our subsidiaries Jetstar and QantasLink – QantasLink provides services to regional Australia and has some community service obligations. The challenge was significant with some unions taking a very different approach to the concept of a safety net being a minimum standard. We had to provide comprehensive data and the initial decisions of the Tribunal were then subject to a Ministerial request for review. However in the end, under very difficult circumstances the
Tribunal got it right for this industry. There was no evidence of any individual being worse off and the awards provide for a fair minimum standard safety net that is a foundation – not a replacement - for collective bargaining.

In the longer term, the issue with modern awards will be the extent to which unions pursue arbitrated award variations to raise employment conditions outside of the bargaining stream. To the extent this does occur – if it occurs - the more the safety net will circumscribe the real scope for enterprise bargaining and hence the scope to tailor employment conditions to the needs of particular enterprises. If the Hawke/Keating Labour Government and every Government since then was right – that the move from standard industry wide arbitrated outcomes to bargained enterprise level outcomes provided a key lever for economic reform and growth – then we need to be very careful that the safety net remains just that - an underpinning minima, not a vehicle for establishing new standards and benchmarks.

The recent debate over alternate paid maternity leave regimes also illustrates the blurring of social and employment rights and the use of an expanded safety net to achieve uniform standards in lieu of relying on collective bargaining.

Qantas, like a number of large corporations already has a comprehensive suite of human resource policies in place and this includes 12 weeks paid and one weeks paid paternity leave, at the employee’s ordinary rate of pay. In some cases this entitlement is derived from policy, in others it is also incorporated in enterprise agreements. For employers like Qantas who have already addressed this issue in bargaining, avoiding a "double dip" where this now becomes a safety net entitlement will be a challenge.

The most interesting issue with the expanding safety net is, however, what its longer term impact will be on revisiting the role of individual bargaining, remembering that part of the safety net has been to breath new life into the award framework – under which many employees work and will probably continue to work - though the modern award process. I will return to this issue as part of considering the impact of the new Act on the structure of bargaining.
On the structure of bargaining I want to talk about 3 issues:

- The introduction of ‘good faith bargaining’,
- The concept of bargaining representatives in a context where the Fair Work Act – perhaps unnoticed by many commentators - now provides that all future agreements will be made directly with employees, not with unions, and
- The flexibility provisions compromise on balancing individual and collective interests.

Good Faith Bargaining

From the hesitant decision by the Commission in October 1991 to permit enterprise bargaining, there have been four successive legislative regimes affecting enterprise bargaining, starting with the 1993 Keating legislation. The fact that enterprise bargaining has remained at the centre of four successive Acts is an important recognition of the positive impact such bargaining has had on individual businesses and on the economic health of the nation. First and foremost bargaining is reconciling the needs of employers and employees within the specific context, circumstance and economics of the enterprise concerned, where those who make the decisions – both employers and employees – will be directly affected by the consequences of the decisions they reach. In Qantas, for example, all the contextual and economic constraints that I spoke of earlier absolutely shape the approach we take in bargaining. Our employees and many of our major unions are also very aware that how the parties conduct themselves in bargaining, and the positions they take, do have long term ramifications for the health of the Company and for the job security of employees.

The first Enterprise Agreements in Qantas were negotiated very soon after the 1991 AIRC decision and we have bargained, almost always collectively, under each of the successive legislative regimes since then. We currently have 48 collective agreements and bargain with 16 unions.
The new introduction of the ‘Good Faith Bargaining’ has two real ramifications for an organisation like Qantas. To the extent that Good Faith Bargaining compels employers to engage in collective bargaining, then from a self interested perspective, it will even up the playing field a little by increasing the pressure on some of our competitors to bargain collectively – in particular both V Australia and Tiger at this stage do not have any collective agreements covering their workforce. But to the extent that Good Faith Bargaining also intrudes on conduct at the bargaining table I am more wary – “good faith”, like “fairness”, is easily bandied around and/or used as an industrial tactic. GFB as a process is not necessarily conducive to good or timely outcomes and the lack of rules governing behaviour in bargaining – as distinct from rules that require bargaining occur – does not really appear to have hampered the operation of bargaining since 1991. Certainly if our experience in some of the overseas jurisdictions is any guide, it does run the risk of increasing the focus on process at the expense of outcomes, though the early indications from Fair Work Australia is that a good common sense approach will continue to apply in Australia.

This is not to suggest that the parties to industrial negotiations do not have obligations and responsibilities. In fact the opposite is true, and this is what makes industrial bargaining like no other form of negotiations; the relationship of the employer and the employee is ongoing and when the negotiations are concluded we need to be able to work as part of the same organisation.

In my role in the aviation industry the real good faith bargaining issue – and one not covered by the current rules – is the unfortunate tendency by a small number of unions, and it is only a small number of unions, to resort to trying to damage the employer’s brand to supplement, or in some cases instead of, taking industrial action. For an industry such as airlines where safe operation – and the public’s confidence in safe operation – is critical to commercial success, it is galling to see some unions borrowing from the US ‘organising model’ and misusing safety as a bargaining tactic. For Qantas this has led to the bizarre situation where the company that is the only airline that performs the overwhelming proportion of its aircraft maintenance in Australia, and which also has the broadest spread of collective agreements and the highest level of unionisation, is the one subject to brand
attacks by a small number of engineering unions, while the delays, incidents and cancellations at our competitors – which are part of every airline - slip under the radar.

**Bargaining Representatives**

The second change to bargaining under the new Act is the introduction of the Bargaining Representative. This removal of unions from an exclusive right to represent employees in bargaining, along with providing for flexibility provisions and for all agreements to now be made directly with employees, were the key concessions made to accommodate individual interests following the removal of AWAs. They are all important changes.

It is yet to be seen whether this broadening of representation rights and the shift from making agreements with unions for endorsement by employees, to making agreements directly with employees, will have any real practical ramifications, though my prediction is that given time they will, especially in Companies that do not share Qantas' levels of unionisation.

Qantas is really at the beginning of a bargaining round, so our experience with the new bargaining rules is limited, but suffice to say already we have had some bargaining representatives nominated outside of the normal channel of union representation. More generally, there is scope for electoral battles within unions to be reflected in bargaining forums, for special interest groups based on geography, gender or simply on specific interests such as part time employment of job sharing, to seek representation and for traditional demarcation lines between unions to be revisited.

Across the private sector, according to the latest ABS figures, the level of unionisation has halved in the last 15 years and is now under 15%. Aviation is certainly much more unionised than the private sector average, but the trend of significant decline still holds true.
So you would have to ask yourself: if only 15% on average of employees are union members, and if the employer has to write to every employee inviting the employee to nominate who they want as their bargaining agent, will unions really maintain their grip on the bargaining process? I think this is at least an open question.

This is not to say handing control over representation to employees is a bad thing, but it certainly has the potential to complicate and protract the bargaining process. It also hands to the employer the responsibility for assessing the relative weight of the claims from competing representatives and making the decision about when a proposed agreement is at a point to put out to vote – remembering that in a formal sense agreements are no longer made with unions, they are negotiated with bargaining representatives and then made directly with employees. Some employers will relish this new role, others will look back with nostalgia on the system where union organisers had the difficult job of thrashing out a united employee position before commencing negotiations with the employer.

**Flexibility Provisions**

The requirement for enterprise agreements to contain flexibility provisions was a key part of the justification for removing access to AWAs.

So it is relevant to ask whether this new mechanism does enable the right balance to be struck between the interests of the collective and the interests of the individual, in a context of a society that increasingly recognises and encourages the rights of the individual.

Certainly unions have not embraced the new arrangement, instead devoting their energy to circumscribing as far as possible the range of issues on which employees can be allowed to reach their own deals – remembering that the flexibility provisions already contain very substantial protections for the employee, including most fundamentally the right of the employee to walk away from a flexibility agreement at 28 days notice. This
reaction suggests that unions are going to have difficulty managing the changing trends in individual employee’s expectations from their employment.

Gen Y, Gen X and soon Gen “Me” are destined to be very different employees from the previous generations – independent, individualistic and with multiple and shifting allegiances. The figures on declining levels of unionisation would certainly suggest that although many younger employees may welcome the benefits unions have achieved, that does not necessarily mean that they will join a union, or even if they do, that they will accept that one size fits all.

In this respect my view is that the opposition of many unions to even the limited individualisation of employment arrangements that flexibility provisions provide for is a mistake – protective paternalism may be well intentioned but I am not convinced it will ensure long term relevance.

In making these comments I am not in any sense underestimating the challenges posed by allowing for individual variations. For the employer one size fits all is also often the easiest approach and sometimes the only viable approach both because of the complexity of administering flexibility in large organisations and because one employee’s flexibility can be another employee’s constraint. Using a Qantas example, one employee’s wish to have a fixed roster to meet child care requirements may in practice throw all the weight of meeting unpredictable work requirements on a second, now smaller, group of employees as well as narrowing the spread of work times (and penalty rates) available to others. Similarly, the desire to take leave during school holidays usually exceeds the leave slots available during the school holidays, particularly as this is a peak time for customers wanting to travel.

So none of these judgements are easy, but in the end judgements will have to be made and complicating the issue by not trusting the individual and the employee to make their own arrangements within a set of principles and with some protections in place is not a long term answer.
I think it is important that the industrial parties come to grips with this issue because if they do not, my prediction is the obligations on the employer to consider the particular needs of the individual will simply become more and more part of the safety net regime, in contradiction to the focus on the collective in the bargaining stream. This was bought home to me when reading a recent report on the election in the UK, where something of a bidding war has developed between Labour and the Conservatives on the selection of categories of employees who would be entitled under legislation to have their individual needs considered by employers, with Labour promising to extend the right to flexible work to employees over 60, and the Conservatives promising to extend the same right to employees with children under 18. Excellent news if you are between 30 and 50 or over 60, but potentially bad news to those of you in the audience before me who fall into that narrow band of employees who will need to work around the parents and the aging. More seriously, my point is that the social demand for greater individual flexibility will not go away.

So in conclusion:

A bit like airlines, change is a constant in industrial relations and as some of the dynamics set in train under the latest legislation take hold, change will certainly continue to be a defining part of our landscape. As will complexity – complexity in both the levels of regulation under which practitioners now operate and more fundamentally, complexity in an industrial relations system attempting to meet the demands and expectations of an increasingly diverse and individualistic society.

There is a tension at the heart of the current legislation, which is its focus on the collective when all the indicators in the broader society, not least in the decline of actual paying union members, point toward a greater variegation and individualisation, and it will be interesting to watch this tension play out over coming years.

Fair Work may have been largely presented in the media as being about the repeal of WorkChoices – that is a return to the past – but in reality it is much more than that in its consolidation of a national system, in its extension of the safety net and in its change to
the dynamic of bargaining to identify just three key developments. But a constant running
though the successive legislative regimes over the last 20 years is that enterprise
bargaining should be at the centre of our industrial relations system and for Companies
such as Qantas operating in a competitive and global marketplace, that is fundamental to
our long term success.

The good news for all those students of industrial relations sitting in the audience, is that
we can say with confidence that industrial relations does matter and that the industrial
relations system will continue to be the subject of intense debate. It will also continue to
develop and change, which always favours the specialist over the generalist. The core
skill of industrial relations – genuinely understanding and respecting where the other side
is coming from and then being able to negotiate a workable compromise between different,
parallel and competing interests - will lose none of its relevance in an increasingly
complex society.

In closing, as an industrial practitioner I have the great privilege of working with just such a
small group of industrial relations specialists at Qantas, who are highly competent and
professional. Several are here to support me tonight and I want to close by acknowledging
them.

I started by saying I have a passion for Industrial Relations. I am fortunate to have had a
career where I have been able to indulge that passion.

END