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# Justice Geoffrey Giudice: An insider's look at Australia's new IR system

by Steven Andrew\*

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The step from working as a practising barrister of the Victorian Bar to head of Australia's leading workplace tribunal almost didn't happen for one of Australia's most respected judicial figures, Justice Geoffrey Giudice.

The 63-year-old Bendigo native who is now head of Fair Work Australia (FWA) says industrial relations has been a part of his working life since he left university in 1970. But when the telephone call came in 1993 offering him a position on Australia's then-leading arbitration body, the Australian Industrial Relations Commission (AIRC), the meticulously organised barrister, for once, wasn't prepared. "Personal circumstances prevented me accepting", Justice Giudice told the inaugural issue of *Workplace Review*.

Four years later, a second call was made to Justice Giudice – and this time, he accepted.

It proved a welcome second chance. "The opportunity to head the commission – and now the tribunal – is a rare privilege; without any doubt, the high point of my career", Justice Giudice said.

That career includes 13 years at the Bar specialising in industrial relations and labour law, 11 as President of the AIRC and one as President of FWA.

## SECOND CHANCE

Justice Giudice said joining the commission was a big change. "After years of arguing cases on behalf of clients, I finally had a chance to make a few decisions myself. The timing was also right – at a family level, my last child was just finishing school, so I had the time to devote to what I knew would be a very demanding role."

His subsequent appointment in 2009 as head of the AIRC's replacement body, Fair Work Australia, however, was even more eventful.

As a Howard Government appointee and former barrister representing employers, some thought Justice Giudice's days were numbered under a Labor Government eager to put its own stamp on IR.

Justice Giudice says he regards the appointment as a "compliment". "The media can sometimes read too much into these things – experience on either side of the IR fence is the key factor in deciding who is or isn't appointed. In my experience, people on the tribunal try very, very hard to be fair – and in some ways, over compensate to ensure fairness. It is not as simplistic as some believe – the government wants a spread of opinion and that's what they get."

In her 30 May 2007 National Press Club address confirming Justice Giudice's appointment to the FWA, the Deputy Prime Minister and federal Education, Employment and Workplace Relations Minister, Julia Gillard, said Labor was putting the appointments system "beyond politics". "Labor will also end the conflict of interest that has the Industrial Registrar serving two masters", Gillard said. Senior FWA staff would be answerable to Giudice, not the WR Minister.

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Portrait by Simon Fieldhouse.

## **BIPARTISAN APPROACH**

The Labor Government's desire to be seen as "bipartisan" by maintaining the former AIRC bench has served it well in the early days of its new Fair Work system. In the transitional period to the start of the new *Fair Work Act 2009* (Cth), the experience of Giudice has proved invaluable.

Faced with the multiple challenges of managing the transition from the AIRC to Fair Work Australia, award modernisation and interpreting the new *Fair Work Act*, Justice Giudice has proved a cool head in a difficult environment. But even he admits the challenges ahead are daunting.

"The remaining parts of award modernisation are very demanding and important. The breadth of change is substantial. For the first time, Australia has a national IR system administered through one tribunal covering almost the whole of the private sector. Thousands of awards both federal and State have to be accommodated in this new system. It's truly a task of monumental proportions."

Interpreting the new *Fair Work Act* and building confidence in the tribunal in its new role as the sole arbitrator on minimum wages are equally significant challenges for Giudice and his tribunal. "With a brand new statute, there are always going to be differences of interpretation between employers and unions. The tribunal's role is to reflect the Parliament's intentions in our rulings."

Justice Giudice said he was "philosophical" about the former Howard Government's decision to replace the AIRC as decision-maker on minimum wages – a role now reinstated by the Rudd Government.

**"One thing that is certain in industrial relations is that there will always be change – you have to move with it."**

## **WAGE FUNCTION RESTORED**

Under Labor, the Minimum Wage Panel has been augmented by the inclusion of three new, non-judicial specialists. Justice Giudice heads the new-look, seven-person panel (four members, three lay people). Final wage submissions for the inaugural minimum wage case were being filed at press time.

With much on his plate, Justice Giudice says he treasures the limited time he has with family and friends. "If I am not physically at work, I spend a lot of time thinking about it", he concedes. But he says he cherishes his time with his wife, and four children. He plays the occasional "hand of bridge, and poor round of golf" and like many in Melbourne, looks forward to "the day when the Demons (Melbourne) claw their way off the bottom of the AFL table". While following his own parents' example in giving his children free rein to choose their own career paths, Justice Giudice concedes he would "jump at the chance" to influence team selection at the Demons.

Despite the long hours, Justice Giudice says he continues to enjoy the challenges that come from heading the tribunal. "Dispute resolution is an interesting field – it's all about building relationships. While I am not involved as much as I would like in hearing matters these days due to my administrative functions, everything I do involves human relationships and addressing conflicts. Our aim is to assist to resolve these conflicts in a civilised manner."

The path to his current role as President of the FWA has not been without problems. In his 13 years as head of the AIRC, Justice Giudice saw its power diminish as the Howard Government introduced a range of new industrial relations laws. In the first 12 months of his term, the number of members of the commission was cut by 10. Negotiations at the enterprise level further reduced the commission's influence, with funding to the AIRC cut. "My concern at that time was to maintain the relevance of the commission by building a strong collegiate atmosphere and ensuring the commission was adequately resourced", Justice Giudice said. Subsequent government decisions to move minimum wage fixing to the Australian Fair Pay Commission and enterprise agreements to an independent office within the Department of Education, Employment and Workplace Relations further reduced the commission's influence. Despite this, Justice Giudice said the commission continued to play a central role in dispute resolution in the period, particularly with the birth of Work Choices. "Use of

technology allowed us to better use available resources – there was no reduction in services during the time.” The new FWA has seen a rebolstering of member numbers, with 50 members now serving on the tribunal.

## UNION BACKGROUND

Significantly, the former solicitor known for his work for employers could just as easily have spent his career working on the other side of the fence – for unions. After finishing university, Justice Giudice’s first job was as a research assistant for the Hospital Employees Federation. The “holiday job” expanded into a 12-month appointment, kindling his interest in Industrial Relations. He eventually moved on to work for the Myer Emporium as an Industrial Relations Manager, helping the company establish a group head office and acting as its negotiator in talks with the shop assistants and clerks unions. The seven-year appointment coincided with the introduction of the five-day week, with the young up-and-comer responsible for negotiating trading hours with unions. “It was an interesting time – there were no legislative restrictions on secondary boycotts. While direct employees might not be on strike, there was pressure applied at the docks or elsewhere to get their pay demands across...the level of disputation was far, far higher than current levels.”

With his interest in IR and law now well and truly stirred, Giudice approached a number of law firms working for Myer, with a view to doing his articles with one of them. He was accepted by Moule, Hamilton and Derham, which, in later years, merged with Freehills. From small beginnings, he was eventually offered a partnership – and after “six or seven years” representing employers, made the decision to go to the Bar.

Justice Giudice said it was a “big step backwards” financially in the first 12 months. “My wife’s wage as a teacher kept us afloat”, he admits. However, it was onwards and upwards once he was admitted to the Bar, with the increasingly well-known and respected barrister going on to represent some of Australia’s largest companies in the oil, aluminium, manufacturing and banking sectors. Close ties with the Confederation of Australian Industry and the Australian Mines and Metals Association followed, bringing him to the attention of key people within the Howard Government. The call up to the AIRC inevitably followed.

## ITALIAN CONNECTION

Looking back on his early career and life, Justice Giudice said a few people helped him more than others.

“My parents were an enormous influence, encouraging me to get as much education as possible.” While both his parents are Australian, Justice Giudice says his distinctive Italian surname hails back to his great-grandfather, an immigrant who came to Australia in 1862. Both his father and grandfather have strong backgrounds in the business world, with his grandfather launching the *Sun* newspaper in Bendigo, the Bendigo United Brewery and going on to serve as mayor of Bendigo. His father was a real estate agent and ran the movie theatre in Bendigo, among other commercial activities.

His first boss at Myer, Bunny Sloan, was also another influence, allowing him to develop and “make my own mistakes”. “He was tolerant and encouraging – a model I recommend to any manager.”

At Moules, he was articled to the late Colin Polites, who later went on to the AIRC as a Senior Deputy President. Former Chief Justice of the Federal Court, Michael Black, and his fellow judge, Chris Jessup, were other important influences, he said.

## TRIBUTES

Director of national IR at the Australian Industry Group (AiG), Stephen Smith, believes Justice Giudice’s “consultative” approach is his biggest strength on the bench. “He has proved himself to be enormously competent, and fair”, Smith told *Workplace Review*. “Unions and employers alike see him as an independent voice.”

In a speech to an AIG conference last month (April 2010) reviewing the first year of the new *Fair Work Act*, federal Workplace Relations Minister, Julia Gillard, singled out Justice Giudice for special

praise. He is a man of “impeccable personal integrity and propriety”, Gillard told delegates. “His leadership has generated very well-deserved respect from all participants – employers, unions and governments of all political persuasions.”

ACTU Secretary, Jeff Lawrence, is another to happily sing the praises of the former employer lawyer. Justice Giudice has discharged his duties “impartially and fairly, in political maelstroms ranging from the Waterfront Dispute to Work Choices”, Lawrence told *Workplace Review*. His “unprecedented” appearance before the Senate Estimates hearings earlier this year was handled “with aplomb and dignity, as has characterised his career on the bench”.

With another two years to go before he retires, Justice Giudice says he still welcomes the challenges ahead. “If people look back and say the FWA was fair and independent, I think I will have done my job.”