WORKPLACE REVIEW

Volume 2, Number 4

Summer 2011

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ARTICLES

Protected industrial action: Legitimate employee right or legally sanctioned extortion? – *Gerard Phillips*

Ahead of the proposed 2012 review of the *Fair Work Act 2009* (Cth), and using the recent Qantas dispute as an example, Gerard Phillips points to a couple of features of the Act, specifically protected industrial action and adverse action provisions, which he believes have failed to deliver much needed flexibility to business if Australia is to be a competitive modern economy in the 21st century. 130

Protected industrial action: Legitimate employee right or legally sanctioned extortion? A riposte – *Giri Sivaraman* and *Aron Neilson*

In a counter view, Giri Sivaraman and Aron Neilson argue that the right to take industrial action arises from Australia's international obligations. They argue that the negative impact of industrial action has been overstated and that if such provisions were to be removed, Australia would be out of step with international opinion and jurisprudence. They argue that bargaining should not be subject to artificial limits. Finally, they argue that the increase in adverse action cases is a reflection of the limitations of previous legislation. 134

Super tribunals: Is there an NCAT stalking the Industrial Court? – *David Shoebridge*

Administrative tribunals deal with real bread and butter issues like rental disputes, discrimination claims, consumer disputes and workers compensation matters. They are clearly important, but just how many does New South Wales really need? This is the question that has been referred to a New South Wales upper house committee for determination, with hearings starting in mid-December. 137

The anti-social network?: Unfair dismissal and Facebook – *Stephanie Vass*

Employees who post negative comments or other damaging information about their employers or other employees on social media sites, while at work or outside of work hours using a private computer, risk being dismissed from work. The serious ramifications that can result from such an action were considered by FWA in a recent decision. 139

The approach of Fair Work Australia to evidence – *Jim Pearce*

Although Fair Work Australia is not bound by the rules of evidence and therefore has a discretion to admit as evidence material that would not be admissible under those rules, it nevertheless does not have a "carte blanche" to completely ignore the rules. Here, Jim Pearce provides examples of some of the types of evidence admitted in tribunal proceedings. 142

Interpreting the Fair Work Act: Some further principles – *Ian Latham*

This article is the second in a series looking at interpreting industrial legislation. Ian Latham examines the tension between the text of a provision, its context and the object and purpose of the legislation. 145

General protections applications where dismissal has not occurred: Practical considerations – *Andrea Ho*

Since the introduction of the general protections provisions of the *Fair Work Act 2009* (Cth) two years ago, there have been a number of high profile cases that have shed some light on the operation of the provisions. Questions, however, remain over the practical application of these provisions, particularly where the applicant has not been dismissed. Here, Andrea Ho analyses the relevant provisions and case law. 147

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