

WORKPLACE REVIEW

Volume 7, Number 1

Summer 2016

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ARTICLES

The changing interpretation of agreements – Hon Reg Hamilton

The Fair Work Commission's approach to the interpretation of enterprise agreements has changed in recent years. From a "liberal" or broad approach to interpretation, focused on achieving cooperative workplace relations and application of principles applicable to award interpretation, the Commission has – since *AMIEU v Golden Cockerel Pty Ltd* [2014] FWCFB 7447 – now accepted that awards cannot be equated with agreements. Reg Hamilton argues that the main authorities are now *Amcor Ltd v CFMEU* (2005) 222 CLR 241 and *Kucks v CSR Ltd* (1996) 66 IR 182 which stress fair treatment to both sides, context, and other matters, rather than a liberal or broad interpretation of obligations on employers. A related issue is that one part of the object of the Fair Work Act 2009 (Cth), collective bargaining, should not be given priority emphasis in applying the tests for approval of agreements. 11

Balancing act: Reinstatement – maintaining procedural fairness and employment satisfaction – Claire Limbach

Under the Fair Work Act 2009 (Cth), reinstatement is the primary remedy in unfair dismissal proceedings. Arguments in support of removing the emphasis placed on the remedy, include; recommendations made by the Productivity Commission; historical data which suggests reinstatement rarely occurs; and the issue of efficiency at Commission hearings. However, it will be argued that upholding the primacy of reinstatement is critical to maintaining procedural fairness and ensuring availability of a remedy that is proportionate to the damage suffered, or potentially suffered, by being unfairly dismissed. By exploring case law and statute and evaluating the purpose of the remedy, it will be argued that it is in the interest of achieving fairness – in an inherently imbalanced relationship – to maintain reinstatement as the primary remedy under the Fair Work Act. 17

Productivity Commission report on workplace relations – an opportunity for reform? – Emma Lutwyche and Neil Napper

The Productivity Commission (PC) released its Draft Report on the Workplace Relations Framework (Draft Report) in August 2015. Interested parties, including industry groups, unions, employer associations, and legal practitioners, had until 18 September 2015 to make submissions. Unsurprisingly, the responses to the PC's Draft Report were

contradictory, and the prospects for reform remain uncertain.	20
Trade union Royal Commission – watershed moment or political stunt? – Neil Napper	
Neil Napper comprehensively reviews the work of the recently completed Royal Commission into Trade Union Governance and Corruption. With acknowledgement of the political controversy that surrounded it and focussing on its final report, Neil discusses the findings of the Royal Commission, including allegations of serious wrongdoing against unions and employers. He also considers the broad-ranging recommendations made by the Royal Commission, including for: a strengthened regulatory regime for unions and employer organisations – particularly in the area of financial management; increased penalties – including criminal sanctions – for registered organisations and their officials who breach statutory duties; enhanced powers for regulators to investigate and enforce sanctions against secondary boycott conduct; and continuation and strengthening of the powers of the building and construction industry regulator. The article concludes by foreshadowing that workplace relations reform is likely to be an important issue in the upcoming federal election.	24
Unpaid law internships – the need for a regulated experience – Nandan Subramaniam	
The current legal framework surrounding unpaid internships is not adequate in addressing the overwhelming number of law students undertaking exploitative unpaid internships. Analysis of real life experiences and academic research surrounding unpaid student internships, demonstrates the negative impact of long-term unpaid arrangements. As the number of law students entering such arrangements is rising, it is absolutely necessary that the law be amended to include unpaid internships within the legal framework so as to allow for their regulation. Further, an effective documentation system will allow for the enforcement of reasonable time periods so as to provide for the benefits of unpaid work carrying over to the student. Such changes would be a shift towards protecting vulnerable law students from being exploited.	30
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