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ARTICLES

Emergency C-Section Required: Improving the Delivery of Male Parental Leave Entitlements – *Sandra Hu*

Nine years since the *Paid Parental Leave Act 2010* (Cth) (PPLA) established a long overdue national paid parental leave scheme, Australia continues to play catch-up with other high-income countries. Despite being hailed a "significant social policy innovation with broad-ranging objectives", the PPLA's objectives have remained aspirational with the infrastructure created by the legislation inadequate for actually achieving the objectives. This is particularly apparent when considering the low uptake of parental leave entitlements available to males. "Dad and Partner Pay" (DAPP) entitlements have failed dismally with respect to families with newborns. The deeply personal and complex decision to take parental leave is simplified when the mechanics of DAPP are set up in a way that discourages its use. This article identifies the PPLA's and DAPP's flaws by exploring the limited options currently available to Australian males, and looks to the operation of public parental leave schemes with strong male participation in foreign jurisdictions for possible solutions. 61

The Death of Reasonable Notice? – *Rick Manuel*

The South Australian decision of *Kuczmarski v Ascot Administration Pty Ltd* appeared to suggest that the common law implication that parties to a contract of employment are required to provide reasonable notice when ending their relationship (if the contract is silent on notice) might be supplanted by operation of s 117 of the *Fair Work Act 2009* (Cth), with its stipulated minimum standard of notice. However, remarks by White J in the 2018 Federal Court case of *Heldberg v Rand Transport (1986) Pty Ltd* suggest that various considerations, including authority and the relative inviolability of common law rights, mean the implied term requiring reasonable notice has not yet run its course. 64

Industrial Action in the Wake of Auimatagi v Australian Building and Construction Commissioner [2018] FCAFC 191 – *Lucas Moctezuma*

The recent Full Federal Court decision of *Auimatagi v Australian Building and Construction Commissioner* emphasises the importance of determining who employs a person when that person walks off a job – in order to determine if their acts constitute unprotected industrial action. When a union official encouraged the employees of several subcontractors engaged by a construction company to refuse to go back to work, the Australian Building and Construction Commissioner (ABCC) sought penalties against him for engaging in "adverse action" against the construction company. The primary judge agreed with the ABCC, fining both the official and the union the maximum penalty. The Full Federal Court upheld the appeal, affirming that, sometimes, "walking off the job" will not be industrial action when workers are not "employees". The construction company did not employ the persons who walked off the job and, as such, it was impossible for the workers to engage in "adverse action" in the form of "industrial action" against the company. 67

The Case of Foodora: The Adequacy of Australia's Industrial Safety Net in a Gig Economy – *Cassidy O'Sullivan*

Australians are increasingly living and working in a "gig economy", where "gigs" – piecemeal contract work and freelancing – are on the rise, and stable full-time employment is in decline. This article looks at recent test litigation surrounding Foodora, including *Klooger v Foodora Australia Pty Ltd*, as part of an analysis of whether the safety net provided by the minimum entitlements in the *Fair Work Act 2009* (Cth) needs to be reinforced to prevent the exploitation of vulnerable workers. It will be argued that the common law test for distinguishing between employees and independent contractors does not neatly lend itself to some gig-work relationships. Further, it will be proposed that several specific legislative amendments are necessary in order to ensure that Australian workers are adequately protected, including the removal of unwarranted barriers to collective bargaining, and the simplification and clarification of the sham contracting provisions. 71

Nearly a Century of Workers Compensation in New South Wales – *Judge Gerard Phillips*

The new President of the Workers Compensation Commission of New South Wales, Judge Gerard Phillips, delivered this speech to the Annual Seminar in Sydney, 22 February 2019, of the Workers Compensation Independent Review Office (WIRO). 75

The New Judicial Review – Legal Unreasonableness – *Mark Robinson SC and Dr Simon Blount*

The doctrine of proportionality might offer a principled approach to the exercise of the enlarged jurisdiction of Australian superior courts to inquire into the substance of administrative decisions. 78

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