

# WORKPLACE REVIEW

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EDITORIAL – *General Editor: Jeffrey Phillips SC* ..... 5

## ARTICLES

### **The Legacy of Jack Munday and the Green Bans: A CFMEU Perspective –** *Darren Greenfield*

For the CFMEU, the legacy of Jack Munday and the BLF of the 1970s resides in more than just the preservation of Sydney's natural and built environment that the Green Bans ensured. It is also in the encouragement of maximum member participation and democratic control in the union, and in the traditions of direct action and forging of new and broader community alliances around industrial and social causes. Resonances of that earlier time are seen in the CFMEU's defiance of the political forces arrayed against it – state and employers – and in people seeking its support in their own struggles. A class war is being waged against ordinary people says the CFMEU, and it looks to Jack Munday and the BLF for inspiration in its struggles, including for workplace safety, protection of wages and conditions, equality and justice for indigenous people, social housing, a decent health care system, and environmental protection. .... 7

### **Legal Life in Lockdown – Neil Napper**

Neil Napper reflects on four months of life and work as a workplace relations lawyer during the pandemic. It has been kaleidoscopic in new experiences, challenges and impressions. Getting tested, social distancing, and “scrubbing up”. Working from home. Border closures. Frantically providing urgent advice to clients on JobKeeper, stand downs, and award variations. Working in pyjamas. A new life born. Bemasked airline passengers. Signs everywhere. Virtual drinks with quizzes. The bottle shops of Clayfield. A two-year old chasing flapping Ibises. “Strange days indeed!” ..... 13

### **Legal Practice after the Pandemic – Judge Gerard Phillips**

Coronavirus's impact as disruptor in the legal industry is the focus of this article. Courts and tribunals had already begun to move away from in-person interlocutory proceedings but now the virus has spurred on this process with regards to contested hearings. With reference to the head start given the New South Wales Workers Compensation Commission by the introduction of its online portal, Judge Phillips reflects that lawyers, judges, courts, and tribunals are adapting effectively to the new circumstances. And while they have had to do so, Judge Phillips suggests that the emerging era of more flexible legal practice holds out the promise of reduced costs and enhanced access to justice for litigants. .... 17

### **A Pandemic amongst the Sandstone – Oscar Pursey**

Like the plagues of old, COVID-19 is sure to change the way we live, work, and study. Considering the pandemic's impact on the life of university students in particular, Oscar Pursey is heartened by our ability to adapt to dramatically changed circumstances, while wistful about what we have lost – even if it be only temporarily. He concludes that the shape of the post-COVID world will ultimately be determined by what we allow to be permanently swept away by the tidal wave. .... 19

## **Industrial Relations after COVID-19 – Craig Ryan**

The Federal Government's emergency economic response measures to the pandemic, such as JobKeeper and free child care, appeared to herald a dominant new ethos in Australian politics: out with small government, balance-the-budget orthodoxies, in with wealth redistribution and intensified government intervention in the economy. In industrial relations, ostensibly temporary changes were made to the *Fair Work Act 2009* (Cth) and *Fair Work Regulations 2009* (Cth) in response to the emerging economic crisis, and the Government embarked on the JobMaker process of crafting a new industrial relations order premised on "cooperative" negotiations between employers and unions. But with both sides of the industrial divide staking their claims for that new order, and with a clear power imbalance in their relations, the achievement of an acceptable and fair industrial settlement for Australia after the pandemic may prove to be chimerical. ....

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## **Wage Theft – Kirsty Stewart, Rick Manuel and Kaz Eaton**

"Wage theft" is increasingly common in employment law parlance, but with its implication of intentional conduct by an employer, it may be distinguished from mere underpayment of wages based on ignorance, of which, even large employers can be guilty: Wesfarmers, Qantas, the Commonwealth Bank and the ABC to name some. After considering wage theft categories and the obligations, breach of which, may result in wage theft, this article examines practical issues practitioners should consider when pursuing recovery of wages, including: is there an employment relationship; correctly identifying the employer; which court to pursue the claim in; and, whether individual managers or directors should be included in the claim (eg human resources practitioners). Available penalties are also considered, as too are the implications of annualised salaries for underpayment of wages. Finally, measures employers might take to reduce the chances of underpayment are discussed, with proper auditing of award coverage classification highlighted. ....

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## **CASE NOTE**

### **Casual Developments – Susan Zeitz and Rick Manuel**

The Full Federal Court's decision in *WorkPac Pty Ltd v Rossato* raised concerns in some quarters of opened floodgates to casual employees receiving annual and other paid leave, with consequent substantial costs impacts for businesses, particularly small businesses. Susan Zeitz and Rick Manuel argue, however, the decision was not the radical overturning of the law on casual employment it seemed. Rather, it underlined that employers should pay close attention to the basis on which they engage casual employees, including recognising: the purpose of a casual loading and the right to offset it against an entitlement to annual and other leave entitlements, and when casual employment becomes regular and systematic employment. The authors advise employers to have written documentation of employment contracts and to maintain appropriate recordkeeping of hours and times. The ability of casual employees under modern awards to request conversion to full or part-time employment should also be considered. ....

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## **OBITUARIES**

### **Vale Jack Munday (1929–2020) – His Significance for Australian Unionism – Meredith Burgmann**

The death of Jack Munday has highlighted his activity during the famous Green Bans period of the early 1970s. Jack's inspired leadership of the NSW Builders Labourers Federation (BLF) led to environmental bans being placed on many Sydney suburbs and historic buildings. Not only did these bans save the face of Sydney but they inspired others

to see the need for urban environmentalism and for unionists to think about the “social responsibility of labour”. How the BLF worked with their rank-and-file to achieve these extraordinary results is a lesson for other unions, even today. ....	44
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