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40 Years of the *Sex Discrimination Act* – A cause for celebration, commendation or commiseration?

Dominique Allen

This year marks the 40th birthday of the Sex Discrimination Act 1984 (Cth) (SDA), which prohibits sexual harassment and discrimination against women in the workplace and beyond. While the SDA led to significant gains for women in its early years, the Act languished in her 20s and 30s, neglected by both politicians and judges. Lately, however, we have seen renewed interest in the SDA and significant improvements following the landmark Respect@Work Report. Like many reaching their 40s, the SDA has entered a new phase.

To mark this significant occasion, this paper examines the last two decades of cases decided under the Act. The paper considers who is litigating sex discrimination claims, the nature of their claim, the success rates and the type of remedies awarded to successful complainants. It identifies ongoing issues relating to enforcing rights under the Act and suggests ways in which this could be improved.

The Onus of Proof and Causation in Discrimination Proceedings

Larissa Andelman

Federal anti-discrimination laws in Australia place the onus of proof on applicants to prove the facts and the elements of the unlawful conduct.

The causation element in direct discrimination claims has not been authoritatively decided in Australia but the High Court in *Purvis v State of New South Wales* [2003] HCA 62; (2003) 217 CLR 92 gave a clear indication that the causation test is 'but why' the conduct occurred. The courts in the United Kingdom have been opaquer as to whether the test is 'but why' or 'but for' or both or something different.

The *Equal Opportunity Act 2010* (VIC) removed the explicit requirement for a comparator which previously was required in the *Equal Opportunity Act 1995* (VIC). This has raised some uncertainty about causation and whether there is an analogy with the onus of proof provisions in s 361 of the *Fair Work Act 2009* (FWA).

Section 361 of the FWA creates a rebuttable presumption that the respondent's conduct was carried out for a particular reason or with a particular intent alleged in the proceedings against the applicant, unless the respondent proves otherwise. S361 is concerned with the subjective reasons of individual decision makers.

Section 361 is in Part 3 of the FWA which protects peoples' workplace rights at work, such as having to access entitlements, enjoying freedom of association and a workplace absent of discrimination.

The paper will consider the manner in which the current federal anti-discrimination laws operate, compared to UK Supreme Court decisions and the recent decision *Austin Health v Tsikos* [2023] VSCA 82 that considered the question of causation and critically assess the some of the likely consequences of adopting a s 361 type reverse onus provision.

Secrecy and Culture in the Finance Sector

Alex Cousner

The finance sector is one that is dominated by four major employers being the major Australian banks. The banks each have an enterprise agreement that provides for their entitlements and pay and conditions within the organisation.

Pay and conditions in the banks is underpinned by the *Banking, Finance, and Insurance Award 2020*, being a modern award under the *Fair Work Act 2009*.

Prior to the pay secrecy reform in 2023, each of these employers practiced strict pay secrecy and prevented workers from communicating about their pay conditions. These requirements were enforced and a culture of fear and secrecy developed as a result.

Sadly, this culture of secrecy extends into 2024 through the withholding of information about the actual rates of pay for work within banks.

This paper will argue that the culture of secrecy within these organisations blinds workers to the truth about their pay and conditions and prevents them from understanding the value of their labour.

This is achieved through the use of proprietary pay information, which is unavailable to workers and reinforced by the *Banking Finance and Insurance Award 2020* with its serious lack of connection to the work actually being performed in the sector and inadequacy in describing the value of that labour.

The paper will conclude by noting the role of legislators in fixing this issue, as well as the Fair Work Commission in reviewing the and the Modern Award.

Public Law and Labour Law: Control and Discipline in the Common Law Contract of Employment

Caroline Kelly

The power of employers over their employees is created and sustained by the structure of the employment relationship itself. Submission to the terms of an employment contract establishes a relationship of power whereby the employee is subject to the practical authority of the employer. This relationship of subordination – which is, in some respects, not unlike the relationship between the state and its subjects – may explain the presence in labour law of doctrines which resemble those we find in the administrative law context.

This paper will consider the presence of administrative law-like doctrines in the ability of employers to control and discipline employees during the employment relationship at common law. There are a number of ways in which the discretionary power of employers is constrained by common law principles which echo the grounds of judicial review including unreasonableness, improper purposes, legitimate expectations and, more broadly, the concept of ultra vires. It is possible to see such principles reflected in the feters imposed on the ability of employers to give directions, impose sanctions, and apply and alter policies. In particular, the law governing the exercise of contractual discretion (for example, in the giving or withholding of bonus payments) draws explicitly on a concept of unreasonableness developed in the judicial review context.

The approach of the High Court in *Personnel Contracting*, *Jamsek* and *Rossato* may have significant impacts in this area which are yet to be fully seen. Whilst the Closing Loopholes legislation takes important steps to ameliorate the consequences of those decisions in relation to the definition of employment, the formalism that characterised the majority judgments in those decisions may colour the approach taken more generally to the construction of contractual discretions going forward. This may, in turn, dilute the influence of administrative law-like principles in the control and discipline of employees by employers.

Non-Union Collective Agreements and the Fair Work Amendments 2022-2024

Shae McCrystal

This paper explores the intent and impact of the Labor government's amendments to the Fair Work Act of 2022-2024 on non-union collective agreements (NUCAs). The argument comprises three main sections. First, it recognises that none of the major players or political parties are talking publicly about NUCAs, despite their on-going importance and the continuing 'NUCA problem'. This continues themes developed in Bray, McCrystal & Spiess (2020) and McCrystal & Bray (2021). Second, it demonstrates that the amendments have addressed some of the negative consequences of NUCAs for workers and unions. This builds on the contribution of Ben & Sage (2022) by exploring the opportunities presented to unions to engage with employers at workplaces where they have previously been excluded, and to challenge agreement approvals. Third, it argues that the remaining weaknesses of the bargaining regime can partly be attributed to the centrality of NUCAs to the architecture of the Fair Work Act. This extends the critique of the amendments developed by Forsyth & McCrystal (2023).

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Right of Entry in the Digital Age

Nicole McPherson

In 2020 as COVID 19 cases rose, many workers moved from working predominately or wholly in the office to working from home. This presented a unique challenge to trade unions and their ability to access workers, as right of entry entitlements did not provide any ability for union permit holders to access workers not physically located at the workplace.

This issue persists today with working from home now a common practice and indeed a workplace entitlement for some workers through enterprise agreement terms. The inability for trade union permit holders to access these workers undermines fairness and representation through freedom of association object of the *Fair Work Act*.

The *Closing Loopholes Act* 2023 and *Closing Loopholes No. 2 Act* 2024 set out a process for the creation of new rights for delegates which may result in the ability for delegates to access workers through electronic means outside the physical workplace. This paper will consider the outcome of delegates' rights model term development process and examine whether those rights are adequate in the context of increasing work from home rights.

Further, there will be discussion of whether those rights should be extended to right of entry permit holders or whether alternative legislative mechanisms will give better effect to the object of the Act by allowing permit holders to access workers outside the workplace.

Institutionalised Wage Theft in the Meat Industry through the PALM Scheme

Ema Moolchand

This paper investigates wage theft and exploitation within Australia's meat processing industry, focusing on migrant workers under the Pacific Australia Labour Mobility (PALM) scheme. Despite the industry's significant economic contribution, with a turnover of approximately $75.4 billion in 2021-2022 and being a leading exporter of red meat, it thrives on the backs of underpaid and overworked migrant labourers.

The "Seeing the Whole Picture" project reported in this paper employs Participatory Action Research to amplify the voices of these vulnerable workers, revealing a narrative of systemic abuse and exploitation. Our findings highlight that recent visa scheme changes fail to adequately address exploitation. Workers continue to endure underpayment, unsafe working conditions, and poor living standards, exacerbated by unpaid "training" periods, incorrect pay, and heavy deductions for housing and transport. The project's use of the photovoice methodology sheds light on these issues from the perspective of the workers who participated in the study, with haunting photos taken by workers depicting their perceptions of their lives and work in Australia.

The paper further finds that the industry's response to modern slavery risks remains inadequate, with persistent gaps in leadership, policy development, and worker engagement. This paper calls for a transformative approach to labour policies that prioritise worker voices, ensuring fair, safe, and dignified working conditions.

The evolving relationship between employment mediation and the Employment Relations Authority in Aotearoa New Zealand

Grant Morris

This paper will explore the interactions in dispute resolution between employment mediation and the Employment Relations Authority (ERA). Both processes exist under the Employment Relations Act 2000 and have a 24-year history of working together to resolve disputes. Mediation is the primary form of employment dispute resolution in NZ (beyond negotiation) and is mainly delivered by the government's Employment Mediation Service (EMS). The ERA is an adjudicatory tribunal but can also engage in alternative dispute resolution processes. While New Zealand has an Employment Court, nearly all formal employment disputes are resolved by the EMS and ERA.

Both the EMS and ERA have experienced significant workload pressures over the past few years, especially in relation to the Covid pandemic. This article argues that an effective and symbiotic working relationship between the two services is a key factor in solving these workload concerns and making the services more accessible to the public. The article explores how this relationship has changed since 2000 and provides a best practice model for the future.

This analysis is based on my experience as an employment mediation researcher, teacher, and practitioner.

Underpayment Class Actions: Who pays and who benefits?

Philippa Munton

The employment class action is by no means a new phenomenon. Representative actions brought on behalf of a class of employees have been used as a vehicle to seek to enforce workplace rights since the late 1990s, shortly after the Part IVA of the *Federal Court of Australia Act 1976* (Cth) (FCA Act) was introduced. The prevalence of such claims has, however, increased in recent years, with a notable uptick in filings since around 2016.

Recent activity in this area indicates that employment class actions (as with all types of class action) are similarly impacted by issues of "competing" proceedings, with multiple plaintiff firms, or employee organisations, commencing claims seeking to advance the same industrial interests on behalf of the same (or substantially the same) class of employees.[ii] Competing claims in the industrial context give rise to a unique issue, given the nature of the Fair Work jurisdiction and the operation of section 570 of the *Fair Work Act 2009* (Cth) (FW Act). Pursuant to section 570 of the FW Act, costs will only be ordered in certain limited circumstances (such as where the court is satisfied that the applicant instituted the proceedings vexatiously or without reasonable cause, or that a party's unreasonable act or omission caused the other party to incur the costs). Save for these limited exceptions, proceedings under the FW Act are said to take place in a 'no-costs' jurisdiction. As a result, even if an applicant is wholly successful, it is unlikely that they will be awarded their costs on determination of their claim. In circumstances where competing proceedings have been commenced, this gives rise to the real and obvious issue that class members may be taxed by multiple firms seeking to recoup their investment in the proceeding.

The paper will seek to examine the utility of the employment class action as a vehicle to advance employees' industrial interests and some of the mechanisms available to the Court, by virtue of the supervisory powers afforded under the FCA Act (including Part IVA) to address the issues of competing class actions and costs, particularly in the FW Act's 'no-costs' jurisdiction.

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The McDonald's class action proceedings (*Elliott-Carde & Anor v McDonald's Australia Limited* (VID726/2021) is an example.

Keeping control of the remote: An argument against a blanket right to work from home

Ryan Murphy

Recently, there have been calls to expand flexible work rights to all employees, including the prospect of a wholesale right to work from home. Such reform might take the form of expanding the right to request flexible working arrangements in the National Employment Standards beyond the set list of circumstances contained in section 65(1A) of the Fair Work Act. Alternatively, it may come through the Fair Work Commission's consideration of flexible work through the 'Work and care' component of the Modern Awards Review 2023-24.

While the ability to work remotely has many positives, this paper will provide a case for exercising caution before changing the law from its current position. It will review the recent and ongoing rise of artificial intelligence and its potential impact on the Australian workforce (particularly at the less experienced end). It will then consider existing arguments to expand the right to work remotely, and will finally present a case for, in the current AI landscape, retaining the current laws regarding remote work.

19th Century Origins of Conciliation and Arbitration

Richard Naughton

This paper will look at developments leading up to the adoption of conciliation and arbitration in Australia.

Typically, analysis of the background to the adoption to conciliation and arbitration in Australia's Federal system reviews State legislative developments such as the Industrial Arbitration Act 1901 (NSW); the Industrial Arbitration Act 1900 (WA); and possibly Kingston's Industrial Unions Bill 1890 (SA), that arguably provided a template for the Industrial Conciliation and Arbitration Act 1894 (NZ).

Research indicates that there was considerable interest in the establishment of "Courts of Conciliation", with an associated arbitration process being seen as a notable alternative to costly and expensive proceedings in workplace disputes, from at least 1880, in both Victoria and New South Wales. This led to attempts in both those States to introduce legislation to establish conciliation procedures during that decade.

This paper considers these developments and the influence of these matters on subsequent State legislation and ultimate acceptance of the conciliation and arbitration model in our Federal system.

Labour and Social Protection for Temporary Migrant Workers: The need for further reform

Marius Olivier

Recent labour law reforms have a significant impact on the labour protection of temporary migrant workers. This applies to among others, but is also subject to exceptions that may in some instances negatively affect certain temporary migrant workers: protection against underpayment; pathways to permanent employment; and regulated labour hire arrangements. Particularly important is the amendment protecting workers' labour rights irrespective of migration status. The reforms tend to have limited impact on social protection for these workers, accentuating the sharp contrast with labour protection and the existing vulnerable social protection position of temporary migrant workers, displayed particularly during the COVID-19 period. The flows from: the impact of relevant visa-based period restrictions on the ability to qualify for permanent employment, claim unpaid parental leave and the extension thereof, and access social security benefits; comprehensive migration-status restrictions on access to public health care and social security benefits among others in relation to maternity, unemployment and child care; and significant disadvantage regarding superannuation withdrawals. Inconsistencies in the social protection status of different categories of temporary migrant workers are apparent, influenced also by the terms of bilateral social security agreements and employer sponsorship assurances. Rethinking is required to achieve a more consistent approach aligned with standards, including recent guidance, embedded in key international human rights, migration and social protection instruments, innovative best practice comparative experiences, a principled policy position honouring the redistributive rationale of the welfare state, and the realities also of regional migration.

The Current Duty of Reasonable Care in Workplace Investigations

Adriana Orifici

Workplace investigations are an increasingly prevalent tool used by employers to inquire into suspected misconduct by employee respondents. A significant risk that arises during workplace investigations is the potential for the process to result in psychiatric injury to a respondent.

In Australia, appellate decisions have determined that an employer's duty of reasonable care does not include an obligation to provide a safe system of workplace investigation and decision-making so as to prevent psychiatric injury to an employee under investigation.

Judicial reasoning regarding the scope and content of an employer's duty of reasonable care in the context of workplace investigations is, however, unsettled. Judicial decisions have also illuminated that the distinction between a system of a workplace investigation (in which the duty of reasonable care does not apply) and a system of work (in which the duty of reasonable care generally applies) is often unclear.

This paper critically considers the current state of the common law. It will draw on Australian case law developments including the decisions of the Court of Appeal of the Supreme Court of Victoria in *Vision Australia Ltd v Elisha* [2023] VSCA 265 (CA) and *Vision Australia Ltd v Elisha* (No 2) [2023] VSCA 288, which are currently the subject of an appeal before the High Court of Australia.

This examination challenges the entrenched rationale that underpins relevant judicial decisions and argues that the legal reasoning is underdeveloped and uncertain. It compares the common law and statutory responses to this issue and suggests pathways of legal reform.

From ‘Please Sir’ to ‘See You in the FWC’: Rights to request reasonable treatment and the role of the Commission

Graeme Orr

The statutory ability to request reasonable consideration initially appeared in the Fair Work Act in the form of requests for extended parental leave or flexible work. Of similar effect have been casual conversion requests, and the novel and pending ‘right to disconnect’. (Albeit the latter is framed as an employer objection that an employee’s refusal is unreasonable).

When framed merely as a request for consideration, albeit with requirements to not unreasonably refuse or to provide reasons, these were less statutory ‘rights’ or ‘obligations’ than exhortations to negotiate, with procedural guidelines (cf ‘a right to ask’ vs a ‘formalised discretion’: Kelly and Kaleve 2006). However recent legislation introduces compulsory arbitration over not just failures to negotiate but the outcome of such requests.

This paper explores two related issues:

1. The nature of these regimes, with and without FWC jurisdiction.
2. How this jurisdiction fits within the evolving role of the FWC.

Stewart et al (2014) noted the FWC’s workload is driven by individual applications, alongside some direct regulatory and quasi-legislative powers (over awards/minimum wages). This is a far cry from an IRC’s historic function as collective-dispute settler (Sykes & Glasbeek 1972).

The distinction is not merely between individual and collective. Rights to request are discretionary, negotiable and future-directed. They contrast with the bulk of the individualised disputes jurisdiction: unfair dismissal, general protections, harassment and bullying. Those involve quasi-judicial determination of breaches of entitlements akin to statutory torts.

Ultimately, if individuals can require arbitration over reasonable future treatment, is it heretical for the FWC to arbitrate collective-bargaining disputes?

Reforming Zeal - Contentious issues, influence of minorities and Parliamentary process in recent workplace law reform

Marilyn Pittard

The Albanese Labor government had a clear vision for reforms to the federal system of workplace relations law when it came to power in May 2022. The extensive tranche of proposed legislative reforms introduced into Parliament gave rise to contentious debate and accusations of inadequate time for consideration of hundreds of pages of bills. The voices of minorities in parliament, especially independent members of parliament, were influential at various points in the debate and the parliamentary process - affecting timing of debates on the bills and influencing directions of the reforms.

The paper identifies the main contested areas in the bills, analyses what issues occupied most of Parliament's time in terms of sitting days, and addresses this influence of minorities, with the focus on independents, on the course of legislative reform in the Secure Jobs, Better Pay Act and the Closing Loopholes Acts. It reflects on the Parliamentary process and outcomes in enacting the most extensive set of reforms since the Fair Work Act, focussing on the areas of collective bargaining, gig workers and the new right to disconnect.

The paradox of choice: examining the options for workplace sexual harassment claims and progress on the Respect@Work changes

Susan Price, Ella Kelly, Isabel Michaels and Harriet Wilson

The Respect@Work: Sexual Harassment National Inquiry and subsequent Report (2020) made 55 sweeping recommendations to address workplace sexual harassment across five key areas of focus: data and research; primary prevention; the legal and regulatory framework; workplace prevention and response; and support, advice and advocacy. One outcome of the implementation of these recommendations is that there are now more avenues by which a person who has been subjected to workplace sexual harassment can seek redress.

This paper will explore the Fair Work Commission's new and expanded jurisdiction in Part 3-5A of the *Fair Work Act* which prohibits sexual harassment in connection with work, and contrast that against other available avenues to illustrate the advantages and disadvantages of each, and what this means for both practitioners who advise clients in these matters, and the individuals themselves. It will draw on the published decisions from the Fair Work Commission that have considered the application of sexual harassment laws since 6 March 2023 when the jurisdiction was expanded beyond just "*stop sexual harassment*" orders to include a dispute function, as well as case studies drawn from the Centre's clients.

It will also examine whether the new positive duty to prevent sexual harassment in the *Sex Discrimination Act* is being translated into employer actions, and whether the aims of Respect@Work Recommendation 38 regarding the use of non- disclosure agreements is being seen in practice, and the ways in which this could be encouraged.

The Development of Australian Labour Law 1788-1888

Michael Quinlan

This paper is an overview of the complex and largely overlooked development of labour laws in Australia 1788-1888. The paper will consider:

1. Regulation of convict labour
2. Regulation of free labour under Master and Servant laws and Maritime labour laws
3. Regulation of special categories of indentured labour (pearlers, pacific islanders)

These issues will be framed against the use and resistance to those laws - massive at times which reshaped them

The paper will also examine the first labour protection laws (Factory Acts, early closing, trade union laws and mining safety including the first laws giving worker representative rights in coalmining in 1876). This discussion will emphasise the critical role of worker and community mobilisation in securing these laws.

The paper will include tables and charts plus illustrative examples.

Square Pegs in Round Holes – Unions and the corporations power

David Quinn

Multiple authors have identified the political strategies which have restricted the role of unions under the Commonwealth IR statute over the last two or three decades by reference to specific legislative amendments. The common denominator in those changes has been the corporations power. The (now comprehensive) reliance of the FW Act upon the corporations power has fundamentally changed the relationship between unions and the regulatory system.

The C&A based system was dependent constitutionally (to generate interstate disputes) and institutionally (to supress industrial anarchy) on registered unions. Over time unions were granted effective monopolies of representation and bargaining and protections against anti-union conduct, in both the statutory based award system and the "over award" collective bargaining system. The quid pro quo was regulation of their internal affairs and agreeing to be held hostage by the threat of losing their institutional protections.

With the gradual, and by the 2000s comprehensive, reliance on the corporations power the guaranteed role of registered unions has been removed in both the award bargaining system (in which the coverage of awards is not defined by union generated disputes and union membership rules) and the enterprise bargaining system (in which non-union agents have virtually the same rights as unions without the same responsibilities). The continuing role of unions in the award system is a function of institutional inertia rather than of right as a party principal, and in enterprise bargaining they are open to competition as never before, at the same time as grounding of the freedom of association protections in the corporations power hase removed the exclusivity of the statutory protections afforded unions and their members.

In contrast, under the Queensland IR Act the monopoly role of unions has been maintained and entrenched. The natural experiment now in play is exemplified by the role played by the most prominent non-union actor under the FW Act (RAFFWU) with the "Red Unions" under the IR Act, the former acting for almost all practical purposes with the same status as a registered union and the later locked out of any effective representative role.

The introduction of exclusive rights for registered unions under the FW Act (eg delegates rights) may provide a mechanism for slowing the corrosive role of the corporations power, but on the current trajectory reliance upon the corporations power has generated the worst of all possible worlds for registered unions.

Managing Organisational Change with Staff Redundancies in the Australian University Sector: A closer look at consultation terms under enterprise agreements approved post Secure Jobs, Better Pay Act

Jonathan Sale, Arlene Sale, John Burgess and Al Rainnie

In the light of COVID-19, international student enrolment numbers went down resulting in a $1.8 billion loss for Australian universities in 2020 (Owens et al., 2022). Approaches to cost reduction usually include redundancies as part of organisational restructuring (Owens et al., 2022; Stewart, 2021). Such static, short-term measures, also referred to as "numerical flexibility" or flexibility in terms of "how much" labour is utilised, are a type of flexibility to maintain competitiveness (Kuruvilla & Erickson, 2002). Another form, known as "functional flexibility," tends to be more dynamic as it involves "how" labour is utilised, such as employee participation in workplace decisions or labour-management cooperation (Kuruvilla & Erickson, 2002). Redundancies may also arise from university mergers (McMullen, 2008).

The human resource processes and programs may entail harmonisation of employment terms and conditions to standardise university contracts among staff (McMullen, 2008). There may also be transfer of courses or departments between higher education institutions with the ensuing transfer of employment contracts from one HEI to another (McMullen, 2008). In the Australian higher education context, processes and programs concerning mergers and redundancies, including their effects, may be incorporated into enterprise agreements reached through collective agreement-making. It is mandatory for an enterprise agreement to have a consultation term, which requires the employer to consult employees about major workplace changes affecting the latter (Stewart, 2021). Mergers and redundancies involve major workplace changes. This paper focuses on managing organisational change with staff redundancies in the Australian university sector, and aims to address these research questions:

1. How are organisational changes involving redundancies managed by Australian universities?
2. What do enterprise agreements in the sector approved post Secure Jobs, Better Pay Act 2022 say about consultation?
3. Is there a dominant approach or model that is used?

These questions are vital considering that next year the Fair Work Commission will be setting model terms for enterprise agreements with respect to consultation, among others, pursuant to the Fair Work Legislation Amendment (Closing Loopholes No 2) Act 2024. The issues are studied through the analysis of documents, such as policies, legislation, reports, enterprise agreements, and

organisational or other documents. Sources of documents include the government, parliament, state agencies like the Fair Work Commission, international organisations, universities, and other institutions or individuals researching on this topic. A case study into how to effectively manage change with staff redundancies in Australian universities is also undertaken.

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Contract, Labour Law and the Realities of Working Life

Eugene Schofield-Georgeson

This paper explains the conceptual framework adopted by the author in his new book, *Contract, Labour Law and the Realities of Working Life* (Routledge, 2025). The book investigates the dominant method of legal interpretation applied by Australian High Court majorities in labour law matters over the past 30 years – a method that the author calls, 'neoliberal legality'. In the book, the author argues that by applying this approach, the Court has sought to redefine Australian labour law in the image of contract, investigating five major areas of labour law in which the High Court has taken this approach. These are: i) the employee / contractor distinction; ii) implied terms; iii) adverse action and freedom of association; iv) restrictions on bargaining; and v) restrictions on industrial action.

This paper explains the concept of neoliberal legality and why conceiving of the Court's approach in this way is useful to understanding processes of adjudication in labour law. Such an understanding leads to the exploration of alternative approaches based not in contract, but social and economic reality, experienced at work and between the parties.

‘Opting Out’: Collective bargaining in professional team sports in an era of change and reform in Australian labour law

Brendan Schwab

The last three decades have seen the business of Australia’s major professional team sports undergo transformational change. The forces driving that change— including unsustainable labour costs, globalisation, new technologies, and acute demands to maximise industry competitiveness—have also shaped three decades of reform and change in Australian labour law. Yet, Australia’s major professional team sports have transformed themselves while consciously operating outside Australia’s formal labour relations system.

Central to this has been the development of a unique model of collective bargaining. Built on common law collective agreements between Australia’s sports bodies and player associations, this ‘Australian model’ has delivered legal certainty and economic stability to a rapidly growing industry and elevated the position of player associations at a time of declining trade union rights and density. It has also avoided the protracted work stoppages and litigation that have been prominent in professional team sports internationally.

The paper will explain and analyse the ‘Australian model’ and how it has enabled comprehensive, long-term and strategic collective bargaining, resulting in both better pay and conditions and industry viability. It will also identify shortcomings which may have harmed vulnerable workers, including women athletes. The important questions of whether and for how long the ‘Australian model’ will remain fit for purpose will be considered.

Breastfeeding Bodies at Work: The case for transforming business as usual

Amanda Selvarajah

In this paper, Australia's entitlements for balancing work and breastfeeding are explored. The paper analyses relevant aspects of Australia's legislative framework and the extent to which these policies support breastfeeding while working. This includes Australia's parental leave entitlements, the right to request flexible work, and protections against breastfeeding discrimination. Breastfeeding workplace policies are then explored by drawing upon interviews with human resource professionals. The paper reveals that the act of breastfeeding is rarely explicitly supported both in legislation and workplace policies. Instead, breastfeeding is often expected to be accommodated through individual and invisible strategies in keeping with societal perceptions of breastfeeding as inherently shameful and incompatible with 'ideal worker' norms. The paper lends support for the need to introduce workplace entitlements that will meaningfully accommodate breastfeeding bodies at work such as paid breastfeeding breaks, generous parental leave entitlements, and stronger flexible work rights to transform business as usual.

AI Hiring Systems in Australian Workplaces: The risks of algorithm-facilitated discrimination

Natalie Sheard

Computer systems driven by artificial intelligence ('AI') are used by employers every day to screen and shortlist job applicants. Despite this, substantial gaps exist in our understanding of how these systems are used in practice and the real, as opposed to theoretical, risks of discrimination when they are deployed. This presentation reports on findings from qualitative empirical research investigating the use of AI-driven hiring systems by Australian employers. It demonstrates that the way these systems are operated in practice creates serious risks of algorithm-facilitated discrimination. This may arise from the training data, the use of proxies, the system's implementation, the construction of new structural barriers, a failure to provide reasonable adjustments and/or the facilitation of an intention to discriminate. These findings are significant. There is a lot at stake when AI-driven hiring systems are used by employers. As one research participant acknowledged, a 'job application is literally a person's attempt to change their life with a new job'.

Change and Reform: Examining the Sex Discrimination Act 1984 (Cth) as a tool for achieving gender equality – what does the Position Duty add?

Belinda Smith

Enactment of the Sex. Discrimination. Act 1984 (Cth) (SDA) was a significant step in addressing gender inequality in work in Australia, as our first national law prohibiting sex discrimination and the first piece of legislation in the world to use the term 'sexual harassment'. But this law could only do so much in prompting social change with an individual rights-based regulatory framework and a focus on protecting women.

A number of amendments expanded and improved the SDA rights over the decades, but arguably the most significant regulatory change for this Act has been the addition of a positive duty in 2022, in response to the Respect® Work.Report. By requiring employers to take steps to prevent sex discrimination, sexual and sex-based harassment, the SDA can now prompt organisations to see beyond individual incidents and bad apples. Prevention requires consideration of drivers and risk factors. What the duty could do, in theory, is to enable a greater understanding of the myriad ways in which language, policies and practices in work reflect, perpetuate and normalise gender inequality, the key driver of sexual harassment.

This paper will outline the potential of the SDA's new positive duty to make an impact on gender inequality. In tandem with work health and safety laws, the positive duty can prompt more than just reactions to complaints, but gender inequality is systemic and entrenched and '[r]edistributing power and opportunity is an objective that always provokes resistance and hostility' (the Honourable Susan Ryan, 2010).

The Ultimate Arbiter of Good Business? The Fair Work Commission, managerial prerogative, and opportunities for unions and employees

Imogen Szumer

Managerial prerogative is variously restricted by the employment contract, statute, and industrial instruments such as awards and enterprise agreements. When exercising its powers of arbitration on matters *not* traversing those outer bounds of managerial discretion, the Fair Work Commission (**Commission**) and its predecessor bodies have exercised great caution before interfering with the autonomy of management to decide how best to run its business.

This paper outlines the jurisdiction of the Commission to resolve disputes concerning the lawful manifestations of managerial prerogative, for example, resourcing decisions, the implementation policies regulating employee conduct, and the imposition of disciplinary sanctions. In addition to arbitral jurisdiction conferred by statute, the Commission may be empowered to exercise a power of private arbitration and resolve disputes between parties under the terms of an enterprise agreement. Through analysis of these two facets of its arbitral jurisdiction, this paper reflects on the Commission's capacity to intervene in managerial decision-making.

As to the Commission's *preparedness* to intervene, this paper then traces the development of key applicable principles. With a particular focus on disciplinary sanction disputes, this paper considers the limited cases in which the Commission, in its role as private arbitrator, has been prepared to effectively re-exercise managerial discretion.

Recent amendments significantly expand the degree to which the Commission is empowered by the *Fair Work Act 2009* (Cth) (**FW Act**) to arbitrate on matters traditionally conceived of as falling firmly within the realm of managerial prerogative. This paper canvasses the recent legislative amendments to the flexible work request scheme and discusses the significance of the Commission's new jurisdiction to arbitrate flexible work disputes. The presentation accompanying this paper will address the practical and strategic implications for employees and unions representing them.

Tackling Bullying and Harassment in the Legal Profession: Systemic discrimination and positive duty powers under the Sex Discrimination Act 1984 (Cth)

Penny Thew

Reports of bullying and sexual harassment within the Australian legal profession have risen sharply in the last decade:

1. In 2014, the Law Council of Australia NARS report found 50% of Australian women legal professionals surveyed reported being bullied and 25% being sexually harassed.
2. In 2019, the IBA "Us Too? Bullying and sexual harassment in the legal profession" report found 73% of Australian women legal professionals surveyed reported being bullied and 47% being sexually harassed.
3. In 2022, the IBA "Beyond Us Too? Regulatory Responses to Bullying and Sexual Harassment in the Legal Profession" report observed:

   "The legal profession's harassment problem is endemic … regulatory/disciplinary bodies alone cannot eliminate the problem; the profession's leaders, individual lawyers, law-makers and professional associations will all play …a role "
4. In 2023, a Lawyers Weekly survey showed that 72% of legal professionals responding reported being bullied.

The above increase occurred despite rule 123 of the Legal Profession Uniform Conduct (Barristers) Rules 2015 and rule 42 of the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 prohibiting the conduct.

This paper will examine:

- The positive duty, sex-based harassment prohibition, prohibition of hostile workplace environments and other key changes to the SD Act.
- How Solicitors' Rule 42 and Bar Rule 123 have absorbed key changes to the SD Act.
- The assistance the legal profession can gain from the new powers available to the Australian Human Rights Commission to inquire into suspected systemic unlawful discrimination and/or breaches of the positive duty within the legal profession.

Reinvigorating Collective Bargaining in the Post Covid Era: A comparative assessment of the collapse of collective bargaining under Australia's *Fair Work Act* and alternatives to enterprise level bargaining

Clive Tillman

Australia's system of enterprise-level collective bargaining is in terminal decline. This is evident from the number of employees covered by current enterprise agreements which has fallen from 27% in 2012 to only 15% by late 2021. This presentation will examine the decline of collective bargaining coverage in Australia and other OECD nations where bargaining occurs primarily at an enterprise level. The presentation will be divided into two parts: Firstly, I will explain the historical context behind the decline of collective bargaining coverage in Australia. Additionally, I will explain how and why this decline in bargaining coverage has occurred across all Anglosphere countries where bargaining takes place at a predominantly enterprise level. The decline has corresponded with the rise of corporate globalisation and deregulatory "neoliberal" economic policies. My discussion will explain how enterprise-level bargaining systems are poorly suited for regulating employment conditions in the modern workplace. Secondly, I will present sectoral bargaining models as an alternative to enterprise-level bargaining systems. In particular, the Nordic sectoral bargaining model is worthy of direct comparison with Australia because it has managed to successfully maintain high levels of collective bargaining coverage despite decades of pressure from the EU and corporate globalisation. The discussion will conclude by explaining how sectoral bargaining models have to potential to increase bargaining coverage and enhance employee voice in the workplace. A sectoral bargaining model could serve as a viable alternative to the enterprise-level bargaining system that exists in Australia and other Anglo-American countries.

Is there a Role for Compulsory Arbitration in Collective Bargaining After Repeal of the Fair Pay Agreements Act 2022 in NZ?

Alan Toy and Nadia Dabee

NZ's inchoate attempt to reintroduce awards (termed "Fair Pay Agreements" in the now repealed 2022 legislation) backed by compulsory arbitration has led to some interesting questions regarding the development of NZ labour law. Vulnerable workers such as younger workers, women, and low skilled workers now face the challenge of bargaining that is not supported by the possibility of compulsory arbitration except in very rare circumstances. NZ Police are currently undergoing compulsory arbitration but this is a special provision only for Police under the Policing Act 2008. The outcome of this dispute may indicate the efficacy of compulsory arbitration as a method of achieving fair wages in NZ . However other industries may no longer avail themselves of this benefit due to the repeal of the 2022 Fair Pay Agreements Act. Although NZ was the first country in the world to make strikes illegal and to provide for compulsory arbitration through passing the Industrial Conciliation and Arbitration Act 1894, the desire to lessen workplace conflict and to enhance the position of workers has not endured.

Could a new form of compulsory arbitration be of benefit to NZ and what would be the appropriate triggers for compulsory arbitrations? Relevant issues include whether wage structures appropriately value differing skill levels and whether this has an effect on productivity. Industry-specific compulsory arbitration might also be apposite. Even in Australia, the incidence of collective bargaining appears to be decreasing so perhaps new perspectives on the availability of compulsory arbitration are needed.

Perspectives From the Public Service: Developing policy and legislation on workplace relations reforms

Daniel Tracey

In the two years following the 2022 Federal Election, the Australian Government has enacted the most substantial workplace relations reforms since the introduction of the Fair Work Act 2009.

Many voices spoke to Government in the development of these reforms. The Australian Public Service ('APS') was, and continues to be, one of those voices.

Several factors, however, distinguish the APS from other stakeholders in the design and implementation of law reform. While many have deep knowledge of the Fair Work framework, the APS supports Government with obligations to provide frank and impartial advice, a clear understanding of Cabinet processes, and expertise navigating the machinations of Parliament.

Using the Closing Loopholes reforms as a case study, this paper would address how the APS contributed to policy design, led extensive stakeholder consultation, and coordinated the drafting of measures in the 2023 and 2024 Acts. Drawing on obligations in the Public Service Act 1999, the Legislation Handbook and Cabinet Handbook, it would shed light on the practical realities of policy and legislative development. It would do so to provide other stakeholders an understanding of how the APS engages with the broader public on workplace relations law reform, and importantly, how the broader public can engage effectively with the APS on these issues.

Author Biographical Statements

Dominique Allen is an Associate Professor and Director of Research in the Department of Business Law and Taxation at Monash University where she teaches employment law. Dominique is a socio-legal researcher and has published widely in Australia and internationally on anti-discrimination law, equality, positive duties, sexual harassment and the role of ADR in resolving legal disputes. She co-authors 'Australian Anti-Discrimination and Equal Opportunity Law' with Neil Rees and Simon Rice (The Federation Press, 2018) and served as Secretary of ALLA 2016-2023.

Luigi Amoresano is a dedicated legal researcher and advocate with expertise in industrial law, supply chain regulation, and employment rights. Luigi's legal career spans across Italy, Spain, and Australia, where he has developed comprehensive experience in policy research, union advocacy, and legal frameworks supporting worker rights in the gig economy and traditional employment sectors. Currently, Luigi serves as a Legal Research Officer at the Australian Manufacturing Workers Union. He holds a Master of Laws from the University of Newcastle, a Master of Maritime Policy from the University of Wollongong, and a Master of Laws from the University of Naples "Federico II".

Larissa Andelman has practiced as a barrister since 2012. She has written for Thomson Reuters on various topics and is co-author of the Chapter on Employment Law in the Law Handbook. She has also previously lectured at UNSW and she provides training on anti-discrimination, in particular on empowering bystanders.

Prior to 2012, Larissa was employed as a Senior Solicitor at the Fair Work Ombudsman and as a union official and industrial officer with the Community and Public Sector Union.

She is a long time member of ALLA and is a member of the Executive Committee. She is a prior President of Women Lawyers of NSW and in 2022 was appointed as a Senior Member of the Administrative, Equal Opportunity and Occupational Division of the NSW Administrative Appeals Tribunal.

Igor Nossar is the architect of the Australian model of supply chain regulation, a hybrid legislative regime for regulating supply chain working conditions. Igor designed this regulatory model and negotiated its legislative enactment during his work as Chief Advocate of a number of trade unions. He has assisted in the adaptation of this legislative regulatory model both to international supply chains and to the regulation of contract networks more generally., and in relation to a range of industries. His most recent scholarly appointment was as Adjunct Professor in the Law School of Law, Queensland University of Technology.

Yvonne Oldfield is a PhD candidate and teaching fellow at Victoria University of Wellington Law School. Her knowledge of the changes in labour law in New Zealand has been informed by several decades of work in the union movement and in dispute resultion as a mediator and member of the Employment Relations Authority.

Blade Atton is a Senior Associate in the Workplace Relations Practice Group at HFW, a leading global sector-focused law firm. He acts for a broad range of clients on employment law and industrial relations matters and is focused on providing practical and commercial advice based on a thorough understanding of his clients' business needs.

Blade has extensive experience as an employment law and industrial relations specialist. His expertise includes all areas of employment, industrial relations, discrimination, work health and safety and workplace-related privacy law. Blade is a commercial legal advisor with a pragmatic and client-focused mindset. He regularly advises on all aspects of the employment lifecycle and is an experienced litigator and advocate in industrial tribunals.

Blade's professional memberships include the Australian Labour Law Association, Industrial Relations New South Wales and the Australasian Association of Workplace Investigators.

Imogen Beynon is currently a PHD candidate at the RMIT University Graduate School of Business and Law. Imogen’s research interests include collective bargaining, union revitalisation, workplace relations reform and young workers.

Imogen’s professional experience includes over a decade of senior leadership positions in unions, government, politics and superannuation with key responsibilities across industrial law, strategic leadership, regulation and policy.

She is passionate about using her research and professional expertise to create social impact at scale, including to support evidence-based public policy development in the fields of work and employment relations.

Alysia Blackham is an Associate Professor at Melbourne Law School, The University of Melbourne.

Angelo Capuano is a law lecturer at Central Queensland University. He is the author of 'Class and Social Background Discrimination in the Modern Workplace: Mapping Inequality in the Digital Age', which was published by Bristol University Press in 2023. Angelo's research interests include law and the future of work, including hybrid work and the use of technology in employment such as artificial intelligence, algorithms and social media. He has a particular interest in workplace issues relating to social origin, class and disability. Angelo's published work has been used in recent court and tribunal decisions in Australia and South Africa, including in a majority judgment of the Constitutional Court of South Africa.

Alex Cousner is a Campaign Manager at the Finance Sector Union. Alex has worked for a number of unions across the Australian union movement including the CFMEU, NTEU and the FSU. Alex leads the FSUs work in AI and Workplace Health and Safety. Alex has a passion for the future of work and workplace rights and has led negotiations for enterprise agreements with all of the major employers in the finance sector. Alex holds a Bachelor of Laws, Graduate Diploma in Legal Practice and Graduate Diploma in Workplace Health and Safety.

Nadia Dabee is a Senior Lecturer in Commercial Law at the University of Auckland Business School. She researches employment law issues and has a special interest in the effect of AI on employment law relationships and the nature of work. She is a teaching award recipient and teaches mainly employment law and taxation.

Danae Fleetwood possesses extensive experience in employer advisory roles, having served as a Workplace Relations Adviser within the construction industry for several years, and as a Human Resources Manager. Drawing on this industry expertise, she now works in academia as a tutor and facilitator at the University of South Australia.

Currently, Danae is pursuing a Master of Philosophy at Queensland University of Technology (QUT). Her research centres on the regulation of AI-enabled workplace surveillance in Australia, adopting a multidisciplinary approach to examine the legal and ethical implications of advanced surveillance practices in Australian workplaces.

Anthony Forsyth is Distinguished Professor in the School of Law, RMIT University. His main areas of research include collective bargaining, trade unions, labour hire and gig work. He is President of the Australian Labour Law Association.

Emma Graham is a PhD Candidate and Sir Roland Wilson Scholar at the ANU College of Law, researching in the areas of labour law, anti-discrimination law and feminist legal theory.

Larissa Harrison is the Director of Industrial and Research at the United Workers Union. With extensive experience in employment and industrial relations law, Larissa has represented employees and unions in most Courts and tribunals across Australia. Larissa has been involved in a number of significant cases, most recently the Aged Care Work Value Case, Delegates Rights model award term proceedings, the Award Review 2023-24 and gender-based undervaluation proceedings. Larissa is currently representing the UWU in the Early Childhood Education and Care supported bargaining Multi-employer agreement. Larissa is dedicated to advancing workers' rights in courts and tribunals, and through industrial reform. She is also passionate about issues affecting pay equity in the Australia's IR system.

Lisa Heap is employed as a Senior Researcher at the Centre for Future Work at the Australia Institute. Lisa is a labour lawyer and researcher with a research focus on gender and inequalities at work, work health and safety and the regulation of work. She holds degrees in political science/industrial relations, law and applied human rights. Lisa's PhD in Law from RMIT University investigated new regulatory approaches to prevent gender-based violence and harassment at work.

Lisa is the former Executive Director of the Australian Institute of Employment Rights and had a lengthy career in the union movement. She also previously served as an Adjunct Professor of the Australian Catholic University and has been engaged by the International Labour Organisation (ILO) as a technical expert. Lisa contributed to the development of two ILO Conventions (Maternity Protection and Violence and Harassment).

Ria Holmes is a doctoral student at Te Herenga Waka, Victoria University of Wellington School of Law. Her PhD research focuses on Te Tiriti o Waitangi, Tikanga and Labour Law. She is a research and teaching fellow. As a Māori researcher she is passionate about Indigenous rights, self-determination, and the expression of these within labour frameworks.

John Howe is a Professor in the Melbourne Law School and is a member of the Centre for Employment and Labour Relations Law. John's research interests include labour law and policy, regulatory design, and social procurement. He has written extensively on the role of the state in regulating employment and labour markets, and on the intersection between state-based regulation and corporate governance. John is presently engaged in research on the history of Australian labour law and policy since the Second World War. He is also continuing his longstanding research on regulatory enforcement of minimum employment standards, which includes a project funded by the Paul Ramsay Foundation investigating the use of data science to prevent wage underpayment. In addition, John is Chief Investigator on an ARC Discovery project investigating the plural regulation of labour disputes in Indonesia, the Philippines and Vietnam.

John is a member of the Australian Labour Law Association, the Association of Industrial Relations Academics of Australia and New Zealand (AIRAANZ), the Labor and Employment Relations Association (US), and the Australian Society for the Study of Labour History. He is also a member of the Editorial Committee of the Australian Journal of Labour Law, and was an Editor of the AJLL from 2015-2023.

John has also worked in senior leadership and governance roles in practice and the academy. Since 2021, he has been a Board Director at the Victorian Workplace Injury Commission. He was Secretary of the Australian Labour Law Association between 2005 and 2009, and Chair of the international Labour Law Research Network from 2015-2019. He was Deputy Dean of the Melbourne Law School

from 2013-2016, and Director of the Melbourne School of Government from 2017-2023. Prior to commencing an academic career, John worked in private legal practice, and also as a researcher for public policy and advocacy organisations in Washington DC.

Caroline Kelly is a PhD Candidate at the Melbourne Law School. Her PhD examines the expression of administrative law doctrines in the regulation and control of employer discretion under Australian labour law. Caroline has published in the Australian Journal of Labour Law and the Sydney Law Review. She co-edited and contributed to *Democracy, Social Justice and the Role of Trade Unions* published in 2021 by Anthem Press. Caroline is Associate Editor of the Australian Journal of Labour Law.

Ella Kelly is the Managing Solicitor of the Employment, Discrimination & Sexual Harassment (EDSH) practice at the Women's Legal Centre ACT.

Ella began her career inhouse in the public sector before joining the EDSH team at Women's Legal Centre ACT in September 2020. Ella is an experienced employment lawyer who represents employees in the Fair Work Commission, ACT Civil and Administrative Tribunal, Federal Courts and in the ACT and Australian Human Rights Commissions. Ella leads the Centre's partnership with Canberra Institute of Technology and also specialises in discrimination matters in areas of public life outside of employment.

Ella is passionate about advocacy for individuals which highlights systemic issues and opportunities to further gender equity.

Melissa Kennedy is a PhD Candidate at Melbourne Law School, who is finalising her PhD on the criminalisation of wage theft.

Domenico (Dom) Lococo is the principal lawyer at Lococo Legal Services (a suburban legal practice) and a sessional lecturer and tutor at various universities (including RMIT University, Federation University, and CQUniversity). He has extensive experience in both private and public practice and is a PhD candidate at CQUniversity. His thesis is titled 'How would the criminalisation and co-regulation (or both) of wage underpayments affect international students from India?' This empirical research is the basis for his paper at this conference titled 'How will the Federal criminal offence targeting wage underpayments impact international students from India?'

Shelley Marshall, is a Professor of Law at RMIT University. Her research focusses on the labour conditions of informal and vulnerable workers. She also critically engages with literature and policy concerning modern slavery. Shelley left legal practice in 2001 to join the team setting up Ethical Clothing Australia. Her research has informed labour law reform in several countries and the policies of the International Labour Organisation. For example, over 2018-19 she made frequent trips to

Thailand to advise the Thai Ministry of Labour on how to enforce labour laws for homeworkers. In 2023, she co-drafted an ILO Convention on Decent Work in Global Supply Chains with Ingrid Landau. Her book, *Living Wage* published by Oxford University Press in 2019, proposed a new architecture for international labour law. An Australian Research Council DECRA Fellowship, 2020-2023, allowed Shelley to examine the deployment of digital technologies to address modern slavery. Shelley, along with the PhD candidates she supervises, deploy a range of research methods to gather and engage with data, including experimental techniques, participatory action research and longitudinal qualitative studies.

Shae McCrystal is Professor of Labour Law at the University of Sydney Law School. Her research focuses on the regulation of collective bargaining and industrial action, including the impact of competition laws on the rights of workers to act collectively. Most recently, Shae has co-authored *Strike Ballots, Democracy and Law* (Oxford 2020) arising out of research funded by an ARC Discovery grant, and co-edited *Labor in Competition Law* (Cambridge 2022). Shae is Vice-President of the Australian Labour Law Association, and an Editor of the *Australian Journal of Labour Law*.

Nicole McPherson is a National Assistant Secretary of the Finance Sector Union. After starting her career as a lawyer, Nicole joined the FSU and worked as an Industrial Advocate and National Industrial Officer. Nicole leads the FSU's Organising and Industrial teams in fighting for progressive rights for all finance workers.

She is passionate about business and human rights, the ethical use of artificial intelligence in the finance sector, and workplace health and safety.

Nicole holds a Bachelor of Arts, Bachelor of Laws with Honours, Graduate Diploma in Legal Practice and Master of Laws.

Ema Moolchand, is a legal scholar and advocate specialising in finance law, corporate governance, and workplace law. Her current research as a PhD(Law) candidate at RMIT University centers on modern slavery and gender issues within Australian supply chains, where she applies a socio-legal approach to highlight vulnerable workers' experiences. Her scholarly achievements, including a book chapter and several peer-reviewed journal articles and reports, have been recognised with prestigious awards such as the RMIT Excellence Scholarship, CRIMT Scholarship from the University of Montreal, and first place in the KPMG Asia-Pacific Legal Essay Competition organised in 2023. Ema’s professional background includes significant experience as a Senior Lawyer at KPMG, where she provided legal advice on a range of complex matters involving banking and finance law, corporate governance, risk management, ASIC compliance and employment law . Her work has also involved extensive research and policy analysis at the Fair Work Commission, contributing to the

development of workplace laws and consolidation of the 121 modern awards in Australia. Ema's commitment to advancing legal knowledge in her fields of expertise is further evidenced by her active participation in academic and professional communities, including the Victorian Women Lawyers and the RMIT Business & Human Rights Centre.

Grant Morris is Associate Professor of Law at Victoria University of Wellington. Grant is an accredited mediator and has worked as a facilitator and negotiator over the past two decades. Dr Morris's research areas include mediation, interest-based negotiation and New Zealand legal history. He has published several books and numerous articles on these subjects, including the recent work, *Mediation in New Zealand*.

Philippa Munton, BA (University of Sydney); BL (Hons1 + University Medal) (UTS): Philippa is a Senior Associate in the Commercial Litigation and Class Actions practice at Corrs Chambers Westgarth. She has practiced as a solicitor for 9 years, specialising in large-scale commercial disputes and class actions, with a particular focus on employment-related class actions.

Ryan Murphy is a Principal in employment and industrial law at McInnes Wilson Lawyers. A Sydney Swans supporter, Ryan is glad to make his first visit to Geelong; although, he remains nervous, haunted by what happened to his Swannies at the hands of the Geelong Cats in the 2022 AFL Grand Final (he is similarly nervous to attend Brisbane any time soon, based on the Swans' apparent failure to attend the most recent AFL decider). Ryan is an Accredited Specialist in Employment and Industrial law with over 13 years' experience in advising and representing (mostly) employers and Government departments. Ryan is a published author in the Australasian Dispute Resolution Journal, the Employment Law Bulletin, and at the 2021 ALLA conference he presented a paper on the four day work week– there, his main focus was helping people learn as many Icelandic phrases as possible in a 20 minute presentation. Ryan is uniquely qualified to speak on flexibility, based on the number of dances ('emotes') that his sons try to teach him, gleaned from Fortnite and Tik Tok. He has promised us he won't show you any of those moves during his presentation at this year's conference, but will instead stick to flexibility *in the workplace*. He also promises that while he has minimal *intelligence*, at least that which he does have is not *artificial*.

Richard Naughton is a Teaching Associate at the Law Faculty, Monash University. Richard's book, *The Shaping of Labour Law Legislation - The Underlying Elements of Australia's Workplace Relations System*, published in 2017, provided an historical account of the background to the current Federal industrial legislation.

Marius Olivier is adjunct-professor in the School of Law, University of Western Australia. He also directs an independent institute focusing on regulatory and policy research, advice and capacity

building in the areas of labour law, social protection and migration.

Adriana Orifici, Adriana Orifici is a Lecturer in the Department of Business Law and Taxation and Director of the Labour, Equality and Human Rights Research Group (LEAH). She currently teaches employment law to postgraduate students. Adriana is a socio-legal scholar whose research spans labour and workplace equality law. Adriana completed her doctoral studies at Melbourne Law School in 2024. Her thesis investigated the legal regulation of workplace investigations using doctrinal, theoretical and empirical research methods.

Graeme Orr is a professor in the law school at The University of Queensland, where he teaches labour law and the law of politics. His books include *The Law of Politics* (2nd ed, 2019), *The Law of Deliberative Democracy* (with Ron Levy, 2016) and one on elections as rituals. Currently he is a section editor for the *Australian Journal of Labour Law*. Graeme is an elected Fellow of the Australian Academy of Social Sciences and was a Fellow of the Australian Academy of Law.

Marilyn Pittard is a Professor of Law and Interim Dean of the Faculty of Law at Monash University. She has served over many years in all Associate Dean positions in the Faculty - in research, education (postgraduate studies), engagement, international, and staffing.

Publishing extensively in labour and employment law, her book, *Australian Labour and Employment Law,* LexisNexis, has just been published in its second edition (2024), and her other published books include books on the following topics: public sector employment (ANU E-Press); the independence of judiciaries in the Asia-Pacific (Cambridge University Press, UK); and business innovation from labour law and other perspectives (Edward Elgar Publishing, UK).

Her labour law research areas include digital workplace law, flexible work, unfair dismissal, employment and criminal records, and vulnerable workers.

Professor Pittard's affiliations include: -

- Chair of the Victorian Legal Admissions Board's Academic Course Appraisal Committee
- Deputy Chair of the Cancer Council Human Research Ethics Committee
- Executive membership and immediate past President of the Australian Labour Law Association
- founding and current editorial committee membership of the *Australian Journal of Labour Law* and
- general editor of LexisNexis' *Employment Law Bulletin*.

Admitted to practice as a lawyer, she was consultant to a major national law firm for many years.

Susan Price is the Head of Civil Practice for Women's Legal Centre ACT and the Chair of the Women's Legal Services Australia Employment, Discrimination & Sexual Harassment Committee.

Susan is an experienced employment lawyer who has worked across private practice, in-house, and community legal centre roles. She has a Masters of Laws, specialising in employment and discrimination, and has completed the Australian Institute Company Directors course.

Susan has been a Policy Lab Fellow and an Honorary Associate of the University of Sydney Business School, and has taught in the areas of change management, employment law, and managing people and organisations.

A long-term member of Women Lawyers NSW, Susan was awarded a Life Membership in 2023. She is a member of the ACT Law Society's Employment Committee.

As Chair of the WLSA Employment, Discrimination & Sexual Harassment Committee Susan oversees a community of practice for employment and discrimination lawyers working in Women's Legal Services, and has ensured the Committee makes submissions to law reform Inquiries, contributes in Fair Work Commission forums, and is a forum to facilitate practice sharing and knowledge transfer between members of the Committee. Susan has forged relations with UnionsACT that led to a successful tender to establish the ACT Working Women's Centre as partnership between Women's Legal ACT and UnionsACT.

Susan is passionate about supporting women in the workforce through opportunity, participation, empowerment, and actions that lead to gender equality.

Michael Quinlan PhD FASSA is Emeritus Professor of industrial relations at the University of New South Wales. He has researched and published extensively in the areas of occupational health and safety (especially work organisation and regulatory aspects) and industrial relations history, especially worker mobilisation and regulation. Recent books include *Contesting Inequality and Worker Mobilisation: Australia 1851-1880* (2020) and Insubordination and (with Hamish Maxwell-Stewart) *Resistance in Convict Australia 1788-1860* (2022). He resides in Launceston Tasmania.

David Quinn is General Counsel in the Workplace Relations & Safety team of Holding Redlich in Brisbane and an Accredited Specialist in Workplace Relations Law.

David represents individuals, unions, small and large businesses, government agencies and community organisations, providing advice on all aspects of Commonwealth and State industrial law, employment contract law, discrimination, workplace health and safety and electoral law. He appears regularly as an advocate for clients in industrial and employment law proceedings . Prior to entering private practice, David was a senior legal officer in the Commonwealth Department of Workplace Relations.

Arlene Sale is a PhD Candidate at Torrens University, Centre for Organisational Change and Agility. Her research interests include employee voice, organisational change, skills development, and

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Jonathan Sale is Program Director for Human Resource Management and Supply Chain Management and Lecturer in HRM at UniSA Business, University of South Australia. He teaches undergraduate and postgraduate courses on employment relations, industrial relations and HRM, and conducts research on topics such as employment skills and strategies, labour disputes settlement, labour relations policy, labour and comparative law, labour laws and labour markets, labour regulation and informal work, social security and migrant work, employee voice and social media, critical skills shortage and exported labour policy, decent work and sustainable development, work health and safety and workplace bullying, and access to labour justice. His study areas include Australia, Malaysia, Philippines, and ASEAN.

Eugene Schofield-Georgeson is a Senior Lecturer at the University of Technology Sydney where he teaches labour law and Australian Constitutional Law. His research negotiates possibilities for industrial and social democracy by challenging a neoliberal rule of law. His work investigates the reproduction of social relationships involving class power through labour and regulatory law, and the law of evidence.

He is the author of Contract, Labour Law and the Realities of Working Life (Routledge, 2025), critiquing dominant common law approaches to labour law, with a particular focus on the High Court's redefinition of employment in the age of precarious work. His previous book, By What Authority? Criminal Law in Colonial NSW, 1788-1861 (2018), explores the evolution and reform of Australian criminal and labour law through the emergence of modern social movements and legal institutions. He has continued this vein of work through two major historical studies of Australian labour enforcement.

In addition, Eugene researches possibilities for worker voice, in respect to health, safety and the environment. Prior to academia, Eugene practised criminal and employment law for over a decade.

Brendan Schwab is an architect of the global and Australian player association movements. Over a 30-year career, he has led and collaborated with the strongest player associations in the world and conducted multiple rounds of collective bargaining. He is now based in Australia following eight years as the Executive Director of the World Players Association, the global peak body for the player association movement.

As the lawyer, then CEO and later Chair of Professional Footballers Australia (PFA), Brendan played an important role in the transformation of Australian football, built on the creation of a new governing body, new professional leagues, collective bargaining, engagement with Asia, and gender equality. In 2022, he was inducted into the Football Australia Hall of Fame, the first Australian to

receive this honour in any sport for their work as a player union leader.

Since 2015, Brendan has helped pioneer the global sport and human rights movement by advocating for major human rights commitments with major sports bodies and co-founding the Sport and Rights Alliance (SRA). He has fought landmark campaigns and cases for athletes and many other people impacted by sport (such as US Muslim basketballer Bilqis Abdul-Qaadir and Bahraini footballer refugee Hakeem al-Araibi).

He is now in private legal practice, servicing a range of Australian and international clients with a focus on sport, labour, and human rights.

Amanda Selvarajah is a lecturer with Monash Business School's Department of Business Law and Taxation and the Labour Equality and Human Rights Research Group. She recently completed her thesis, which examined the supports offered to help balance work and caregiving in Australia's employment framework and how they may be improved to facilitate gender equal patterns of work and care. Her broader research interests include questions of legal reform that focus on issues of equality and access to justice, especially in employment law, often utilising comparative, empirical and mixed method approaches.

Natalie Sheard is a socio-legal researcher and lawyer with expertise in discrimination by AI systems, particularly those used in recruitment. Her work investigates how, when and where such discrimination may occur, its impacts and the adequacy of existing Australian and international legal responses. In 2024, she was awarded the prestigious Nancy Millis Medal for her doctoral thesis. In 2025, she will commence a McKenzie Postdoctoral Fellowship at the University of Melbourne. Dr Sheard also has significant experience as a social justice lawyer, in digital innovation to increase access to justice and in law reform and policy development. She is a member of the Australian Discrimination Law Experts Group and the digital equality group of the Berkeley Center for Comparative Equality and Anti-Discrimination Law.

Belinda Smith is an Associate Professor at Sydney Law School. Her main fields of research are gender equality, sexual harassment, and work and care. In articles and chapters published in Australia, the United States and Japan she has explored alternative regulatory tools and frameworks for promoting equality. (Recent publications include: B Smith 'Respect@Work Amendments: A Positive Reframing of Australia's Sexual Harassment Laws' (2023) 36 *Australian Journal of Labour Law* 145; and B Smith, R Kayess, D Allen, A Orifici, 'Bearers of rights, not just babies: Pondering pregnancy as an impairment to explore pathways to equality', (2024) 49(3) *Alternative Law Journal 192*.)

Imogen Szumer is a Senior Associate at Maurice Blackburn Lawyers' employment and industrial team in Melbourne. Imogen previously held roles at Legal Aid NSW and in the national office of the Australian Rail, Tram and Bus Industry Union. In her work, Imogen is passionate about combating the inherent inequality in the employment relationship and bettering working people's lives.

Carolyn Sutherland is a Professor of Labour Law and member of the Labour, Equality and Human Rights Research Group (LEAH) in the Department of Business Law and Taxation at Monash Business School. Carolyn's research focuses on labour dispute resolution in Southeast Asia; and on processes of judicial decision-making in Australian labour law cases. She has a particular interest in empirical legal and interdisciplinary methods. She is the lead CI on an ARC Discovery project (2019-2025) which is investigating the formal and informal regulation of labour disputes in Indonesia, the Philippines and Vietnam.

Penny Thew, called to the Bar in 2005, is highly regarded for her expertise in all aspects of employment and discrimination law, contractual disputes and restraints of trade. With over 23 years' experience in advocacy, advising and dispute resolution, Doyle's Guide has consistently recognised Penny as a recommended leading employment law barrister.

Penny is a Graduate Member of the Australian Institute of Directors (GAICD) and is a member of the Chartered Institute of Arbitrators (CIArb). Penny appears in all courts and is admitted to appear in the High Court of Australia. In addition to her practise as a barrister, since 2017 Penny has been appointed a part-time Tribunal Member of the NSW Civil and Administrative Tribunal, having been reappointed for further terms in 2019 and 2024. https://statechambers.net/penny-thew/

Clive Tillman is a lawyer from Melbourne, Australia. He was admitted into practice in 2021 upon completing his practical legal training at the College of Law. Prior to undertaking studies in law, Clive completed an MA in History. He possesses a robust foundation in law, history, and political philosophy, which he aims to leverage to offer significant contributions to the field of labour law.

Currently, Clive is engaged in doctoral studies at RMIT University, working under the supervision of Distinguished Professor Anthony Forsyth and Professor Shelley Marshall. His research focuses on the decline of collective bargaining coverage in Australia under the Fair Work Act, with the objective of identifying ways to counteract this decline. His work employs a strong comparative method to identify aspects of foreign collective bargaining systems that may inform and inspire potential reforms to Australian collective labour law.

Alan Toy is a Senior Lecturer in Commercial Law and the Assistant Dean Postgraduate Research at the University of Auckland Business School. Alan was one of the architects of the Master of Information Governance (MInfoGov) which commenced in 2021. Alan teaches two courses in this

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