

MLL342 WORKPLACE LAW

TOPIC 1

INTRODUCING WORKPLACE LAW

- What is labour law?
 - o See pp 1-2
 - o Concerned with the relationships between employers and employees
- Balances what would otherwise be a relationship heavily weighted in favour of the employer
- BUT an issue arises today as fewer employees are engaged under a formal employment contract
 - o Casuals, agency-based, contractors, etc.

WORKPLACE OR INDUSTRIAL RELATIONS

- Relationship between workers and employers is not only a legal one
 - o It is also an economic one – workers exchange their labour in return for wages or salary, and the product of the employees labour will normally yield the employer profit or benefit
- All relationships arising out of the relationship between workers and employers may loosely be called *labour relations*, *industrial relations* or *workplace relations*
- See Fox et. al. pp 5-6 for comparison of workplace relations with that of family, prison, and military, and the impact of industrialisation on traditional employer/ee relationships
- While pay and related matters are important, they are only part of industrial relations
 - o equally as important is the way supervisors are to approach workers; control over job content and methods; promotion systems; hiring and termination etc.

SIGNIFICANCE OF EMPLOYMENT AS A SOCIAL RELATIONSHIP

- Lives often revolve around work, and the loss of a job can be shattering emotional, as well as economic, trauma
- This is relevant when the law's growing recognition of the significance of employment as a social relationship is analysed
- The right to engagement in work, acknowledges that individuals, can be increasingly integrated into society

POLITICS AND LABOUR LAW

- Illustrated importantly by the legislative reforms which heard from 2005-09
- There is a very clear link between change in governing political parties on the one hand and the policy and legislative revision and reform on the other
 - o This can be clearly illustrated by tracking the reform history of labour law legislation and the correlating government at the time: C Fox and M Pittard
- Implementation of Work Choices (*Workplace Relations Act 1996*) by the Howard government, caused controversy over whether the reforms affected employees
 - o One study found that the reforms allowed for increased bargaining power for employers

STATE AND GOVERNMENT INTERVENTION IN LABOUR RELATIONS IN AUSTRALIA

Nature and significance of State's role

- State intervention occurs at a variety of levels:

- *Establishment of an independent tribunal*
Autonomous industrial tribunal to mediate disputes, and in appropriate circumstances, make rulings and orders or impose upon the parties arbitrated settlements having the force of law
Initially at state level, and then federal level
- *Legislated standards*
The standards are legislated by accident parliament
Typically regulate workplace health and safety or levels of compensation for industrial injury, and also create and regulate trade themselves
The federal parliament has recently legislated directly some standards in *FWA*
- *Courts of law*
Ordinary courts of law shape the common law and the manner in which applies to industrial relationships
- Intervention by the state in matters of industrial relations ought be 'fair and reasonable'
Important balance to be struck between the interests of the economy and the interests of individual workers

WORK CHOICES

- Introduced AWAs into the WR Act
- AWAs were individual statutory agreements between an employer and employee which had to be approved by a public authority
- Key aspects were:
 - o Supremacy of AWA over collective agreements
 - o Removal of the 'no disadvantage' test so that AWAs neither needed to meet basic award conditions, nor disadvantage the employee overall
 - o Dismantling of unfair dismissal protection for most employees
- Enterprise bargaining took place without resort to compulsory arbitration, and no new awards could be made
- Employees were less protected to market influences and the system became less regulated
 - o Still regulated in the sense that there were some safeguards wrt AWAs, and certain matters could not be subject matter of AWAs

NEW WAVE OF REGULATION

- FW Act set up a system of collective enterprise bargaining underpinned by legislated and award standards
- Aims to provide for a system of efficiency and productivity in workplaces while maintaining fairness to workers
- See Fair Work Bill p 26
- Following features:
 - o Collective bargaining to be returned as the dominant method of determining conditions of employment against a background of the agreement not making employees worse off against a safety net standard, but with no individual statutory agreements (AWAs);
 - o re-institution dismissal protection for employees;
 - o the right to strike to be maintained as well as the secret ballot laws but essentially there were no changes to the controls on industrial action and certainly no strikes during the life of an agreement
 - o awards were to be modernised safety net legislated containing 10 National Employment Standards

SOURCES OF LEGAL OBLIGATIONS