

Workplace Law Summary (Entire Notes Package)

Topic 1: Sources of Employment Law

Australian employment law is derived from:

- Common law (employment contracts)
- Statute
- Modern Awards
- Enterprise Agreements
- Workplace policies

Key Sources

- *Fair Work Act 2009* (Cth)
- National Employment Standards (NES)
- Modern Awards
- Enterprise Agreements

Exam Question

Which source of law governs the dispute?

Topic 2: Employee v Independent Contractor

The threshold issue in many problems.

Why It Matters

Employees receive:

- Unfair dismissal protection
- General Protections
- NES entitlements
- Award coverage

Contractors generally do not.

Key Cases

- *Hollis v Vabu Pty Ltd* (2001) 207 CLR 21
- *CFMMEU v Personnel Contracting Pty Ltd* (2022) 275 CLR 165
- *ZG Operations Australia Pty Ltd v Jamsek* (2022) 275 CLR 254

Key Factors

- Control
- Delegation
- Integration
- Financial risk
- Equipment

Topic 3: Employment Contracts

Employment relationships are contractual.

Core Issues

- Formation
- Interpretation
- Workplace policies
- Lawful directions
- Implied terms

Key Cases

- *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410
- *Romero v Farstad Shipping* (2014) 231 FCR 403
- *Commonwealth Bank of Australia v Barker* (2014) 253 CLR 169

Key Principle

Policies are not automatically contractual.

Topic 4: Workplace Equality & Discrimination

Employers must not discriminate based on protected attributes.

Protected Attributes

- Sex
- Race
- Disability
- Age
- Religion
- Family responsibilities

Types

Direct Discrimination

Less favourable treatment.

Indirect Discrimination

Neutral rule causing disadvantage.

Key Cases

- *Banovic*
- *Purvis*
- *Schou*
- *Richardson v Oracle*

Key Provision

- s 351 *Fair Work Act*

Topic 5: General Protections

One of the most important parts of the course.

Core Sections

- s 340 Workplace Rights
- s 342 Adverse Action

- s 346 Industrial Activity
- s 351 Discrimination
- s 361 Reverse Onus

Formula

Workplace Right

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Adverse Action

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Causation

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Reverse Onus

Key Case

Board of Bendigo Regional Institute of TAFE v Barclay (2012) 248 CLR 500

Exam Trigger

Employee complains and is later disciplined or dismissed.

Topic 6: Termination of Employment

Employment may end through:

- Notice
- Summary dismissal
- Resignation
- Constructive dismissal
- Redundancy

Key Cases

- *Blyth Chemicals Ltd v Bushnell* (1933) 49 CLR 66
- *Mohazab v Dick Smith Electronics Pty Ltd* (1995) 62 IR 200
- *Elisha v Vision Australia Ltd* (2024) 98 ALJR 379

Key Principle

After *Elisha*, psychiatric injury damages may be recoverable for breach of employment contracts.

Topic 7: Unfair Dismissal

Part 3-2 *Fair Work Act*.

Core Sections

- s 382 Eligibility
- s 386 Dismissal
- s 387 Harsh, Unjust or Unreasonable
- s 389 Genuine Redundancy

Key Case

Selvachandran v Peteron Plastics Pty Ltd (1995) 62 IR 371

Formula

Eligible?

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Dismissed?

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Valid Reason?

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Procedural Fairness?

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Redundancy?

Topic 8: Work Health & Safety

Employers owe duties to provide safe workplaces.

Includes

- Physical safety
- Psychological safety

Key Cases

- *Baiada Poultry Pty Ltd v R* (2012) 246 CLR 92
- *Bowker v DP World Melbourne Ltd* [2014] FWCFB 9227

Exam Trigger

Bullying, stress, harassment or psychological injury.

Topic 9: Workplace Bullying

Section 789FD

Bullying requires:

1. Repeated behaviour
2. Unreasonable behaviour
3. Risk to health and safety

Defence

Reasonable management action carried out reasonably.

Remedy

Stop Bullying Orders.

Topic 10: Remuneration & Wage Theft

Issues

- Underpayment
- Classification
- Penalty rates
- Overtime
- Wage theft

Key Provisions

- s 323 Payment Obligations
- s 324 Deductions

- s 550 Accessorial Liability

Exam Trigger

Employee paid less than award entitlement.

Topic 11: National Employment Standards (NES)

The statutory minimum safety net.

Key Rights

- Maximum hours
- Flexible work
- Annual leave
- Personal leave
- Public holidays
- Notice
- Redundancy pay

Key Provisions

- s 62
- s 65
- s 117
- s 119

Exam Question

Has the employer breached the NES?

Topic 12: Modern Awards

Industry-based minimum standards.

Common Issues

- Coverage

- Classification
- Penalty rates
- Overtime
- Allowances

Key Provision

- s 45 FWA

Exam Question

Which Award applies?

Topic 13: Enterprise Agreements

Collective workplace agreements.

Key Provisions

- s 172
- s 186
- s 193
- s 228

Key Concepts

- Good faith bargaining
- BOOT
- FWC approval

Key Case

Toyota Motor Corporation Australia Ltd v Marmara [2014] FCAFC 84

Topic 14: Industrial Action

Industrial action is generally unlawful unless protected.

Key Provisions

- s 19
- s 413

Requirements

- Bargaining underway
- Protected Action Ballot
- Notice
- Genuine bargaining

Key Case

Esso Australia Pty Ltd v Australian Workers' Union (2017) 262 CLR 104

The 10 Most Important Cases

1. *Hollis v Vabu*
2. *Personnel Contracting*
3. *Jamsek*
4. *Barker*
5. *Purvis*
6. *Barclay*
7. *Mohazab*
8. *Selvachandran*
9. *Elisha*
10. *Esso*

The 10 Most Important Sections

Section	Topic
s 15AA	Employee test

s 44	NES breaches
s 45	Award breaches
s 65	Flexible work
s 117	Notice
s 323	Payment obligations
s 340	Workplace rights
s 342	Adverse action
s 361	Reverse onus
s 385	Unfair dismissal

Final Exam Formula

WHO?

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EMPLOYEE OR CONTRACTOR?

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WHAT HAPPENED?

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WHICH CAUSE OF ACTION?

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WHICH STATUTE?

↓

WHICH SECTION?

↓

WHICH CASE?

↓

APPLICATION

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DEFENCE

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REMEDY