

WORKPLACE REVIEW

Volume 8, Number 1

Autumn 2017

| | |
|---|----|
| EDITORIAL | 3 |
| FOCUS ON SOUTH AUSTRALIA | |
| The new South Australian Employment Court: What does its expanded jurisdiction potentially mean? – Rick Manuel | 5 |
| FOCUS ON WESTERN AUSTRALIA | |
| When “one and the same” means “one and the same” for Western Australian employees and long service leave – Duncan Fletcher and and Kathryn Maric | 8 |
| ARTICLES | |
| Investing in people – Dr John Falzon | |
| Instead of putting people down and blaming them for their own exclusion, it is time to look elsewhere, writes Dr John Falzon. Identifying structural factors as accounting for poverty and inequality in Australia, including as manifested in unemployment, underemployment, and insecure employment, he argues against punishing the vulnerable. Rather, he sees the solution to poverty and inequality lying not in cutting penalty rates, for example, but in policies of comprehensive, people-centred investment. | 10 |
| Thinking outside the square: Long Service Leave today – Ashleigh Mills | |
| In a modern workforce, Australians are – perhaps more than ever – in need of reprieve and in need of recuperation. But what does that “reprieve” and “recuperation” look like today? And what should it look like into the future to ensure that Australian workers function at a level that promotes both greater productivity for businesses and a sustainable work-life balance for themselves? Long Service Leave (LSL) has long featured as a “carrot” in Australia’s industrial relations system, designed to attract employees toward the promise of an extended break following years of loyal service with one employer. However, in recent years, the question of whether LSL can and must be adapted to the needs of an evolving, often over-worked and ageing workforce has been frequently asked and vehemently debated. This question is important, but is there a more important one to ask? | 12 |
| Complaints and inquiries: Pain in the neck or workplace right? – Neil Napper and Luke Scandrett | |
| When can an employee avail themselves of the protection provided by s 341(1)(c)(ii) of the Fair Work Act 2009 (Cth), to complain or inquire about their employment without suffering retribution from their employer? This article considers the parameters of the protection, as ascertained from an examination of differing interpretations of the section’s pertinent elements – “able to”, “complaint or inquiry”, “in relation to employment” – in various decisions of the Federal Courts and Fair Work Commission. Based on their | |

| | |
|---|----|
| conclusions, Neil Napper and Luke Scandrett offer suggestions about how employers should navigate the section and respond to claims brought under it. At a minimum, they recommend employees should be provided with an outline of the reasons for their dismissal. | 16 |
| “The King’s Shilling”: Military industrial relations in Australia – Jeffrey Phillips SC | |
| Jeffrey Phillips SC was appointed to the part-time position of Defence Force Advocate in February 2015. This is an edited version of a paper he delivered in Canberra in February 2017 to members of the Directorate of Military Remuneration, Defence People Group, and members of the tri-services’ industrial relations cells. | 20 |
| The insidious abuse of Section 389(1)(a) – Bruce Taylor | |
| Against a background of recent well-publicised cases of companies in the retail and fast food industries massively underpaying their employees, Bruce Taylor suggests the Fair Work Act 2009 (Cth) is a contributing factor. He argues that a broad interpretation of “genuine redundancy” under s 389(1)(a) of the Act by the Fair Work Commission, is enabling companies to replace their employed workforces with subcontractors, resulting in the twin injustices of lost jobs and increasing underpayment of workers. | 26 |
| INTERVIEW | |
| Jeffrey Phillips SC: His (and others’) strong points of view – Craig Ryan | 28 |
| WORK HEALTH AND SAFETY | |
| Finding strength in our vulnerabilities: The case for building resilience in integrated systems for safety and security – Alena L Titterton | 33 |
| BOOK REVIEW | |
| Macken’s 8th edition: A welcome, “venerable”, addition – reviewed by Neil Napper | 41 |
| THE LAST WORD ... | |
| Miscellany of the legal world – Jeffrey Phillips SC | 43 |
| DIARY | 46 |
| INDEX | 48 |