WORKPLACE REVIEW

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EDITORIAL – *General Editor: Neil Napper* 3

FOCUS ON SOUTH AUSTRALIA – *Editor: Rick Manuel*

Enforcing Safety in Workplaces

For employers alleged to have contravened the *Work Health and Safety Act 2012* (SA), there is an alternative to prosecution in the form of a limited availability under the Act to give enforceable undertakings. Rick Manuel considers what is involved, suggesting that undertakings are not an easy way out and that they may contribute to making workplaces safer. 6

ARTICLES

Sir Owen Dixon – Federalism and His Contribution to the Development of Commonwealth Power – *Anton Duc*

Sir Owen Dixon's contribution to the understanding of Commonwealth power vis a vis the States originated from his unique interpretation of the Engineers' Case – a case which signalled a fundamental shift in the allocation of Federal powers. The article examines Dixon's legacy in the field of federalism, in such cases as *Australian Railways Union v Railways Commissioners (Vic), West v Commissioner of Taxation, City of Essendon v Criterion Theatres Ltd,* and *Melbourne Corporation v Commonwealth,* wherein Dixon recognised Federal implications in the Constitution, which, since Engineers, had been read literally. Dixon read the Constitution as a federalist document with necessary implications for the protection of the States against discriminatory Federal legislation that threatened to infringe their powers. Despite his reading, the High Court in more recent decades has undertaken an expansive interpretation of Commonwealth powers which allowed Federal incursions into areas traditionally reserved to the States: eg the Work Choices Case. A modern revival of Dixon's federalist reading of the Constitution has, however, served to counter the centralist trend by limiting Commonwealth power and reasserting the role of the States: eg *Williams v Commonwealth*. 8

An Implied Term of Good Faith? – *Glenn Fredericks*

The existence and possible scope of an implied term in contracts which requires parties to act in good faith, has been considered in a number of Australian decisions. Despite this, the existence of such a term continues to be a matter of some dispute. This article considers the recent history of this term in NSW and elsewhere, particularly in the context of the contract of employment. 19

Workers' Rights in the Gig Economy – *Justin Pen*

Workers in the gig economy deemed to be "independent contractors", lack access to a number of fundamental labour protections enshrined in the *Fair Work Act 2009* (Cth). Gig economy workers cannot enjoy the benefits guaranteed under the National Employment Standards, a set of minimum criteria which have been developed over decades as an expression of basic community standards; cannot engage the unfair dismissal process,

relegated to bringing costly and difficult claims based in contract for wrongful termination; and cannot participate in collective organizing, curtailing their ability to enter into enterprise bargaining or take industrial action. Absent some legislative intervention to address these shortcomings, the incidence of precarious work, and the gig economy's accompanying unscrupulous labour practices, will continue to surge. 26

"The King's Shilling" – Mark 2: The History of Wage Setting in Australia and Its Relevance for the Determination of Military Remuneration – *Jeffrey Phillips SC*

The author is Australia's Defence Force Advocate. This is an edited version of a paper he gave in Canberra on 6 February 2018 at the Directorate of Military Remuneration's annual conference. 30

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