

# WORKPLACE REVIEW

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## ARTICLES

### **Depth in Goodbyes** – *David Nikolas Brodsky*

Turnover, for better or worse, presents economic costs to businesses and economic and/or emotional costs to employees. In a perfect world, each party would understand the full impact of termination of employment on the other, in order to “do” turnover well. Meeting in the middle might start with employers extending themselves first. This article aims to shine a brighter torch on decisions around termination of employment, for the initial benefit of business leaders’ knowledge, and with positive flow-on effects for employees through the application of that knowledge. .... 8

### **Cross-examination on Credit Issues** – *Richard Burbidge QC*

In the author’s contribution to the Winter 2021 edition of *Workplace Review* he focused on providing a general introduction to the very wide topic of cross-examination. In this contribution, the author instances some of the ways in which questions of credit generally arise in litigation and how cross-examination might proceed, including by providing first person accounts of some of his own experiences in conducting cross-examinations. .... 12

### **Respect@work: Ensuring Your Client’s Policies Support Employee Rights** – *Virginia Ginnane*

With the enactment of the *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* (Cth) employers are on notice to put sexual harassment, gender equality and other relevant policies in place as soon as possible, writes Virginia Ginnane. Regular training of employees will also be required to guarantee the effectiveness of the extended protections provided by the Act. .... 16

### **Comment: WorkPac Pty Ltd v Rossato and Freedom of Contract** – *Dr Ryan Haddrick*

The High Court’s decision in *WorkPac Pty Ltd v Rossato* was not a revolution in employment law, argues Ryan Haddrick. Rather, it affirmed the contract as the primary determinant of the character of the legal relationship between the putative employer and employee, with written terms of such a contract being the point of reference, not other considerations such as “unspoken” contemplations or expectations. Taking issue with other commentators on the decision, Haddrick maintains that it is properly the function of Parliament, not the courts, to provide employment rights to protect employees against alleged superior bargaining power. In this respect he notes by way of example, new ss 66A to 66M of the *Fair Work Act 2009* (Cth) as providing additional rights to casual employees. .... 18

## **“Incapacitated for Work” in SA’s Return to Work Act – Rick Manuel**

South Australia’s *Return to Work Act 2014* provides a basis for workers who have suffered work injuries to be able to return to work. By reference to the recent decision of *Coleman-Sleep v Return to Work Corp of South Australia (Ceduna Koonibba Aboriginal Adelaide Health Service)*, Rick Manuel considers the operation of the Act, in particular its s 18 which obliges an employer to provide suitable employment for their employee who has suffered a work injury and who is able to return to work. Notwithstanding *Coleman-Sleep* and other decisions by the South Australian Employment Tribunal advancing interpretation of s 18, clarification of the parameters of the Act’s complex provisions await decision by the Supreme Court of South Australia. .... 23

## **“Freedom” – A Workplace Issue – Craig Ryan**

The lifting of lockdowns and reopening of Australian society undeniably speaks to the well-founded longing of many for reconnection with family and friends and resumption of old lives. The opening-up strategy is also propagated as equating with “freedom”. This article considers the meaning of the freedom thus being popularised, and argues for a broader idea of freedom to found the way forward; one premised on understanding all dimensions of the pandemic and its impact, and on recognizing our collective responsibility for each other as we deal with the continuing crisis. .... 26

## **Wage Theft: From Underpayments to Epidemic – Adam Searle**

Wage theft emerged into popular consciousness through a series of high profile media exposes involving household-name businesses failing to pay their workers – on a scale that was shocking to the community. This gave momentum to a political campaign, commencing in New South Wales (NSW), in support of laws that criminalised wage theft. Wage theft became a key dividing line in modern politics at both State and Federal levels. This article examines this development and the wage theft laws enacted in Queensland and Victoria. It concludes with some observations about what a NSW wage theft law might look like. .... 30

## **Reputation Management – Jacquelynne Willcox**

Getting the “zeitgeist” is essential to the salvaging of corporate reputations, argues Jacquelynne Willcox. By way of example, she recounts how, at a time of popular outrage after months of revelations of the unfair, disproportionate, and shocking treatment of women in the workplace, former Australia Post CEO Christine Holgate won a public opinion victory when her legal and public relations team “tapped into the imagery” of powerful men judging women harshly. Similarly, the formerly reviled banking sector rebuilt its credibility by honing listening skills to recalibrate its relationship with the public, and by extension, government. .... 37

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