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**Articles**

[The Reflection of Administrative Law Principles in the Regulation of Employer Power to Control, Manage and Discipline Employees at Common Law](#)

— *Caroline Kelly*

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This article examines the reflection of administrative law principles in the regulation of employer power to control, manage and discipline employees during the employment relationship at common law. It argues that mapping the presence of principles that resemble those that have developed in the administrative law context is worthwhile because it assists us in understanding labour law itself and raises important questions about the nature and extent of employer power and how it should be constrained. This article examines three examples of how the regulation of employer power to control, manage and discipline employees during the employment relationship at common law reflects the principles of judicial review — the duty of obedience and its parallels with legal unreasonableness and *ultra vires*; the way in which the upholding of workplace policies as contractual can mirror the enforcement of a legitimate expectation; and the application of legal unreasonableness to the exercise of contractual discretion. It then considers the impacts of the recent approach of the High Court of Australia to the common law contract of employment. This article ultimately offers several key observations about the way in which administrative law principles are reflected in the regulation of employer power to control, manage and discipline employees and argues that such principles can be, and are already, utilised in the labour law context in a way that is not incoherent.

[Sunsetting Zombie Agreements: The Impact of Stale Agreements on Safety Net Rights for Workers](#)

— *Shae McCrystal*

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Invoking the horror movie concept of the walking dead, the term ‘zombie agreement’ describes a statutory enterprise agreement that was created before the enactment of the Fair Work Act 2009 (Cth) (FW Act), whose continued operation was enabled by transitional legislation passed at the same time as the FW Act. By 2023, many of these agreements were still in operation, such that employment arrangements at some Australian workplaces were governed by enterprise agreements that had been created last century.

On 6 December 2023, as a result of changes effected by the passage of the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth) (SJBPA Act), the operation of almost all remaining zombie agreements ceased. The only zombie agreements which did not automatically terminate on that date were those whose operation had been extended (for a maximum of four years) by order of the Fair Work Commission (FWC) or those where an application for extension had been made but not determined. The body of FWC decisions considering zombie extension applications casts new light on the nature and content of zombie agreements, and in particular their relationship to the modern award safety net.

Enterprise agreements created since the commencement of the FW Act were not impacted by the change. Some FW Act agreements have become decidedly 'stale', having been in operation for potentially as long as 16 years. The impact of stale enterprise agreements on safety net rights for workers is a little-understood and researched aspect of the Australian agreement-making landscape. This article explores the history of zombie agreement-making under the federal industrial relations system through examining the lifecycle of a zombie agreement, and the legislative framework that facilitated its continued operation. Through this history, and an exploration of zombie extension decisions by the FWC, the article demonstrates the corrosive effect on worker safety net rights of enterprise agreements that continue to operate well beyond their original terms and proposes that all stale agreements should be given a sunset date.

## Two Years of Multi-Employer Bargaining: A Work in Progress

— *Larissa Harrison & Anthony Forsyth*

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The Albanese Government's Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth) included provisions aimed at increasing collective bargaining coverage by providing options for bargaining to occur beyond the level of the single enterprise. The Government's main objective, in widening access to collective bargaining through two new streams of multi-employer bargaining, was to lift workers' real wages after a decade of wage stagnation. In this article, we examine how the new multi-employer bargaining provisions have been operating since they came into effect on 6 June 2023, beginning with an analysis of the statutory provisions and how they have been applied by the Fair Work Commission. We also explore the approach taken by the United Workers Union in seeking to make effective use of multi-employer bargaining. We conclude with a preliminary assessment of the new arrangements for multi-employer bargaining, identifying some problems and gaps in the legislative provisions. We conclude that while the provisions amount to a significant policy intervention, as very few multi-employer agreements have been made to date, further reforms should be considered to ensure that the uptake of multi-employer bargaining accelerates.

## Case Note

### Reframing *Addis*: A Clarification of the Law of Damages for Psychiatric Injury in Dismissal in *Elisha v Vision Australia Ltd*

— *Adriana Orifici*

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In *Elisha v Vision Australia Ltd*, the High Court of Australia clarified the common law of contract in Australia by determining that damages are available to an employee who suffers a psychiatric injury caused by the manner of their dismissal, and by its characterisation of the scope of remoteness of the claimant's psychiatric injury by reference to a social fact. This article examines how this decision clarifies the law of damages under the contract of employment. It also considers how the decision reveals differences in the development of the common law of contract in Australia and the United Kingdom. I argue that this decision will influence employer practices, including by encouraging reticence in the drafting of terms in employment contracts and policies and procedures that relate to discipline and dismissal.