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(guest editors' introduction and articles included in this part are linked to the LexisNexis platform)

CONTENTS

Guest Editors' Introduction

The Fair Work Act 2009 (Cth) has reached the significant milestone of 10 years in operation, and is the first Australian labour law regime to endure so long since the first moves away from conciliation and arbitration in the late 1980s. This Special Issue brings together expert analyses that address aspects of the Act that have received relatively little scholarly attention, such as the National Employment Standards, modern awards and union right of entry, as well as key issues including wages and agreement-making, enforcement of the Act and individual protections and the overall state of Australian unions. In this introduction to the Special Issue, we look back at the political and academic debates surrounding the Fair Work Act over its first decade of operation. This review reveals an apparent paradox — whereas academic analyses point to a 'multifaceted crisis' of wage stagnation, declining collective agreement coverage and underpayment of wages, two major reviews of the Act have concluded that the legislation is operating effectively to achieve its objectives. The other articles in this special issue identify shortcomings of the Fair Work Act and propose constructive improvements in their focus areas. However, we suggest that Australian labour law will effectively grapple with addressing the current crises only if debates interrogate the normative principles underpinning the law. In particular, we call for a fundamental rethink of Australia's 'enterprise bargaining' model.

Articles

Since 2013 Australia's labour market has experienced the weakest sustained rate of growth in wages in its postwar history. Nominal wage growth slowed to half or less its traditional pace, and real wage growth has been essentially non-existent. This article first describes the empirical dimensions of the slowdown in Australian wages. It then considers the impact of the Fair Work Act 2009 (Cth) on wage growth over the last decade, through three distinct channels of influence: minimum wage regulation, the operation of the modern awards, and regulation of collective bargaining. The article concludes that while the slowdown of wages cannot be ascribed to the incremental impacts of the Fair Work Act per se, the legal and regulatory regime established by the Act has failed to support normal wage growth in the face of decelerating pressures. Broad suggestions for reforms to strengthen the Act's effectiveness in lifting wages are suggested.

trifling and the enforcement framework generated very little discussion, let alone debate. Early reviews of the Office of the Fair Work Ombudsman generally reached positive conclusions about the level of employer noncompliance and the Fair Work Ombudsman's overall response. However, the tide turned in 2015 following the 7-Eleven underpayment scandal. Since this time, there has been, and continues to be, a sense that there is now an enforcement crisis. While the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 (Cth) introduced a number of far-reaching reforms, many believe more needs to be done. This article charts some of the most critical forces which have shaped compliance promotion and enforcement processes over the past 10 years and reflects on how this response may continue to evolve into the future.

This article examines the extent to which the 'adverse action' provisions in Part 3-1 of the Fair Work Act 2009 (Cth) provide effective protection in relation to two central, but as yet unexplored, issues of equality: reasonable accommodation in relation to attributes including disability and family or carer's responsibilities, and sexual harassment. It concludes that Part 3-1 is deficient in relation to both these matters, and requires legislative amendment.

The decade in which the Fair Work Act 2009 (Cth) has been in operation has continued to present challenges for the Australian union movement. Despite high hopes that the 2009 legislation's support for collective bargaining would deliver positive outcomes, enterprise agreement coverage and union membership levels have declined further. The Australian Council of Trade Unions' Change the Rules campaign highlighted the Fair Work Act's deficiencies, exacerbated by employer 'gaming' and judicial interpretation. The campaign proposed reforms to give unions a realistic prospect of countering capital's ability to constantly reinvent itself through new business models. This article analyses the experience of Australia's union movement in the Fair Work Act era, exploring how key features of the 2009 statute have operated, and assessing the Change the Rules campaign in light of the 2019 federal election outcome. This discussion is situated in the context of the Coalition Government's attempts to restrict union power and influence since 2013. Overall, the article argues that while legislative change will no doubt assist unions to represent and bargain for workers, innovative approaches to membership structures and activism are also required to rebuild union strength.

Australia's trade union movement faces significant restrictions on their ability to organise workers, due to right of entry provisions under the Fair Work Act 2009 (Cth) that limit union access to work spaces. These regulations are not new, being a consequence of decades of change made to regulate union access to work spaces. In particular, legal changes over time have restricted when unions can access work spaces, which spaces they can access, and have made the process complex and subject to agreement between an employer and union over 'reasonable access'. Throughout this article, we

showcase that geography is crucial to understanding right of entry. We analyse how the social regulation of space and time in the workplace, and the rescaling of industrial relations laws, have significantly constrained the agency of workers, and in turn the capacity of unions, collectively to improve working conditions at workplaces across Australia. In response, some unions have attempted to find new ways of organising beyond the workplace, with some success. However, it is yet to be seen if new approaches can overcome the challenge that restricted access to work spaces has on the capacity of employees to improve their working lives. As such, unions continue to believe that there is no adequate replacement for access to work spaces, and therefore remain focused on achieving legislative change that would allow greater access to work spaces. Nonetheless, with no legislative change in sight in the near future, the union movement will need to more widely adopt an organising approach beyond work spaces if they are to prevent further membership decline.