

# Australian Journal of Labour Law (AJLL)

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(articles, practice and procedure and book review included in this part are linked to the LexisNexis platform)

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#### Articles

##### [Road Transport Regulation, Safety and Prospects for the ‘Gig Economy’](#)

— *David Peetz*

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The road transport industry has long experienced high rates of contractor work (by ‘owner-drivers’) and been characterised by low pay, incentives to drive fast and skip breaks, driver fatigue, use of drugs and stimulants, overloading, long working hours, poor safety, and insolvencies. Long hours in the industry are linked to poor general health, severe psychological distress and near-misses. In recent years two models of regulation of road transport have gained attention: the short-lived federal Road Safety Remuneration Tribunal (RSRT) and the long-lived (and still surviving) Chapter 6 of the Industrial Relations Act 1996 (NSW). This article explores the impact of Chapter 6 regulation on road safety in the trucking industry in New South Wales. It outlines the industry’s safety problem and its brief experience with the RSRT; discusses the theoretical considerations relevant to the regulation of pay in the road transport industry; examines the history leading up to the introduction of Chapter 6; and discusses how the NSW Industrial Relations Commission regulates minimum standards and plays other roles in the industry such as conciliation and dispute resolution. Most importantly, it investigates the impact of Chapter 6 regulation, in particular on safety, through quantitative analysis of road fatality statistics over three decades. It concludes with consideration of the theoretical implications of these experiments for the concept of ‘directed devolution’, and the potential practical implications for the regulation of the platform or ‘gig’ economy for independent courier drivers and riders. In concluding, it also touches on the question as to why the Chapter 6 and RSRT models differed so much in their longevity.

##### [‘Structural’ and ‘Transactional’ Exploitation in the Workplace and Beyond: Examining the Treatment of Temporary Migrant Workers in Australia](#)

— *Sayomi Ariyawansa*

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The term ‘exploitation’ is routinely used to describe the mistreatment and abuse of temporary migrant workers in Australia, yet there has been little theoretical engagement with the concept of ‘exploitation’ and what it means in this context. It is rarely defined and most often used to describe conduct that is already unlawful, and thus *prima facie* wrongful. Why then, do we use the term ‘exploitation’, beyond its rhetorical heft? This article argues that there is a need to use the term with greater precision — to examine what, exactly, is exploitative about the treatment of these workers. It focuses on the concepts of ‘structural’ and ‘transactional’ exploitation, explains how these concepts may be interlinked, and argues that the exploitation of temporary migrant workers in Australia may be both transactional and structural in nature. The article also suggests how the distinction between transactional and structural

exploitation provides important conceptual tools for analysing, with more precision, how temporary migrant workers are exploited in Australia — as well as, importantly, the tools to examine responses to the problem of exploitation.

## Practice and Procedure

### Section 323 of the Fair Work Act 2009 (Cth): Can It Enforce Contractual Entitlements?

— *Tae Kim*

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Section 323 of the Fair Work Act 2009 (Cth) requires an employer to pay an employee all amounts that are payable to the employee in relation to the performance of work. This article examines whether, and if so how, s 323 can be utilised to enforce contractual underpayments. Authorities at the Full Federal Court level suggest that s 323 provides an enforcement avenue for contractual entitlements. However, the High Court has yet to consider this issue. This article demonstrates that, notwithstanding the existing authorities, the precise application of s 323 to contractual entitlements remains unclear and this has caused a significant degree of uncertainty for litigants. A case is made to suggest that, notwithstanding the present prevailing view at Full Federal Court level, s 323 should not be construed so as to provide a general right to enforce any payment obligation, including payment obligations that arise under contract.

## Book Review

### *For Labor to Build Upon: Wars, Depression and Pandemic* by William B Gould IV

— *Braham Dabscheck*

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