

Australian Journal of Labour Law (AJLL)

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

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Articles

[A Balancing Act: The Difficulties of Detecting Labour Violations and the Implications for Employer Compliance and Deterrence](#)

— *Tess Hardy, Sean Cooney and John Howe*

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The detection of legal violations is a critical element of regulation and is central to delivering deterrence, and yet it has frequently been overlooked in existing scholarship on labour standards enforcement. Combining a summary of the literature on information-gathering and monitoring with a detailed examination of Australia's main labour inspectorate, the Office of the Fair Work Ombudsman ('FWO'), we critically analyse the tools and techniques used to identify breaches of wage and hour regulation. Building on literature concerned with the model of 'strategic enforcement', we argue that reliance on complaints alone is inadequate. To ensure resources are funnelled towards the most pressing issues, the most concerning employers and the most vulnerable workers, proactive detection methods are essential. Our study of the FWO reveals however, that in shifting away from a complaint-centred model and implementing alternative detection strategies, labour inspectorates may have to overcome a series of practical and political challenges.

[The Road to Reform: Lessons from International Jurisdictions for Legislative Regulation of Non-Disclosure Agreements in Workplace Sexual Harassment Matters in Australia](#)

— *Madeleine Causbrook*

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In July 2022, the Australian Government committed to implementing all 55 recommendations of the Australian Human Rights Commission's Respect@Work Report, including a recommendation to develop best practice principles for using Non-Disclosure Agreements ('NDAs') in workplace sexual harassment matters. This reflects a trend of increasing recognition by Australian governments that more needs to be done to regulate NDAs in these matters. In this article, I examine legislative and policy approaches to regulating NDAs in workplace sexual harassment matters from Ireland, Prince Edward Island, New York, New Jersey and California. Drawing on these approaches, I argue for the need for legislation in Australia to prohibit NDAs in workplace sexual harassment matters unless they are requested by complainants. In particular, I propose several law and policy reform principles for NDA reform to enhance the ability of complainants to make informed and supported decisions on confidentiality, while protecting the key rights and interests of others.

[Termination of Enterprise Agreements under the Fair Work Act: A Systematic Document Analysis](#)

— *Alex Veen, Stephen Clibborn and Joseph McIvor*

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Following the Fair Work Commission Full Bench's decision in *Re Aurizon Operations Ltd* ('Aurizon'),

there was a rise in applications to terminate nominally expired enterprise agreements under s 225 of the Fair Work Act. This led some to claim that the *Aurizon* decision precipitated an increase in managerial assertiveness, while others viewed it as a sign of a broken bargaining system. To properly understand the *Aurizon* decision's impact, we examine the causes of changes in the rate of termination applications by evaluating every published s 225 decision of the Fair Work Commission from the commencement of the Act to March 2022. Where earlier scholarship on this issue was based on relatively small sample sizes, this article presents a comprehensive analysis of 1,807 publicly available s 225 decisions. It explores to what extent these applications have been contentious and finds that only a small minority of applications were controversial, with other economic and regulatory developments inflating the figures. We also highlight the largely underappreciated role of the Fair Work Commission in handling these applications, including its regulatory efficiency and commitment to facilitating enterprise bargaining.

Book Review

An Equal Place: The Struggle for Justice in Los Angeles, Scott
L Cummings
— Christopher Arup