

# PREFACE

This book is the result of thinking about labour law for more than 20 years, particularly for the purposes of explaining its purposes and principles to various cohorts of students. It is informed by my experience in teaching labour law related subjects at four Australian universities, in three different law faculties, and in two different Business Schools, to cohorts of undergraduate and graduate law students undertaking electives in Bachelor of Laws and JurisDoctor programs, and to postgraduate students undertaking Masters degrees in Labour Law and Relations, or a management program.

It has been written in the hope that it will be the kind of book that is read from cover to cover, front to back, as a discursive introduction to the broad architecture and themes of labour law, suitable for anyone with an interest in understanding how work is regulated in Australia in the early decades of the twenty-first century. While written with university students particularly in mind, it is also intended to be a useful introduction to the subject for anyone wishing to understand Australian labour law.

A study of the law of work in all its forms would be a mammoth enterprise, comprising chapters on the history of human endeavour since the earliest agrarian times until our contemporary digital age, and would traverse productive and reproductive work, paid and unpaid, subservient and entrepreneurial. This book is both more modest and more ambitious in its aims. It is more modest, in presenting a limited set of topics essential for introducing the curious and intelligent but inexpert reader to key aspects of the law regulating working relationships in Australia. It is perhaps more ambitious, in seeking to frame those topics in a way that does not merely catalogue rules but provokes critical reflection on why our laws are as they are, and whether reform would produce laws better served to the challenges of our contemporary world. The Discussion Questions framed at the end of each chapter are intended to provoke further reflection on the adequacy of our labour laws, and proposals for reform.

A word about the primary title: *Labour Law*. Even the names we choose to give our systems of law reveal the values and priorities that our leaders and policy makers ascribe to work. At the turn of the twentieth century, this would have been a book about 'master and servant' law. When the author studied the subject in the 1990s, it was labelled 'employment and industrial law', reflecting an artificial bifurcation between the laws dealing with the individual relationship between employers and their staff, and the system of regulation dealing with industrial relations between capital and labour. The federal statute at that time was named the *Industrial Relations Act 1988* (Cth). During the Howard government's time in office (from 1996 until 2007) a political decision to diminish attention to industry-wide regulation of

labour relations resulted in major amendment to and renaming of this legislation as the *Workplace Relations Act 1996* (Cth), a name which purported to locate the single enterprise, or ‘workplace’, as the primary site for the regulation of work. Since the enactment of the *Fair Work Act 2009* (Cth) by an Australian Labor Party-led government, a preference has emerged for the term ‘labour law’—the word ‘labour’ encompassing the broad scope of interests, both individual and collective, of working people. Hence the title of this book.

The secondary title, ‘An Introduction to the Law of Work’, recognises that this book is an introductory work, and also that it follows an approach adopted by the author in her collaboration with Professor Rosemary Owens, in *The Law of Work* published in 2007. First, it is introductory. It is not an encyclopaedic work and does not promise answers to practitioners to every technical question that arises in employment law practice. Readers seeking a more comprehensive encyclopaedia of our labour laws are advised to consult more detailed treatises.<sup>1</sup> Hopefully it will nevertheless be of interest to lawyers in practice who would like to contemplate the broad themes of the field and gain an overall appreciation for how the various elements of our system of labour laws fit together, however imperfectly. It is necessarily selective in its choice of topics. The publisher’s brief was to produce a readable work of no more than 130,000 words, suitable for introducing the subject to students of labour law, so it focuses principally on the topics dealt with in Labour Law and Employment Law courses. It is necessarily more concise when covering topics such as Discrimination Law and Work Health and Safety, which are most often taught in separate courses at universities. It is not a ‘cases and materials’ book, but the suggested readings at the end of each chapter—particularly the suggested case extracts—may provide some guidance, to students of the law, on where to begin their reading of case law. There is absolutely no substitute for reading case law, if your mission is to become a lawyer yourself. Medium-neutral citations to the cases have been provided to make it easy for students to locate these extracts in freely available case databases.

Secondly, this is a sequel of sorts to *The Law of Work*. The content of the chapters has drawn on some of my own previous writings in that work published by Oxford University Press, first in 2007 with Professor Rosemary Owens, and again in a second edition in 2011, with Rosemary and also Professor Jillian Murray. The first edition of *The Law of Work* was written just after the passing of the notorious *Work Choices* laws, and the second soon after the commencement of the *Fair Work Act 2009* (Cth). I owe an abiding debt of gratitude to my coauthors on those much more extensive and scholarly volumes for their insights into the subject. Readers familiar with those works will see some of the themes and ideas revisited here, albeit in a more condensed form. Chapters 3 and 11 in particular owe much to the earlier work.

As is customary in prefaces to new works, I would like to acknowledge my debts also to other scholars. I must first acknowledge the inspiration I first gained from my own teachers in labour law, principally Associate Professor Greg McCarry, who first introduced me to the subject as an undergraduate law student myself, and my PhD supervisor and colleague for many years, Professor Ronald C McCallum at the University of Sydney. It has been a great privilege to learn from these leaders in the field.

1 For a comprehensive study of the law of employment, see C Sappideen et al., *Macken’s Law of Employment* 8th edn (2016) and M Irving, *The Contract of Employment* (2012). On labour law more generally, see A Stewart et al., *Creighton & Stewart’s Labour Law* 6th edn (2016).

In recent years I have learned a great deal—especially about discrimination at work and workplace dispute resolution—from the opportunity to work on joint research projects with Professor Therese MacDermott at Macquarie Law School in Sydney. I have also learned a great deal about methods for unpacking the subject of labour law for a variety of cohorts of students from my labour law colleagues at the University of Technology Law School: Michael Rawling, Eugene Schofield-Georgeson and Brett Heino. And before joining UTS, I had wonderful colleagues with whom to share delivery of an extensive labour law program at the University of Sydney Law School: Shae McCrystal, Kate Peterson, Belinda Smith, and two eminent silks who teach in that program, Elizabeth Raper and David Chin. Dr Troy Sarina at Macquarie Business School has also taught me much about ways of thinking about the subject from the perspective of students in human resources management.

Labour law is indeed a rich field, and I have been privileged to work with many great scholars over the years. Professor Mark Freedland at Oxford University showed me great generosity in inviting me to join one of his major projects, *The Contract of Employment* (Oxford University Press, Oxford, 2016). Professor Carolyn Sappideen and Paul O’Grady likewise afforded me the great honour of joining them as an author in two editions of the leading practitioner text on employment law, *Mackens’ Law of Employment* (Thomson, Sydney, 2011, 2016). Most recently, I have learned a great deal from collaborating with professors Gordon Anderson and Douglas Brodie on projects imagining a future for the common law in employment regulation. Many other scholars, in Australia and internationally, have enriched my understanding of the subject, and if I were to mention them all here in this Preface it would be a very long list indeed. Their names, and their influential works, can be found in the footnotes and additional references provided in each chapter, although, again, the need to produce a concise and not overly complex introduction to the subject has limited the scope for extensive reference to international scholarship.

I have attempted to state the law as it stood in December 2020. The Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill 2020 (Cth), tabled late in December, was referred to a Senate Committee to report in March 2021, so commentary on the proposed amendments in the Bill are necessarily tentative. In a rapidly evolving field such as this, readers are advised to keep an eye to new developments since the publication date. Writing commenced before anyone was aware of the coming pandemic and was concluded while we were still dealing with its social and economic impact. This is all the more reason for taking the approach chosen in this book. Although specific technical rules are susceptible to regular amendment, particularly in times of economic strain and political instability, the broad themes, purposes and principles of labour law are more abiding. A solid understanding of those broad themes places the student—and the reader more generally—in the best position to monitor technical amendments as they arise, and hopefully, to contribute themselves to the important debates we join in as working citizens, about desirable reforms in this field of law so important to our daily lives.

And speaking of our daily lives, I wish to thank my long-suffering husband for his patience while I worked, too often at home, messing up our shared ‘home offices’ in the kitchen and living room during the 2020 pandemic. Finally, I am pleased to dedicate this book to my granddaughter, Lilith May Behrman, barely two years old at the time of writing this. What brave new world of work will she enter, I wonder?

*Joellen Riley Munton*

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