EMPLOYMENT, LABOUR AND INDUSTRIAL LAW IN AUSTRALIA

*Employment, Labour and Industrial Law in Australia* provides a comprehensive, current and accessible resource for the undergraduate and Juris Doctor student.

With a social and political background to the law, this text provides insightful legal analysis underscored by practical business experience, while exploring key principles through a close evaluation of laws and lively discussion of prominent cases.

Recognising the multi-faceted nature of the subject, the authors have included content on employment, labour and industrial law in the one text, while also presenting critical topics not often dealt with, namely:

- current and in-depth analysis of trade union regulation
- public work including the public sector, the judiciary and academics
- workplace health and safety including worker’s compensation, bullying, anti-discrimination and taxation
- emerging issues including topics such as transnational and international employment law, migration and employment, as well as volunteers and work experience.

To maintain currency within this rapidly changing area of law, the text has a website which will include updates for any major developments in the field as well as responses to end-of-chapter questions.
Written by respected academics and practising lawyers in the field, *Employment, Labour and Industrial Law in Australia* is a relevant and contemporary guide to this fascinating area of law.

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For God, my mother Jessica and my dog Mack, who are my best friends.
And for Justices Margaret McMurdo and David Octavius Joseph North,
who have been inspirations, mentors and supports in my career.

Louise Floyd, Brisbane, May 2017
FOREWORD

Until the Industrial Revolution, the regulation of employment was not a subject which engaged the minds of legislators to any great extent. Even so, attempts to control employment had been made as early as 1351 when, in the reign of Edward III, the Statute of Labourers sought to reduce wages to the levels which applied before the Black Death. The labour shortage caused by that awful plague had seen wages rise and labourers move in search of improved conditions. As has often been the case, the statute failed to realise its goal.

In this country, colonial governments made sporadic attempts to control the labour market, and often with the same lack of success as had been experienced half a millennium earlier in England. It was not until the great strikes of the 1890s that a concentrated effort was made to create a system which might prevent or settle disputes. Legislation to establish systems of conciliation and arbitration emerged, first in Western Australia (1900) and then New South Wales (1901), the Commonwealth (1904), South Australia (1915) and Queensland (1916). Tasmania and Victoria retained a curious attachment to wages boards until 1984 and 1992 respectively.

The slow march in legislation was mirrored in the common law of employment, where principles established in the 19th century and earlier were applied with varying degrees of precision well into the late 20th century. But the market for labour does not wait for parliaments or courts. While changes in the types and styles of employment have been recognised to a limited extent by the various industrial commissions through awards and agreements, the pace of change continues to quicken.

This book recognises that the acceleration in change means that decades of labour law jurisprudence are being relegated on a continuing basis to the file marked ‘of historical interest’. Knowledge of the interstices of interstate industrial disputes or the effect of ambit claims was once an essential part of an industrial lawyer’s armoury. After the WorkChoices case, the thousands of pages devoted to those matters are now consigned to the dusty shelves of unvisited libraries.

The factors which give rise to the inevitable mutation of the law come from both within and without this country. Australia long ago ceased to be immune from the influence of world trade and international corporate employers. To that end, this book contains a very welcome consideration of transnational and international employment law and the special problems it engenders.

The authors provide, to both the student and the professional, a clear description of the law and rigorous analyses of both the challenges which exist and the changes which are in prospect.

The Hon Justice Glenn Martin AM
President, Industrial Court of Queensland and Queensland Industrial Relations Commission
Judge of the Supreme Court of Queensland
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