457 visas, 394, 409–12, 423
Azarias Report, 411
ability to engage other staff, 15
academic employment, 300
disciplinary procedures, 306
dismissal. See dismissal in
Australian universities
enterprise agreements, 305
misconduct and serious
misconduct, 306–7
nature of employment in
universities, 300–1
organisational change, 306
redundancy and
retrenchment, 307–8
salary, 305
status of university policy in
employment contract, 301–4
tenure, workplace security
and types of
employment, 305–6
workloads, 308
academic freedom
concept of in Australia, 317–19
dismissal and, 316–17
express. See express
academic freedom
implied protection, 321–3
under statute, 141–2
adverse action, 93–4
elements of, 214
anti-bullying statutory scheme,
361
bullying has occurred, 363
defences, 364–5
ongoing risk, 363–4
outcomes from, 365–6
relationship to other Fair
Work Commission
matters, 366–7
remedies, 365
worker constitutionally
covered, 348
anti-discrimination, 367–8, 389,
See also discrimination
Apparel Industry Partnership,
399
approval process for enterprise
agreements
approval by Fair Work
Commission, 139–40
better off overall test, 141
effect of approval, 142
‘genuinely agreed’, 140
pre-approval steps, 138–9
undertakings, 141–2
Australian Accounting Standards,
163
Australian Building and
Construction
Commission, 173–4, 186, 193
Australian Charities and
Non-Profits Commission,
176, 186
Australian Commission on Law
Enforcement Integrity,
186
Australian Competition and
Consumer Commission,
185
Australian Crime Commission,
186
Australian Electoral Commission,
124, 172, 197
Australian Federal Police, 186
Australian Human Rights
Commission, 145
Australian Industrial Relations
Commission, 10, 80, 86,
100–1, 191
Australian labour law system
practical, historical and
constitutional
development of. See
development of
Australian labour law
system
Australian Prudential Regulatory
Authority, 385
Australian Public Service Code of
Conduct, 274
Australian Public Service
Commission
Australian Public Service
Employment Principles,
274
Australian Public Service
Values, 273–4
Australian Public Service
Values and Code of
Conduct in Practice,
274–5
Better Practice Guide to
Managing
Unreasonable
Complainant Conduct,
275
formal investigation, 277
Handling Misconduct:
A Human Resource
Manager’s Guide, 276
informal investigation, 277
inherent danger in informal
investigation, 278
strengths and weaknesses of
investigative system, 277
Australian Securities and
Investments
Commission, 176
Australian Standards, 340
Australian Taxation Office, 7,
186, 383
Australian Workplace Agreements,
80–2, 95, 112
automation. See robots and
automation
awards. See modern awards
Azarias Report, 411
bargaining for enterprise
agreements
approval process. See
approval process
for enterprise
agreements
commencement of, 124
good faith bargaining
requirements. See good
faith bargaining
requirements
majority support
determination, 124–5
notice of employee
representation, 125–6
protected industrial action
in support of claims, 133
better off overall test, 82, 100, 148
approval process for
enterprise agreements
and, 141
better off overall test (cont.)
enterprise agreements and,
122–3
Fair Work Commission and,
141
Big Society, 94
Brexit, 394, 398, 406–7, 423
effect of on workers' rights,
407–8
freedom of movement of workers/persons after,
407
future of European Union and,
408–9
impact on Scottish employment law, 408
United Kingdom employment laws and law
enforcement, 407–9
Brodie's Law, 359–60
bullying
Brodie's Law, 359–60
case law, 357–8
definition, 357
exclusion of reasonable management action
from, 18–19
Fair Work Commission and.
See anti-bullying statutory scheme
person conducting a business
or undertaking and,
358
public servants, 278
reasonable management action, 357
workers' compensation and,
356, 360
workplace health and safety
and, 358–60
Business Council of Australia, 79
capacity to bargain for remuneration, 17
CASCADE restraint, 254–5
causation, 90–2
Chinese labour law, 393, 403–4
codes of conduct
regulation of transnational
labour law by, 399–401
Cole Royal Commission. See
Royal Commission into the
Building and Construction Industry
Conciliation and Arbitration
Commission, 77, 86

conspiracy, 205–6
construction industry regulator, 173–5
contract for provision of personal services, 6
contract of employment. See employment contract
Core Labour Standards, 398
corporate tax evasion, 387–8
Deakin Settlement, 77, 94
demoted employee, 18–19
outworkers, 19
demotion
dismissal and, 217–18
development of Australian
labour law system, 77–8
changing economic, structural and policy
considerations, 78–80
WorkChoices, 80–1
discrimination. See also anti-discrimination
direct, 369–71
equal opportunity, 375–82
exemptions to prohibitions against, 372–3
genuine occupational requirements, 372
Human Rights Commission, 382
indirect, 371–2
Racial Discrimination Act 1975 (Cth), 376–82
remedies, 374
sexual harassment, 373–4

dismissal
Australian universities. See dismissal in Australian universities
avoiding double dipping, 259
constructive, 215
definition, 215
demotion and, 217–18
fixed-term contracts, 215–17
harsh, unjust or unreasonable. See harsh, unjust or unreasonable dismissal
jurisdictional questions, 218
unfair. See unfair dismissal
wrongful. See wrongful dismissal
dismissal in Australian universities, 308

academic freedom. See academic freedom
avoiding dismissal processes, 311–12
holding of political opinions, 316
inappropriate behaviour with student, 315
medical assessment of staff, 316
misappropriation, 316
outside work, 316
plagiarism, 314
processes, 309–11
refusal to obey directions, 313–14
reinstatement, 237–9
double dipping
avoidance of, 259
duty of fidelity, 67
duty to account for property, 68
intellectual property and inventions, 68
use of information, 67
duty of good faith, 54–9
interplay between duty of mutual trust and confidence, 59–60
three views of, 54
duty of mutual trust and confidence, 43–4
Australia and, 49–54
development of in English law, 44–9
interplay between duty of good faith, 59–60
duty to account for property, 68
duty to cooperate, 41–3
duty to provide work, 39–40
distinguished from direction to not perform work, 40–1
duty to use care and indemnify, 68
duty to use care and skill, 66–7
economic dependency, 15
elements of unfair dismissal, 214
dismissal. See dismissal
genuine redundancy. See genuine redundancy
harsh, unjust or unreasonable. See harsh,
unjust or unreasonable dismissal
emergency services
key issues, 417
ongoing concerns about unpaid work, 417–19
paid and unpaid work, 416–17
employee consent, transfer of employment and, 20
deemed, 18–19
identification of. See identifying an employee
lack of unified definition of, 8–10
obligation to obey reasonable directions. See employee obligation to obey reasonable directions
public servant. See public servants
use of information by, 67
employee obligation to obey reasonable directions, 60–2
direction regarding outside of work activities, 64
direction to attend medical examination, 62–4
public service employee, 65–6
employer identification of. See identifying the employer
employment contract
academic employment, status of university policy in, 301–4
consideration and, 5
contract of service, 9
duty of fidelity. See duty of fidelity
duty of good faith. See duty of good faith
duty of mutual trust and confidence. See duty of mutual trust and confidence
duty to cooperate, 41–3
duty to provide work. See duty to provide work
duty to use care and skill, 66–7
employee obligation to obey reasonable directions
See employee obligation to obey reasonable directions
employer’s duty to use care and indemnify, 68
essential terms complete and certain, 5
formation of, 4
intention of agreement to be legally binding, 4–5
not required to be in writing, 4
remuneration for work, 38–9
employment law definition, 84–5
employment relationship contractual nature of, 3–5
issues at end of. See issues at end of employment relationship
significance of, 2
statutory rights and obligations, 3
vicarious liability and, 2–3
Enforceable Undertakings workplace health and safety, 343
enforcing rights and obligations under enterprise agreements, 142–3
dispute resolution, 143
via the courts, 143–4
enterprise agreements
academic employment, 305
approval process. See approval process for enterprise agreements
‘bargaining fee’, 117–18
bargaining for. See bargaining for enterprise agreements
better off overall test and, 122–3
contracts and policies and, 110–11
enforcing rights and obligations under. See enforcing rights and obligations under enterprise agreements
express academic freedom and, 320–1
fairly chosen’, 113
mandatory content in, 118–20
matters which can be included, 115–18
only one applies, 110
prohibited content in, 120–2
relationship with other employment terms, 110–11
scope of, 112–13
terminating, 145–6
varying, 144–5
who is covered by, 112–15
enterprise bargaining definition, 99
forms of, 99
future of and possible reform, 146–8
historical context, 100–1
key characteristics of, 99–100
minimum standards underpinning. See minimum standards underpinning enterprise bargaining
negotiations, reasons for, 101–2
objective of, 101
who can bargain, 111
equal opportunity, 375–82
European Union freedom of movement of workers/persons, 407
future of after Brexit, 408–9
United Kingdom exit from. See Brexit
express academic freedom, 320
in codes of conduct, 320
in enterprise agreements, 320–1
fair entitlements guarantee, 260–1
Fair Work Act 2009 (Cth)
adverse action, 93–4
element of causation, 90–2
elements of adverse action, 214
overview, 82
procedure and remedies, 94
right of entry under, 192–3
State and Federal tribunals and constitutional issues, 82–4
workplace right, 358–60
Fair Work (Registered Organisations) Act 2009 (Cth)
disqualification of union officials and, 161–2

identifying the employer, 19
employment by related or
associated corporations,
20–2
labour hire arrangements. See labour hire
arrangements
labour supply chains, 26–7
principles to be applied in,
20–1
sham contracting and. See sham contracting
implied duty of trust and confidence, 47, 49
Improvement Notices
workplace health and safety, 343
income tax, 383–4. See also taxation
independent contractors
employee/independent contractor distinction, 6
legislation, 34–5
sham contracting and, 29–34
individual flexibility arrangements, 109
industrial action
definition, 133, 195
intimidation and, 206
picketing, 202–3
prohibition on payments for, 138
protected. See protected industrial action
right to strike. See right to strike
secondary boycotts, 207–9
suspending or terminating, 200–1
unprotected, 200
workplace health and safety
issues and, 203
industrial relations
workplace health and safety
and, 345–6
industrial torts, 203–5
conspiracy, 205–6
contractual interference, 205
intimidation, 206
remedies in relation to, 206–7
unlawful interference, 206
injury
definition for workers’ compensation, 350–1
integration into the business, 15
intellectual property
duty of fidelity and, 68
International Federation of Airline Pilots, 405
international labour law. See transnational labour law
International Labour Organization, 87–8, 95,
208, 264, 393–4, 396, 399, 404, 417, 422
Committee of Experts on the Application of Conventions and Recommendations, 27–8
Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 196
Convention concerning Freedom of Association and Protection of the Right to Strike, 196
Convention on Termination of Employment, 213
Core Labour Standards, 398
Declaration of Philadelphia, 87
Freedom of Association and Protection of the Right to Organise Convention, 87
Maritime Labour Convention, 405
Occupational Health and Safety Convention, 333
Right to Organise and Collective Bargaining Convention, 87
international transport industry
human resource issues and international organising, 404–5
International Transport Workers Federation, 405
introduction of robots and automation
government reports on, 421
scholarly writing on, 421–2
inventions
duty of fidelity and, 68
issues at end of employment relationship
references, 263
restraint of trade clauses. See restraint of trade clauses
Johnson exclusion zone, 48
judicial work, 288–90
appointments, 290
conditions. See judicial working conditions
conduct guides and misconduct, 294–5
removal of judge from office, 291–3
judicial working conditions
basic, 296
government administrative arrangements and budgets, 298–9
mental safety, 297
physical safety, 296–7
sick leave, 297–8
social media, 299–300
labour hire agency
identifying the employer and, 25–6
labour hire arrangements, 22
identifying employer in, 23–5
interposition of labour hire agency, 25–6
intra-group labour hire arrangement, 20
what constitutes, 22–3
labour law
definition, 84–5
legal theories as justification for, 73–6
labour supply chains
identification of employer and, 26–7
majority support determination, 124–5
medical certificates, 353
Merit Protection Review Commission, 277
methods of regulating transnational labour law
application of domestic laws abroad, 401–3
codes of conduct, 399–401
methods of regulating transnational labour law (cont.)
regional agreements and sanctions, 398–9
trade regulation, 399
treaties and conventions, 397–8
migration and employment, 394
subclass 457 visas, 394, 409–12, 423
minimum standards underpinning enterprise bargaining, 102
modern awards, 107–9
National Employment Standards, 102–7
misrepresenting employment as independent contracting arrangement, 29–32
modern awards, 110
as minimum standard underpinning enterprise bargaining, 107–9
content required in, 109
coverage, 108–9
individual flexibility arrangements, 109
reviews by Fair Work Commission, 108
multi-indices test, 13–14
National Employment Standards, 9, 18, 94, 109–10, 118, 141, 148
as minimum standard of enterprise bargaining, 102–7
no disadvantage test, 80–1, 100, 123, 146
abolition of, 81
no work, no pay, 38–9
North American Free Trade Agreement, 399
notice of employee representative rights, 125–6, 139
Office of the Australian Information Commissioner, 186
on-the-spot fines, 343
opportunity for profit and the risk of loss, 16
origins of union regulation, 154

Conciliation and Arbitration Act 1904 (Cth) and successors, 155–7
system inherited and colonial experience, 154–5
outsourcing, 19
outworkers, 19
Panama Papers, 387–9
payment for leave, 17
payment of other significant business expenses, 16
payroll tax, 387
Penalty Notices/Infringement Notices
workplace health and safety, 343
person conducting a business or enterprise
expertise of another party and, 341–2
person conducting a business or undertaking, 388
concept in workplace health and safety, 335–7
due diligence of officers and, 357
incident notification and associated requirements, 339
Provisional Improvement Notices and, 339
reasonable practicality, 340–3
workers’ compensation and, 362
picketing, 202–3
plagiarism
as ground for dismissal in Australian universities, 314
procedural fairness in unfair dismissal, 231–5
reinstatement and damages, 237–9
tribunal procedure, 236
Productivity Commission, 108
Prohibition Notices
workplace health and safety, 343
property
employee duty to account for, 68
protected action ballot, 197–8
protected action ballot order, 134–5
protected industrial action
implications of, 199
in support of enterprise bargaining claims, 133
procedural requirements for, 134–6
prohibition on payments for, 138
protected action ballot, 197–8
requirements for, 197–9
significance of, 134
suspending or terminating, 136–8
provision and maintenance of tools and equipment, 16
provision of own place of work, 16
provision of skilled labour or labour requiring specialist qualifications, 17
Provisional Improvement Notices, 339
Public Interest Disclosure Act 2013 (Cth)
key issues under, 287–8
public sector employment, 270–1
handling misconduct and investigations, 276–84
judicial work. See judicial work
management of, 272–3
public sector theory, 285
outsourcing, 285–6
whistleblowing. See whistleblowing
public servants, bullying, 278
obligation to obey directions, 65–6
social media and, 275
See also Australian Public Service Commission
Public Service Act 1999 (Cth)
Australian Public Service Code of Conduct, 274
Australian Public Service Employment Principles, 274
Australian Public Service Values, 273–4
key provisions and guides, 273–5
objectives, 273
s 22, 273
territorial operation, 273
Registered Organisations
Commission, 175–7, 183
powers of Commissioner, 163, 172, 188
rationale for, 176
relevant indicia of totality test, 13–17
consideration of, 14–17
multi-indicia test, 13–14
removal of judge from office, 291–3
remuneration for work, 38–9
methods of, 16–17
remuneration planning, salary packaging and fringe benefits tax, 386
representation as part of the business, 15
restraint of trade clauses, 248–9
anti-poaching clauses, 255–8
basic principles, 250–2
cascading restraint, 254–5
legitimate interest and, 249–50
technology and, 252–4
right of entry, 185
applications for and removal of permits, 194–5
Fair Work Act 2009 (Cth)
and, 192–3
permit system, overview of, 191–2
position prior to Workplace Relations Act 1996 (Cth), 190–1
Work Health and Safety Entry Permit, 194
right to delegate or substitute, 15
Right to Organise and Collective Bargaining Convention 1949, 87
right to perform work for others or reject work, 14–15
right to strike
constraints on in Australia, 196–7
international position on, 196
Robens reforms, workplace health and safety, 331–2
robots and automation, 394
introduction into the workplace. See introduction of robots and automation
spectre of, 419–20
waterfront example, 420
Royal Commission into the Activities of the Australian Building Construction Employees’ and Builders Labourers’ Federation, 178
Royal Commission on the Activities of the Federated Ship Painters and Dockers Union, 178
Royal Commission into Alleged Payments to Maritime Unions, 178
Royal Commission into the Building and Construction Industry, 173, 178, 180
Royal Commission into Trade Union Governance and Corruption, 153
ACTU and, 182
Discussion Paper, Options for Law Reform, 182
disqualification of union officials and, 162
link between industry superannuation funds and trade unions, 385
named unions, 179–80
organised crime and corruption, 185–6
policy issues and consultation, 181–2
referrals arising from, 186–7
scope of hearings, 186–4
terms of reference, 178–80
topics of issues papers, 181
Royal Commission into Trade Union Governance and Corruption recommendations building and construction industry, 185
competition issues, 185
corrupting benefits, 184
legislative amendments, 184
right of entry, 185
secondary boycotts, 185
superannuation, 185
union officials, 183–4
union regulation, 183
Royal Commissions, 177–8
Letters Patent, 177–8
secondary boycotts, 185, 207–9
sexual harassment, 373–4
sham contracting, 27, 174
common law sham and pretence and, 27–8
discharging employee to engage as independent contractor, 32–4
misrepresenting employment as independent contracting arrangement, 29–32
statutory provisions on sham arrangements, 28–9
Small Business Fair Dismissal Code, 213–14, 218
social media
Australian public servants and, 275
judicial working conditions and, 299–300
misuse, dismissal and, 225–7
spill and, 290–1
State regulators, 175
superannuation, 384–6
surface bargaining, 130
taxation, 382–3, 389
corporate evasion of, 387–8
employee share schemes, 386–7
income tax, 383–4
liability, totality test, 18
payroll tax, 387
remuneration planning, salary packaging and fringe benefits tax, 386
superannuation, 17, 384
termination payments, 387
technology. See robots and automation
termination damages and, 48
fair entitlements guarantee, 260–1
insolvency of employer or transfer of business, 259–60, 262
termination payments, 387
Index

totality test
control and continuing
relevance of, 11–13
flexible application of, 18
obligations owed by
contracting parties to
each other, 18
relevant indicia. See relevant
indicia of totality test
taxation liability, 18
vicarious liability for injuries, 18
Trade Union Council (UK), 407
trade unions. See unions
transfer of employment
consent of employee and, 20
transnational labour law, 393–4,
396–7
conflicts of law in, 402
key issues, 395–6
methods of regulating. See
methods of regulating
transnational labour law
origins, 394–5
tribunals, 86–7
International Labour
Organization, See
International Labour
Organization
unfair dismissal
damages and, 48
elements of. See elements of
unfair dismissal
procedural fairness in. See
procedural fairness in
unfair dismissal
union officials
accountability to Fair Work
Commission, 170–1
breach of duties of, 168–70
consequences for improper
action, 171
disqualification of, 161–2
duties of, 164–8
right of entry. See right of
entry
who is regarded as, 164
union-related Royal
Commissions and
inquiries, 177–8
unions, 95
adverse action and, 93–4
causation and, 90–2
corporate status of, 157–8
elections, 160–1
elements of adverse action, 214
eligibility and rules, 159–60
Fair Work (Registered
Organisations) Act 2009
(Cth) and, 158–9
Federal, State registration for,
188–90
financial and other records,
162–3
freedom of association,
88–9
origins of regulation of. See
origins of union
regulation
purpose of, 153
workplace right and, 358–60
United Nations, 396, 417
Convention on the
Elimination of All Forms
of Discrimination against
Women, 367, 375
Convention on the
Elimination of All Forms
of Racial Discrimination,
367
Convention on the Law of the
Sea, 405
International Covenant on
Civil and Political Rights,
367
Universal Declaration of
Human Rights, 154, 196,
397
unlawful interference, 206
unprotected industrial action,
200
vicarious liability, 2–3
for injuries, 18
volunteers, 394, 412–13
definition, 413–14
emergency services. See
emergency services
liability, workplace health
and safety, 415–16
workers’ compensation and,
362
Wageline (Qld), 84
Wal-Mart Stores Inc, 399–401
Code of Conduct, 400–1
whistleblowing, 286–7
complaints, 286–7
key issues under Public
Interest Disclosure Act
2013 (Cth), 287–8
work
employer duty to provide,
39–40
remuneration for, 38–9
work experience, 394
Work Health and Safety Entry
Permit, 194, 345
WorkChoices, 80–1, 95
key features of, 81
worker
concept of in workplace
health and safety, 348
definition for workers’
compensation, 349–50
workers’ compensation and,
348
workplace health and safety
duties imposed upon,
337–8
workers’ compensation, 346
bullying, 356, 360
compulsory insurance for
employers, 348
definition of injury, 350–1
definition of worker, 349–50
employer opportunity to
‘self-insure’, 348
employment issues following
injury, 354–5
excluded claims, 353–4
injury management,
rehabilitation and return
to work, 354
interaction between State and
Commonwealth
schemes, 355–6
journey and recess claims,
351–3
‘no-fault’ schemes, 348
person conducting a
business of enterprise
and, 362
precursor to statutory
scheme, 346–7
psychological claims, 353
statutory schemes, 347–9
volunteers, 362
worker and, 348
workplace health and safety and, 345
Workplace Gender Equality Agency, 375
workplace health and safety bullying. See bullying compliance and enforcement, 343–5
compliance tools, 343
concept of person conducting a business or undertaking, 335–7
concept of worker, 348
concepts of risk and risk control, 334–5
duties imposed on others including visitors, 338
duties imposed upon workers, 337–8
harmonised national scheme and exceptions, 333

health and safety representatives and other consultations, 339
incident notification and associated requirements, 339–40
industrial relations and, 345–6
notion of general duties, 331–2
officers to exercise due diligence, 337
origins of modern legislation, 330–1
other duty holders, 337–9
penalties for failure to comply with safety duty, 345
reasonable practicality, 340–3
workers’ compensation and, 345

workplace law
case law and statute or common law and legislation, 85–6
employment, industrial or labour law, 84–5
freedom of association, 88–9
workplace right, 358–60
World Trade Organization, agreements, labour conditions in, 398
wrongful dismissal damages for lost opportunity, 247–8
leading cases and issues on, 241–2
reasonable notice, 239–41
repudiation and giving and waiving notice, 242–5
termination and non-renewal of short-term contracts, 201