

The Identity of the 'Employer' in Australian Labour Law: Moving Beyond the Unitary Conception of the Employer

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Abstract

This article examines the concept of the 'employer' in Australian labour law, showing how the use of this term (and the related concept of 'employee') can operate to limit the rights of workers in relation to unfair dismissal, collective bargaining and employment entitlements under the *Fair Work Act 2009*. It also considers several areas in which rights and obligations are ascribed more broadly, under both the *Fair Work Act* and workplace health and safety laws. The article then explores various regulatory approaches through which attempts have been made to extend responsibility beyond the unitary conception of the employer, in the context of three specific business models: labour hire, franchising and supply chains. The new forms of regulation adopted in Australia in recent years include labour hire licensing schemes, statutory provisions imposing liability for breaches of minimum employment standards upon franchisors, and regulatory schemes to enhance accountability across sector-specific supply chains. The article concludes with a brief discussion of reforms to bargaining structures which are critical, if business reliance on the unitary concept of the employer is to be meaningfully contested in the Australian setting.

Keywords: Unitary employer; Labour hire; Franchising; Supply chains; Collective bargaining

1. Introduction.

Australian labour law takes as its starting point the relationship between the employee and 'the unitary employer'¹, a notion explained (in the UK context) as the 'contractual

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¹ Rawling M., Howe J., *The Regulation of Supply Chains: An Australian Contribution to Cross-National Legal Learning*, in Stone K., Arthurs A. (eds), *Rethinking Workplace Regulation*, Russel Sage Foundation, New York, 2013, 233, 234.

employer' or the entity responsible for ensuring compliance with minimum wages and other labour standards². As Hardy has stated: 'A general premise of the [*Fair Work Act 2009*] is that a binary and direct employment relationship is in existence. [However], this statutory foundation is potentially compromised by the fact that it is not now uncommon for multiple organisations to be involved in shaping key working conditions'³. In Australia, as in many comparable countries, various new business models have emerged over the last 30 years or so⁴ through which businesses have been able to 'side-step' the application of employment regulation premised on the accountability of the unitary employer⁵.

This article examines (in Section 2) the definition of 'employer' in Australian labour law, showing how the use of this term (and the related concept of 'employee') can operate to limit the rights of workers in relation to unfair dismissal, collective bargaining and employment entitlements under the *Fair Work Act*. Section 2 also considers several areas in which rights and obligations are ascribed more broadly, under both the *Fair Work Act* and workplace health and safety laws. The article then moves on (in Section 3) to explore various regulatory approaches through which attempts have been made to extend responsibility past the common law employer, in the context of three specific business models: labour hire, franchising and supply chains. The new forms of regulation adopted in Australia in recent years include labour hire licensing schemes, statutory provisions imposing liability for breaches of minimum employment standards upon franchisors, and regulatory schemes to enhance accountability across sector-specific supply chains. The article concludes (in Section 4) with a brief discussion of reforms to bargaining structures (put forward by the union movement) which could more effectively overcome the constraints imposed by the traditional conception of the employer.

2. Defining the 'Employer' in Australian Labour Law.

The concept of 'employer' is defined in Australia's principal statute regulating employment and labour relations, the *Fair Work Act*. This legislation uses the term 'national system employer' to define the types of entities that are subject to various of its provisions, reflecting the statute's constitutional coverage⁶. So, for example, 'constitutional corporations', 'the Commonwealth' (i.e. federal government) and any 'Commonwealth

² Wynne-Evans C., *A Solution to Fissuring? Revisiting the Concept of the Joint Employer*, in *Industrial Law Journal* (advanced access version), 2020, 1, 3. See also Prassl J., *The Concept of the Employer*, Oxford University Press, Oxford, 2015, 1, 13, 16-23.

³ Hardy T., *Who Should Be Held Liable for Workplace Contraventions and on What Basis?*, in *Australian Journal of Labour Law*, 2016, 78, 86.

⁴ Johnstone R., McCrystal S., Nossar I., Quinlan M., Rawling M., Riley J., *Beyond Employment: The Legal Regulation of Work Relationships*, The Federation Press, Alexandria, 2012.

⁵ See generally Hardy T., *Reconsidering the Notion of the "Employer in the Era of the Fissured Workplace: Traversing the Legislative Landscape in Australia*, in Nakakubo H., Araki T. (eds), *The Notion of the Employer in the Era of the Fissured Workplace: Should Labour Law Responsibilities Exceed the Boundary of the Legal Entity?*, Kluwer Law International, Alphen aan den Rijn, 2017, 53.

⁶ Legislative power to regulate workplace relations is shared, under the Australian Constitution, between the federal and state parliaments. However, federal legislative capacity has been extended over the last 30 years through reliance on the constitutional power to regulate corporations. See Stewart A., Forsyth A., Irving M., Johnstone R., McCrystal S., *Creighton and Stewart's Labour Law*, The Federation Press, Alexandria, 2016, 101-106.

authority' (i.e. federal public sector authorities) are designated as national system employers⁷. 'Employer' for these purposes has its ordinary or common law meaning⁸, which is premised on the traditional employment relationship between employer and employee (as distinct from a principal-independent contractor relationship)⁹. The following three examples illustrate how the *Fair Work Act* notion of the employer, and the related concept of 'employee', operate to limit access to employment rights. This is followed by discussion of other examples in which a broader range of business entities may be subjected to employment obligations.

2.1. Unfair dismissal.

Under Part 3-2 of the *Fair Work Act*, only employees can bring a claim to the Fair Work Commission (FWC) for unfair dismissal against an employer¹⁰. This means that an independent contractor has no right to challenge the termination of their contract, an issue which has arisen in relation to workers putatively categorised as contractors in the gig economy¹¹. Several platform workers have sought to challenge their dismissals in recent years, arguing that they were misclassified and were at law employees with the right to pursue an unfair dismissal claim. In only one case to date has this argument succeeded: a Foodora delivery rider who was able to show that the company exercised extensive control through a 'batching' method that allocated work to riders utilising performance metrics¹². In other cases, Uber and Uber Eats drivers have been ruled ineligible to pursue unfair dismissal claims, because the 'wages-work bargain' inherent in the employment relationship was considered to be absent in the arrangements they entered into with these platforms¹³. These decisions have overlooked the various forms of control which platforms exercise over gig workers (including an algorithmic form of performance management), and the practical inability of the workers to develop their own independent businesses¹⁴.

In addition, an employee can only bring an unfair dismissal claim against their *direct* employer. In the context of agency work (known in Australia as 'labour hire'), this means

⁷ *Fair Work Act*, section 14(1).

⁸ *Fair Work Act*, section 12; see also the definition of 'employer' (and 'employee') provided at the commencement of each Part of the legislation, and the definition of 'national system employee' in section 13 ('an individual so far as he or she is employed, or usually employed' by a national system employer).

⁹ Stewart et al, n. (6), 204-213.

¹⁰ *Fair Work Act*, section 382(a).

¹¹ Stewart A., McCrystal S., *Labour Regulation and the Great Divide: Does the Gig Economy Require a New Category of Worker?*, in *Australian Journal of Labour Law*, 2019, 32,1.

¹² *Klooger v Foodora Australia Pty Ltd* [2018] FWC 6836; the employee also established that his dismissal by the platform, allegedly for infringing its intellectual property rules, was really motivated by his public involvement in campaigning for improved conditions for food delivery riders. He therefore won his unfair dismissal claim and was awarded compensation, although by then Foodora had left the Australian market: Chau D., 'Foodora to cease operations in Australia later this month, but lawsuits still ongoing', *ABC News*, 2 August 2018.

¹³ *Kaseris v Rasier Pacific V.O.F.* [2017] FWC 6610; *Pallage v Rasier Pacific Pty Ltd* [2018] FWC 2579; *Suliman v Rasier Pacific Pty Ltd* [2019] FWC 4807; *Gupta v Portier Pacific Pty Ltd; Uber Australia Pty Ltd T/A Uber Eats* [2020] FWC 1698.

¹⁴ See Forsyth A., *The Uber Eats Decision: Australia's FWC Full Bench misses the chance to see through the gig economy's sophistry*, 2020, <https://labourlawdownunder.com.au/?p=846>, accessed 12 June 2020; Forsyth A., *Playing Catch-Up but Falling Short: Regulating Work in the Gig Economy in Australia*, in *King's Law Journal*, 31, 2020, (forthcoming).

the employee has no rights vis-à-vis the host business at which he or she is placed by an agency¹⁵. This orthodox analysis enables host businesses to determine that they will no longer accept the services of an agency's employee (for example, because of concerns about the employee's performance or misconduct), without facing any unfair dismissal liability¹⁶. The employee in such a situation may also be unable to bring a claim against their employer (the agency), as the requirement of a termination 'on the employer's initiative'¹⁷ may not be satisfied (either because the agency keeps the employee 'on the books' but without providing them with further work¹⁸, or the agency is able to point to the actions of the host as the activating cause of the termination rather than any action of its own¹⁹). However, a series of more recent decisions limit the ability of an agency to rely on the contractual entitlement of a host to have a labour hire employee removed from its site, as a basis for the agency to avoid an unfair dismissal claim²⁰.

2.2. Collective bargaining and industrial action.

The system of collective agreement-making and 'protected' industrial action that may be taken in bargaining for a new enterprise agreement, under Parts 2-4 and 3-3 of the *Fair Work Act*, is based on the related concepts of employer and 'enterprise'. The most common form of agreement is one made by an employer and its employees for all or part of the employer's enterprise (a 'single-enterprise agreement')²¹. An 'enterprise' is 'a business, activity, project or undertaking'²². Agreements may also be made between two or more employers and their employees, where the employers are 'single-interest employers'²³. These are employers engaged in a common enterprise or joint venture²⁴, related companies in a corporate group,²⁵ or employers specified in a 'single interest employer authorisation' (for example, franchisees in a franchise business structure)²⁶. Finally, agreements can be made between two or more employers (who are not single-interest employers) and their employees (a 'multi-enterprise agreement')²⁷. A specific stream of multi-enterprise bargaining is provided to assist low-paid employees to obtain a collective agreement²⁸.

¹⁵ *Aradia v Accenture Australia* (2008) 170 IR 288 (finding that no employment relationship exists as between labour hire employee and host); *FP Group Pty Ltd v Toobey's Pty Ltd* [2013] FWCFB 9605 (rejecting the notion that agency and host are joint employers).

¹⁶ *Cresp v Nissan Casting Plant (Australia) Pty Ltd* [2016] FWC 3845.

¹⁷ *Fair Work Act*, section 386(1)(a).

¹⁸ *Bradford v Toll Personnel* [2013] FWC 1062.

¹⁹ *Pettifer v MODEC* [2016] FWC 3194; *Pettifer v MODEC* [2016] FWCFB 5243.

²⁰ *Kool v Adecco Industrial Pty Ltd* [2016] FWC 925; *Tasmanian Ports Corporation Pty Ltd v Gee* [2017] FWCFB 1714; *Kumar v Australia Personnel Global Pty Ltd* [2017] FWC 5661; *Spinifex Australia Pty Ltd v Tait* [2018] FWCFB 6267; *Star v WorkPac Pty Ltd* [2018] FWC 4991.

²¹ *Fair Work Act*, section 172(2)(a).

²² *Fair Work Act*, section 12.

²³ *Fair Work Act*, section 172(2)(a).

²⁴ *Fair Work Act*, section 172(5)(a).

²⁵ *Fair Work Act*, section 172(5)(b).

²⁶ *Fair Work Act*, sections 172(5)(c) and 249(1)-(2); *Re McDonalds Australia Pty Ltd* [2013] FWC 2477.

²⁷ *Fair Work Act*, section 172(3)(a).

²⁸ *Fair Work Act*, Part 2-4, Division 9 and Part 2-5, Division 2.

The overwhelming focus of collective bargaining on the notion of the ‘enterprise’ has the effect of limiting agreement-making to the direct employer of a group of employees. So, for example, it is not possible for employees or their union to bargain with a host business in the labour hire context²⁹, nor across all of the employers in a particular industry or sector³⁰ (unless those employers agree to make a multi-enterprise agreement or are the subject of a low-paid bargaining authorisation, as indicated above). Protected industrial action in the form of strikes or work bans may only be taken in support of a single-enterprise agreement, and not to progress demands for a multi-enterprise agreement³¹ or for common claims at more than one employer³². The low-paid bargaining stream has not, in practice, been successful in enabling unions to increase the coverage of agreements across multiple employers in service industries like child care, cleaning and hospitality, because the statutory tests for accessing it are far too stringent³³.

2.3. Minimum employment standards.

Under the *Fair Work Act*, minimum wages and employment conditions are set down in instruments with legal force known as ‘awards’, which apply on an industry or occupational basis³⁴. A smaller number of minimum conditions, including various leave entitlements, notice of termination and redundancy pay, form the ‘National Employment Standards’ (NES) applicable to all national system employees³⁵. Employers are liable if they contravene any provision of the NES in respect of an employee³⁶, and are similarly liable for any breach of an award³⁷ or an enterprise agreement³⁸. An employee may seek remedies from a court including compensation for the amount of any underpayment arising from such a breach, and the imposition of civil penalties against their employer³⁹.

As well as a claim against the direct employer, section 550(1) of the *Fair Work Act* opens up the prospect of liability for contravention of the NES, an award or agreement on the part of any other ‘person who is involved in a contravention’. This includes a person who has aided, abetted or induced the breach, been in any way knowingly concerned in or party

²⁹ Industrial Relations Victoria, *Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report*, Victorian Government, 31 August 2016, 102.

³⁰ Creighton B., *A Retreat from Individualism? The Fair Work Act 2009 and the Re-Collectivisation of Australian Labour Law*, in *Industrial Law Journal*, 4², 2011, 116, 125-127.

³¹ *Fair Work Act*, sections 409(1) and 413(1)-(2). See further McCrystal S., *Why Is It So Hard to Take Lawful Strike Action in Australia?*, in *Journal of Industrial Relations*, 2019, 61, 1,129.

³² *Fair Work Act*, sections 412 and 421 (the prohibition of ‘pattern bargaining’).

³³ Macdonald F., Charlesworth S., Brigden C., *Access to Collective Bargaining for Low-Paid Workers*, in McCrystal S., Creighton B., Forsyth A. (eds), *Collective Bargaining under the Fair Work Act*, The Federation Press, Alexandria, 2018, 206, 213-218. See also *United Voice v Australian Workers’ Union of Employees (Qld)* (2011) 207 IR 251; *Australian Nursing Federation v IPN Medical Centres Pty Ltd* [2013] FWC 511; *United Voice* [2014] FWC 6441.

³⁴ *Fair Work Act*, Part 2-3.

³⁵ *Fair Work Act*, Part 2-2.

³⁶ *Fair Work Act*, section 44(1).

³⁷ *Fair Work Act*, sections 45.

³⁸ *Fair Work Act*, section 50.

³⁹ *Fair Work Act*, sections 539(2) (Items 1, 2 and 4), 540(1) and 545; employees may initiate a claim for recovery of underpayments by themselves, or with the assistance of their union or the federal enforcement agency (Fair Work Ombudsman).

to it, or conspired with others to effect it⁴⁰. Under this ‘accessorial liability’ provision, other parties such as company directors, senior managers, human resources managers, payroll staff and even external accountants have been found to be primarily liable, or jointly liable with employers, for underpayments⁴¹. A significant increase in the incidence of underpayments in the last five years, commencing with systemic and widespread non-compliance with awards by 7-Eleven stores⁴², raised the question whether accessorial liability could be extended to franchisors within a franchise network or lead companies in supply chains. By the time the 7-Eleven scandal emerged in 2015-2016, instances of seeking to apply section 550 to establish liability on the part of a separate corporation (in addition to the direct employer) had been rare⁴³. This led to pressure for legislative amendments, enacted in 2017⁴⁴, which are discussed in Section 3 below.

2.4. General protections and workplace bullying.

Two other types of claims under the *Fair Work Act* adopt a broader approach to the categories of worker and business entity that they apply to. First, ‘general protections’ claims under Part 3-1 may be initiated by an employee against their employer, or by an independent contractor against their principal.⁴⁵ These claims relate to situations where the employer or principal has allegedly taken some form of ‘adverse action’ (for example, dismissal or demotion)⁴⁶ against an employee or contractor, because of their exercise of various types of ‘workplace rights’⁴⁷ or engagement in different kinds of ‘industrial activity’⁴⁸, or for a discriminatory reason⁴⁹. In practice, most general protections claims are brought by employees rather than contractors⁵⁰. Independent contractors more frequently bring claims under another provision in Part 3-1, section 357, which prohibits ‘sham contracting’ (i.e. an employer misrepresenting an employment relationship as one of principal and contractor)⁵¹.

⁴⁰ *Fair Work Act*, section 550(2). As to the level of knowledge required to establish involvement in a breach under this provision, see Hardy, n. (3), 87.

⁴¹ See for example *Fair Work Ombudsman v Priority Matters Pty Ltd & Anor* [2019] FCCA 56; *Fair Work Ombudsman v NSH North Pty Ltd* [2017] FCA 1301; *Ezy Accounting 123 Pty Ltd v Fair Work Ombudsman* [2018] FCAFC 134.

⁴² Berg L., Farbenblum B., *Remedies for Migrant Worker Exploitation in Australia: Lessons from the 7-Eleven Wage Repayment Program*, in *Melbourne University Law Review*, 2018, 41, 3, 1035.

⁴³ Hardy, n. (3), 87-90, discussing successful examples such as *Fair Work Ombudsman v South Jin Pty Ltd* [2015] FCA 1456.

⁴⁴ *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*.

⁴⁵ *Fair Work Act*, section 342(1) (Items 1, 3).

⁴⁶ *Ibid*.

⁴⁷ *Fair Work Act*, sections 340-341.

⁴⁸ *Fair Work Act*, sections 346-347.

⁴⁹ *Fair Work Act*, section 351.

⁵⁰ For discussion of the potential application of the protections afforded to contractors, see Stewart et al, (3), 669.

⁵¹ See for example *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd* (2015) 90 ALJR 107; ‘Ambassador’s bodyguard employed on sham contract, union alleges’, *Workplace Express*, 1 June 2017; ‘\$1 billion class action could redefine sub-contracting arrangements’, *Workplace Express*, 22 November 2018; Patty A., ‘It’s not fair. It’s not right’: Rider takes Deliveroo to court, in *Sydney Morning Herald*, 28 August 2019.

Secondly, Part 6-4B enables a worker to apply to the FWC for an order that bullying at work by an individual or group of individuals stop⁵². For these purposes, the term ‘worker’ takes its meaning from the *Work Health and Safety Act 2011* (see below), and includes an employee, contractor, apprentice, trainee, work experience student or volunteer.⁵³ The businesses within which a workplace bullying claim can arise are centred on the concept of a ‘person conducting a business or undertaking’ (PCBU), also derived from the *Work Health and Safety Act*, but limited by section 789FD(3) of the *Fair Work Act* to specific types of PCBU⁵⁴. Anti-bullying orders, although rarely made by the FWC⁵⁵, can potentially be directed towards a worker’s employer, principal, co-worker(s) and even persons who visit the workplace⁵⁶.

2.5. Work health and safety.

Uniform work health and safety (WHS) laws have been adopted at the federal level and in all Australian states and territories apart from Victoria and Western Australia.⁵⁷ These statutes, modelled on the federal *Work Health and Safety Act*, significantly broaden potential accountability for the safety of workers and the public beyond the narrow concept of the employer. The uniform WHS laws ‘channel the relevant regulatory focus towards the business activity in question rather than the formal legal structure’⁵⁸. This is achieved by imposing the primary duty of care on the ‘PCBU’ (see above), a very wide concept which includes an employer, an occupier of premises, various types of lead businesses (for example, franchisors, principal contractors), franchisees, subcontractors, digital platforms, labour hire agencies and host businesses⁵⁹. The framing of WHS regulation around the notion of the PCBU operates in tandem with the wider definition of ‘worker’ (see above), ensuring that safety protections afforded by the primary duty of care ‘clearly cover workers carrying out work in most multilateral work arrangements’⁶⁰.

⁵² O’Rourke A., Antioch S., *Workplace Bullying Laws in Australia: Placebo or Panacea?*, in *Common Law World Review*, 2016, 45, 1, 3.

⁵³ *Fair Work Act*, section 789FC(2), although a person volunteering in a wholly-volunteer organisation that has no employees is excluded from bringing a bullying claim: *Re McDonald* [2016] FWC 300; compare *Re Legge* [2019] FWC 5874 and *Bibavi v Stepping Stone Clubhouse Inc* [2019] FWCFCB 1314.

⁵⁴ These include constitutional corporations, the Commonwealth or Commonwealth authorities.

⁵⁵ The FWC adopts an intensive case management approach to bullying claims, aimed at restoring safe and productive workplace relationships, leading to a very high settlement rate: FWC, *Annual Report: Access to Justice 2018-19*, 2019, 50-51.

⁵⁶ Stewart et al, n. (6), 704.

⁵⁷ The *Work Health and Safety Bill 2019* is currently before the Western Australian Parliament.

⁵⁸ Hardy, n. (3), 93.

⁵⁹ Johnstone R., *Regulating Work Health and Safety in Multilateral Business Arrangements*, in *Australian Journal of Labour Law* 2019, 32, 1, 41, 45.

⁶⁰ *Ibid.*, n.(59); see also 46-49.

3. Regulatory Responses to Overcome Limitations of the Unitary Concept of Employer.

The discussion in Section 2 has shown that, with few exceptions, the locus of Australian workplace regulation is framed around the traditional employment relationship. This gives rise to many limitations in the ability of employees or unions to exercise individual and collective rights against entities other than the direct employer. Hardy has examined the normative justifications for extending liability to third parties for non-observance of minimum employment standards. These include that the lead firm may have caused the direct employer to engage in breaches; that it may possess the power in the supply chain to prevent contraventions from occurring; and that it may have benefitted (directly or indirectly) from the breaches⁶¹. Rationales of this kind are evident in the various regulatory interventions adopted at federal and state level over the last ten years or so to address the limitations arising from the unitary concept of employer in Australian labour law, which are examined now.

3.1. Labour hire.

Two different sets of issues arise for workers from the use of third-party labour providers in different sectors of the labour hire market. The first group of providers are in what might be termed the mainstream or reputable part of the labour hire industry. These businesses are larger, well-established labour hire agencies, which generally comply with awards and have systems in place to ensure host businesses follow workplace health and safety requirements⁶². The problems for employees of these agencies include determining where liability for unfair dismissal lies as between the agency and the host (as discussed in Section 2 above)⁶³; and differential treatment compared with employees of the host (for example, those employees are often entitled to higher rates of pay under an enterprise agreement entered into by the host, which does not apply to labour hire workers on site)⁶⁴. Another issue is that many labour hire staff are engaged as casuals⁶⁵, ending up in long-term insecure employment (for example, this is a common experience for labour hire workers placed in manufacturing plants or distribution warehouses)⁶⁶. However, two recent judicial decisions have challenged the ability of employers to retain labour hire workers as casuals indefinitely, by granting them leave entitlements associated with permanent employment where the ‘casual’ arrangements are in fact regular and ongoing⁶⁷.

⁶¹ Hardy, n. (3), 101-102.

⁶² Industrial Relations Victoria, n. (29), 53-54, 81.

⁶³ See also *ibid*, 111-116.

⁶⁴ *Ibid*, 98-103.

⁶⁵ A ‘casual’ employee is one engaged on an uncertain and irregular basis, as compared with full-time or part-time employment: Stewart et al, n. (6), 245. On the high incidence of casual employment in labour hire, see Industrial Relations Victoria, n. (29), 61-62, 89-90.

⁶⁶ Industrial Relations Victoria, n. (29), 77, 79-80, 89-90, 106; Hatch P., *In Amazon’s “Hellscape”, Workers Face Insecurity and Crushing Targets*, in *Sydney Morning Herald*, 7 September 2018; Schneiders B., *Strikes to Hit Chemist Warehouse as Workers Seek Huge Pay Boost*, in *Sydney Morning Herald*, 1 March 2019.

⁶⁷ *WorkPac Pty Ltd v Skene* [2018] FCAFC 131; *WorkPac Pty Ltd v Rossato* [2020] FCAFC 84.

In 2016, the Victorian Inquiry into Labour Hire and Insecure Work recommended the adoption of an industry Code of Practice, to improve the three-way relationship between agency, host and employee. The Code (which has not been implemented) could include best practice arrangements in relation to matters like the rostering of labour hire staff and fair processes in decisions leading to dismissal⁶⁸. Another regulatory solution adopted by unions is the inclusion of ‘site rates’ clauses in enterprise agreements made with host businesses. These clauses require agreement rates of pay to be extended to any labour hire employees on site⁶⁹. An extension of this approach was adopted in the Australian Labor Party’s 2018 proposal to enact the principle of ‘same job, same pay’ for labour hire workers (i.e. ensure that they receive the same pay and conditions as direct employees)⁷⁰. This proposal could perhaps have taken a similar approach to that found in the *Agency Workers Regulations 2010* (UK)⁷¹. Nevertheless, the policy was not fully developed, nor ultimately implemented, as Labor lost the May 2019 federal election.

The second group of labour intermediaries are those termed by the Victorian Inquiry as ‘rogue’ labour contractors⁷², whose role in industries such as horticulture, meat processing and contract cleaning has become more visible in the last five years⁷³. These labour providers engage in blatantly exploitative conduct, including significant levels of underpayment of award wages, provision of sub-standard accommodation, non-observance of workplace health and safety rules and dangerous transportation of workers to work sites⁷⁴. Usually, the contractors are not labour hire agencies or any form of legitimate business. They operate in the shadows, taking advantage of the vulnerability of migrant workers in particular, and are difficult to monitor or trace for purposes of enforcing workplace and other laws⁷⁵. The regulatory response to this problem has been the adoption of labour hire licensing laws in three states: Queensland, South Australia and Victoria⁷⁶.

Under these statutes, only legitimate businesses with a demonstrated capacity to comply with workplace, safety, taxation, migration and related laws can obtain a licence to provide labour hire services. The labour hire legislation in each state also imposes on host businesses the obligation to utilise only licensed labour hire providers. Substantial penalties apply both to providers operating without a licence, and to hosts using unlicensed

⁶⁸ Industrial Relations Victoria, n. (29), 260.

⁶⁹ *Ibid.*, 103-107.

⁷⁰ Australian Labor Party, *Same Job, Same Pay: Labor’s Plan to Tackle Unfair Labour Hire*, July 2018.

⁷¹ For an assessment, see Forde C. and Slater G., *The Effects of Agency Workers Regulations on Agency and Employer Practice*, ACAS Research Paper 01-14, 2014.

⁷² Industrial Relations Victoria, n. (29), 53-54, 81.

⁷³ See for example Howe J., Reilly A., Wright C., van den Broek D., Clibborn S., *A Critical Examination of the Relationship between Labour Hire Intermediaries and Growers in the Australian Horticulture Industry*, in *Australian Journal of Labour Law*, 2019, 32, 1, 83. See also (on non-compliance in the construction industry) Hannan E., *80 pc of labour hire firms breaking law, ABCC audit shows*, in *The Australian*, 19 June 2020.

⁷⁴ Industrial Relations Victoria, n. (29), Chapter 4; Finance and Administration Committee, Parliament of Queensland, *Inquiry into the Practices of the Labour Hire Industry*, Report No 25 of the 55th Parliament, June 2016, 19–23; Economic and Finance Committee, Parliament of South Australia, *Final Report: Inquiry into the Labour Hire Industry*, Report No 93, October 2016, 24–35.

⁷⁵ See for example Industrial Relations Victoria, n. (29), 185, 193-196.

⁷⁶ *Labour Hire Licensing Act 2017* (Qld); *Labour Hire Licensing Act 2017* (SA); *Labour Hire Licensing Act 2018* (Vic). See also *Labour Hire Licensing Act 2020* (ACT), establishing a licensing scheme in the Australian Capital Territory.

providers⁷⁷. In this way, labour hire licensing laws aim to eradicate disreputable operators from entering the market. They do not challenge the foundational conception of the labour hire contractor (or agency) as the legal employer of workers supplied to host businesses. However, they distribute some of the responsibility for compliance with minimum employment standards to hosts, thereby countering the tendency of many users of labour hire services to ‘turn a blind eye’ to exploitation from which they benefit. This regulatory approach has been shown to be effective in raising standards of business behaviour and reducing exploitation of vulnerable workers, over more than 15 years of experience in the United Kingdom⁷⁸.

3.2. Franchise business structures.

It was noted in Section 2 above that the 7-Eleven underpayment scandal led to the passage of amendments to the *Fair Work Act* in 2017, to increase the level of protection afforded to employees in franchise businesses. Exploitation in the franchise sector has extended further than 7-Eleven, with revelations of underpayments and other employment law breaches also in Domino’s Pizza franchises⁷⁹, Caltex petrol outlets⁸⁰, the Subway fast-food chain⁸¹ and various brands operated by Retail Food Group (including Donut King, Brumby’s and Gloria Jean’s)⁸². In Australian franchise networks, the franchisee (for example, the 7-Eleven store operator) is the legal employer of the employees, and therefore liable for any underpayments or other award breaches that may occur⁸³. The nature of franchise networks is such that, frequently, franchisees are under considerable pressure from franchisors to reduce labour costs⁸⁴. Franchisors often exercise a high level of control over franchisees in relation to matters such as product presentation, branding and use of particular suppliers⁸⁵. In these ways, franchisors transfer much of the risk of business operations (including in relation to employment law compliance) onto franchisees, while still deriving a considerable proportion of the profits⁸⁶.

⁷⁷ Forsyth A., *Regulating Australia’s ‘Gangmasters’ through Labour Hire Licensing*, in *Federal Law Review*, 2019, 47, 3,469.

⁷⁸ See for example Gangmasters Licensing Authority, *The Preventative Impact of Licensing on Labour Exploitation*, June 2015; Metcalf D., *United Kingdom Labour Market Enforcement Strategy 2018–19*, Director of Labour Market Enforcement, Report, May 2018, 68, 95. Compare, however, Ariyawansa S., *A Red-Tape Band-Aid or a Solution? Lessons from the United Kingdom’s Gangmasters (Licensing) Act 2004 for Temporary Migrant Workers in the Australian Horticulture Industry*, in *Australian Journal of Labour Law*, 2017, 30, 2, 158.

⁷⁹ Ferguson A., Christodoulou M., *Domino’s Pizza workers kept in the dark about underpayment for almost two years*, in *Sydney Morning Herald*, 14 February 2017.

⁸⁰ Ferguson A., *FWO report on Caltex is a shocker*, in *Australian Financial Review*, 5 March 2018.

⁸¹ Ryan P., *Subway forced to cough up workers’ unpaid wages in crackdown on fast-food sector*, in *ABC News*, 1 October 2019.

⁸² Ferguson A., Danckert S., *‘It’s like 7-Eleven’: claims underpayment is rife at RFG*, in *Sydney Morning Herald*, 18 December 2017.

⁸³ Hardy T., *Shifting Risk and Shirking Responsibility? The Challenge of Upholding Employment Standards Regulation within Franchise Networks*, in *Australian Journal of Labour Law*, 2019, 32, 1, 62, 63, 65.

⁸⁴ *Ibid.*, 66.

⁸⁵ Johnstone et al, n. (4), 70-71; Kellner A., Peetz D., Townsend K., Wilkinson A., *‘We are Very Focused on the Muffins’: Regulation of and Compliance with Industrial Relations in Franchises*, in *Journal of Industrial Relations*, 2016, 58, 1, 25.

⁸⁶ Johnstone et al, (4), 70; Hardy, (83), 64-65.

Prior to the 2017 amendments, the *Fair Work Act* proved insufficient to counter the particular problems arising from non-compliance within franchises. The accessorial liability provision (section 550, discussed earlier) had only been used successfully to make a franchisor liable for underpayments in one case⁸⁷. In the high-profile 7-Eleven case, the courts generally took the view that the franchisor (7-Eleven's Australian head office) 'was not at fault'⁸⁸. On the contrary, the Fair Work Ombudsman found (in its inquiry into the 7-Eleven scandal) that the franchisor could have prevented the underpayments by the franchisees in light of its control over the settings in which they operated⁸⁹. This contributed to public pressure for legislative reforms that would hold franchisors accountable, which came in the form of the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*.

The 2017 legislation introduced amendments to the *Fair Work Act*, under which franchisors and holding companies may be held liable for workplace law breaches by franchisees and subsidiaries, where they have actual or imputed knowledge of the contraventions and do not take reasonable steps to prevent them⁹⁰. In the franchise context, liability applies where the business conducted by the franchisee is substantially or materially associated with intellectual property relating to the franchise, and the franchisor has a significant degree of influence or control over the franchisee's affairs⁹¹. These provisions represent the most deliberate statutory attempt, to date, to challenge the limitations of the traditional unitary concept of the employer in holding Australian businesses accountable for non-compliance with minimum standards. There have not yet been any decided cases to indicate how effective the amendments are in achieving that goal in practice.⁹² Concern has been raised, however, that franchisors may be able to manipulate relevant factors in the statutory defence to avoid liability⁹³.

⁸⁷ *Fair Work Ombudsman v Yogurberry World Square Pty Ltd* [2016] FCA 1290, discussed in Hardy, (83), 74-75.

⁸⁸ Hardy, n. (83), 72-73, discussing decisions such as *Fair Work Ombudsman v Hiji Pty Ltd* [2016] FCCA 1634; *Fair Work Ombudsman v JS Top Pty Ltd* [2017] FCCA 1689. Note, though, that 7-Eleven head office took responsibility for recompensing all underpaid workers through its wage repayment scheme: see Berg and Farbenblum, n. (42).

⁸⁹ Fair Work Ombudsman, *A Report of the Fair Work Ombudsman's Inquiry into 7-Eleven: Identifying and Addressing the Drivers of Non-Compliance in the 7-Eleven Network*, Commonwealth of Australia, April 2016, discussed in Hardy, (83), 74.

⁹⁰ *Fair Work Act*, Part 4-1, Division 4A; see in particular section 558B.

⁹¹ *Fair Work Act*, section 558A. For detailed examination of the 2017 franchisor liability provisions, see Hardy, n. (83), 75-82.

⁹² In the only decision related to the 2017 provisions so far, the Federal Court of Australia refused the Fair Work Ombudsman's application to require a franchisor to produce documents in an investigation into its alleged liability under section 558B for underpayments by one of its franchisees: *Fair Work Ombudsman v United Petroleum Pty Ltd* [2020] FCA 590.

⁹³ Hardy, n. (83), 78-80, discussing section 558B(3)-(4): the defence is taking reasonable steps to prevent breaches from occurring, having regard to factors such as the size and resources of the franchise, the franchisor's ability to influence or control franchisees, any action taken by the franchisor to ensure the franchisees had reasonable knowledge of workplace laws, and arrangements put in place by the franchisor to ensure compliance by franchisees and deal with complaints about underpayments or other breaches.

3.3. Supply chains.

Complex supply chains have been the focus of various innovative regulatory strategies in Australia⁹⁴. Johnstone et al have observed that (like franchising and labour hire, discussed earlier):

*The supply chain is another business structure that by its nature obscures the real economic relationship between business controllers and the workers who actually carry out the work. ... These integrated supply chain systems ... enable firms at or near the apex of the chain to avoid the legal proximity with workers that may attract various obligations and liabilities, but at the same time enable them to maintain effective commercial control over the work performed*⁹⁵.

Countering this business model has come in several different forms. First, exploitation of home-based ‘outworkers’ in the textile, clothing and footwear (TCF) industry over a long period of time led to implementation of a complementary legislative framework in four Australian states. These laws include provisions deeming outworkers (generally considered to be independent contractors) as employees, and providing them with the right to recover unpaid entitlements against a range of parties across the clothing supply chain (although not clothing retailers or consumers)⁹⁶. A similar scheme was implemented federally through amendments made by the *Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012*. Part 6-4A of the *Fair Work Act* allows outworkers to recover unpaid wages, leave and superannuation from an entity above them in the supply chain, for whom work has been indirectly performed⁹⁷. The federal and state regulatory approaches seek to bring clothing retailers into responsibility for fair treatment of TCF outworkers, through codes of practice imposing obligations relating to the commercial relationships retailers enter into with manufacturers and suppliers⁹⁸ (for example, requiring manufacturers to disclose details of production locations to retailers⁹⁹).

Secondly, a short-lived experiment with supply chain regulation in the road transport industry was implemented through the *Road Safety Remuneration Act 2012*. This legislation established the Road Safety Remuneration Tribunal (RSRT), a specialist body with powers to set minimum rates and other conditions for employees and self-employed owner drivers¹⁰⁰. Obligations could also be imposed on other participants in the transport supply chain. This can be seen in the RSRT’s *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016*. It required consignors and consignees of goods, operators of premises for loading and unloading goods, and other contractual intermediaries to take reasonable steps to ensure that hirers of drivers were not impeded from complying with the

⁹⁴ Rawling, Howe, n. (1), 235.

⁹⁵ Johnstone et al, n. (4), 66.

⁹⁶ The relevant state laws in New South Wales, Victoria, South Australia and Queensland are examined in Rawling, Howe, n. (1), 236-239.

⁹⁷ Stewart et al, n. (6), 254-255. See also *Textile, Clothing and Footwear and Associated Industries Award 2010*, Schedule F.

⁹⁸ Rawling and Howe, n. (1), 238-239; Stewart et al, (6), 255.

⁹⁹ Nossar I, Johnstone R, Macklin A, Rawling M, *Protective Legal Regulation for Home-based Workers in Australian Textile, Clothing and Footwear Supply Chains*, in *Journal of Industrial Relations*, 2015, 57,4, 585, 592-593.

¹⁰⁰ Rawling M, Kaine S, *Regulating Supply Chains to Provide a Safe Rate for Road Transport Workers*, in *Australian Journal of Labour Law*, 2012, 25, 237.

minimum rates specified in the order¹⁰¹. One of the objectives here was to counter the negative supply chain effects of inadequate minimum pay rates for drivers, including the necessity to take on additional work and engage in unsafe practices to complete deliveries within unreasonable time-frames¹⁰². However, the order operated for only two weeks prior to the RSRT's abolition by the Coalition Government in the lead-up to the 2016 federal election.¹⁰³ It is therefore not possible to assess the effectiveness of this regulatory intervention in supply chains. The backlash against it¹⁰⁴, though, highlights the power of business forces to resist regulation that transcends the traditional conception of the employer.

Thirdly, the Fair Work Ombudsman has sought to make wider supply chain actors responsible for labour standards compliance through litigation relying on section 550 of the *Fair Work Act* (discussed above). This formed part of a deliberate 'strategic enforcement' approach on the part of the regulator, combining enforcement action in the courts with other tools such as enforceable undertakings and compliance deeds 'to look beyond labour law's traditional focus on the liability of the contractual employer of labour'¹⁰⁵. One of the most significant examples related to the underpayment of supermarket trolley collectors, typically employed by subcontractors at the base of a supply chain with the peak occupied by the major supermarkets: Coles and Woolworths¹⁰⁶. In one case, the Fair Work Ombudsman instigated proceedings for award breaches against the direct employing entities, and against Coles based on its alleged involvement in the contraventions under section 550¹⁰⁷. The Coles litigation was resolved through an enforceable undertaking in which the company accepted its 'ethical and moral responsibility' to ensure compliance by all parties involved in running its enterprise¹⁰⁸. In another case, a contracting entity above the direct employer of trolley collectors was found to be liable as an accessory to underpayments engaged in by that employer¹⁰⁹.

In summary, these measures to lift compliance with minimum labour standards in complex supply chains have met with mixed success. The approach adopted in the TCF sector has arguably been the most effective, utilising a combination of federal and state legislation, the industry award and both mandatory and voluntary codes to 'enable hidden workforces to be made visible and enable monitoring and enforcement of legal liability and responsibility for fair working conditions'¹¹⁰. It is also important to note that supply chain regulation in the TCF and road transport industries came about following many years of

¹⁰¹ Stewart et al, n. (6), 428.

¹⁰² See for example the RSRT's ruling in *Re Third Annual Work Program* [2015] RSRTFB 15.

¹⁰³ *Road Safety Remuneration Repeal Act 2016*. See Stewart et al, (6), 180, 428; Rawling M., Johnstone R. Nossar I., *Compromising Road Transport Supply Chain Regulation: The Abolition of the Road Safety Remuneration Tribunal*, in *Sydney Law Review*, 2017, 39,3, 303.

¹⁰⁴ Thornthwaite L., *Controversial History of Road Safety Tribunal Shows Minimum Pay was Doomed from the Start*, in *The Conversation*, 15 April 2016.

¹⁰⁵ Hardy T., Howe J., *Chain Reaction: A Strategic Approach to Addressing Employment Noncompliance in Complex Supply Chains*, in *Journal of Industrial Relations*, 2015, 57, 4, 563, 563-565.

¹⁰⁶ Johnstone R., Stewart A., *Swimming Against the Tide? Australian Labor Regulation and the Fissured Workplace*, in *Comparative Labor Law and Policy Journal*, 2015, 37, 55, 76-77.

¹⁰⁷ Hardy, n. (3), 88, noting that significant penalties were imposed on the direct employers responsible for underpaying the trolley collectors: *Fair Work Ombudsman v Al Hilifi* [2016] FCA 193.

¹⁰⁸ Hardy and Howe, n. (105), 571.

¹⁰⁹ *Fair Work Ombudsman v South Jin Pty Ltd* [2015] FCA 1456, discussed in Hardy, (3), 89.

¹¹⁰ Nossar et al, n. (99), 600.

campaigning by trade unions in those sectors.¹¹¹ The role of unions in agitating for regulatory reform to overcome the limitations of the unitary concept of the employer in Australian labour law is considered in the concluding section which now follows.

4. Conclusion.

This article has illustrated the limitations of Australian labour law's capacity to protect workers outside the framework of the traditional employment relationship. Regulatory interventions to address these constraints have mostly been focused on finding a way to hold lead firms accountable for compliance with minimum labour standards, for example through labour hire licensing, franchisor liability provisions and supply chain schemes. Important as these experiments have been, more is needed to effectively challenge the ability of employers to distance themselves from responsibility through multilateral business models. The main TCF union has argued that collective bargaining at the sectoral or supply chain level is required to engage all relevant parties in the clothing production process¹¹². The Australian Council of Trade Unions contends that workers should be able to determine their preferred level of bargaining, whether that be across industries, supply chains, franchises or wherever the locus of employer power is¹¹³. The United Workers Union has shown, through its Fair Food Campaign over the last few years, that gains can be obtained for workers through a 'whole of supply chain' approach to collective organisation and solidarity¹¹⁴. Legislative change to enable collective bargaining beyond the narrow focus of the employing enterprise is essential, if business reliance on the unitary concept of the employer is to be meaningfully contested in the Australian setting.

Bibliography

- Ariyawansa S., *A Red-Tape Band-Aid or a Solution? Lessons from the United Kingdom's Gangmasters (Licensing) Act 2004 for Temporary Migrant Workers in the Australian Horticulture Industry*, in *Australian Journal of Labour Law*, 2017, 30, 2, 158.
- Berg L., Farbenblum B., *Remedies for Migrant Worker Exploitation in Australia: Lessons from the 7-Eleven Wage Repayment Program*, in *Melbourne University Law Review*, 2018, 41, 3, 1035.
- Creighton B., Forsyth A. (eds), *Collective Bargaining under the Fair Work Act*, The Federation Press, 2018, 206. See also *United Voice v Australian Workers' Union of Employees (Qld)* (2011)

¹¹¹ Rawling, Howe, n. (1), 236, 240.

¹¹² Macdonald et al, (33), 219-220.

¹¹³ ACTU, *Congress 2018 Draft Policies and Resolutions*, 2018.

¹¹⁴ Kerin E., *Fair Food Is about Fair Work*, in *Australian Food Sovereignty Alliance*, 13 June 2016; United Workers Union, *Union Win: Golden Farms*, 2019, www.unitedworkers.org.au/union-win-golden-farms/, accessed 23 June 2020.

- 207 IR 251; *Australian Nursing Federation v IPN Medical Centres Pty Ltd* [2013] FWC 511; *United Voice* [2014] FWC 6441.
- Creighton B., *A Retreat from Individualism? The Fair Work Act 2009 and the Re-Collectivisation of Australian Labour Law*, in *Industrial Law Journal*, 2011, 40, 116.
- Ferguson A., Christodoulou M., *Domino's Pizza workers kept in the dark about underpayment for almost two years*, in *Sydney Morning Herald*, 14 February 2017.
- Ferguson A., Danckert S., *"It's like 7-Eleven": claims underpayment is rife at RFG*, in *Sydney Morning Herald*, 18 December 2017.
- Ferguson A., *FWO report on Caltex is a shocker*, in *Australian Financial Review*, 5 March 2018.
- Forde C., Slater G., *The Effects of Agency Workers Regulations on Agency and Employer Practice*, ACAS Research Paper 01-14, 2014.
- Forsyth A., *Playing Catch-Up but Falling Short: Regulating Work in the Gig Economy in Australia*, in *King's Law Journal*, 2020, 3, (forthcoming).
- Forsyth A., *Regulating Australia's 'Gangmasters' through Labour Hire Licensing*, in *Federal Law Review*, 2019, 47, 3, 469.
- Forsyth A., *The Uber Eats Decision: Australia's FWC Full Bench misses the chance to see through the gig economy's sophistry*, 2020 <https://labourlawdownunder.com.au/?p=846>, accessed 12 June 2020.
- Hannan E., *80 pc of labour hire firms breaking law, ABCC audit shows*, in *The Australian*, 19 June 2020.
- Hardy T., Howe J., *Chain Reaction: A Strategic Approach to Addressing Employment Noncompliance in Complex Supply Chains*, in *Journal of Industrial Relations*, 2015, 57, 4, 563.
- Hardy T., *Reconsidering the Notion of the "Employer" in the Era of the Fissured Workplace: Traversing the Legislative Landscape in Australia*, in Nakakubo H., Araki T. (eds.), *The Notion of the Employer in the Era of the Fissured Workplace: Should Labour Law Responsibilities Exceed the Boundary of the Legal Entity?*, Kluwer Law International, Alphen aan den Rijn, 2017, 53.
- Hardy T., *Shifting Risk and Shirking Responsibility? The Challenge of Upholding Employment Standards Regulation within Franchise Networks*, in *Australian Journal of Labour Law*, 2019, 32, 1, 62, 63, 65.
- Hardy T., *Who Should Be Held Liable for Workplace Contraventions and on What Basis?*, in *Australian Journal of Labour Law*, 2016, 29, 78.
- Hatch P., *In Amazon's "Hellscape", Workers Face Insecurity and Crushing Targets*, in *Sydney Morning Herald*, 7 September 2018;
- Howe J., Reilly A., Wright C., van den Broek D., Clibborn S., *A Critical Examination of the Relationship between Labour Hire Intermediaries and Growers in the Australian Horticulture Industry*, in *Australian Journal of Labour Law*, 2019, 32, 1, 83.
- Johnstone R., Stewart A., *Swimming Against the Tide? Australian Labor Regulation and the Fissured Workplace*, in *Comparative Labor Law and Policy Journal*, 2015, 37, 55, 76-77.
- Johnstone R., *Regulating Work Health and Safety in Multilateral Business Arrangements*, in *Australian Journal of Labour Law*, 2019, 32, 1, 41, 45.
- Johnstone R., McCrystal S., Nossar I., Quinlan M., Rawling M., Riley J., *Beyond Employment: The Legal Regulation of Work Relationships*, The Federation Press, Alexandria, 2012.

- Kellner A., Peetz D., Townsend K., Wilkinson A., “*We are Very Focused on the Muffins*”: *Regulation of and Compliance with Industrial Relations in Franchises*, in *Journal of Industrial Relations*, 2016, 58, 1, 25.
- Kerin E., *Fair Food Is about Fair Work*, in *Australian Food Sovereignty Alliance*, 13 June 2016;
- Macdonald F., Charlesworth S., Brigden C., *Access to Collective Bargaining for Low-Paid Workers*, in McCrystal S., Creighton B., Forsyth A. (eds), *Collective Bargaining under the Fair Work Act*, The Federation Press, 2018, 206.
- Metcalf D., *United Kingdom Labour Market Enforcement Strategy 2018–19*, Director of Labour Market Enforcement, Report, May 2018, 68, 95.
- Nossar I., Johnstone R., Macklin A., Rawling M., *Protective Legal Regulation for Home-based Workers in Australian Textile, Clothing and Footwear Supply Chains*, in *Journal of Industrial Relations*, 2015, 57, 4, 585.
- O’Rourke A., Antioch S., *Workplace Bullying Laws in Australia: Placebo or Panacea?*, in *Common Law World Review*, 2016, 45, 1, 3.
- Prassl J., *The Concept of the Employer*, Oxford University Press, Oxford, 2015, 1, 13.
- Rawling M., Howe J., *The Regulation of Supply Chains: An Australian Contribution to Cross-National Legal Learning*, in Stone K., Arthurs A. (eds), *Rethinking Workplace Regulation*, Russell Sage Foundation, New York, 2013.
- Rawling M., Kaine S., *Regulating Supply Chains to Provide a Safe Rate for Road Transport Workers*, in *Australian Journal of Labour Law*, 2012, 25, 237.
- Ryan P., *Subway forced to cough up workers’ unpaid wages in crackdown on fast-food sector*, *ABC News*, 1 October 2019.
- Schneiders B., *Strikes to Hit Chemist Warehouse as Workers Seek Huge Pay Boost*, in *Sydney Morning Herald*, 1 March 2019;
- Stewart A., McCrystal S., *Labour Regulation and the Great Divide: Does the Gig Economy Require a New Category of Worker?*, in *Australian Journal of Labour Law*, 2019, 32, 1, 4.
- Stewart A., Forsyth A., Irving M., Johnstone R., McCrystal S., *Creighton and Stewart’s Labour Law*, The Federation Press, Alexandria, 2016.
- Thornthwaite L., *Controversial History of Road Safety Tribunal Shows Minimum Pay was Doomed from the Start*, in *The Conversation*, 15 April 2016.
- United Workers Union, *Union Win: Golden Farms*, 2019;
- Wynne-Evans C., *A Solution to Fissuring? Revisiting the Concept of the Joint Employer*, in *Industrial Law Journal* (advanced access version), 2020, 1, 3.

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