INDUSTRIAL RELATIONS
LAW SUMMARY

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Part 1: Sources of law

Topic 1: The broad framework of industrial relations law

There are a variety of ways in which people may ‘work’ and hence may be regulated by the broad framework of industrial relations law. Work may be defined in terms of both ‘productive labour’ that produces commercial wealth, and ‘reproductive labour’ that produces and allows other people to engage in productive labour. The context of industrial relations law is made up of economic, social and cultural factors. In addition, the political context of the law of work is informed by the nation state acting as a key player in regulating various forms of work at local, national and international levels. Through work, people develop a relationship of interdependence with society, and form groups with collective opinions on issues of work to be regulated.

1.1 The legal regulation of work

The principal piece of legislation governing industrial relations law in Australia is the *Fair Work Act 2009* (Cth). However, the extent to which this Act effectively regulates work is questionable. As it stands, the Act only covers paid forms of work. This disregards the various forms of ‘reproductive labour’ that are unpaid from being regulated under a national system. For example, domestic work, child care, volunteer work are excluded from protection under the Act, which leads to these forms of work being undervalued.

However, the *Fair Work Act 2009* (Cth) does have a variety of objectives which comprise an effective framework to regulate ‘productive labour’ in Australia.

*Fair Work Act 2009* (Cth), Section 3

<table>
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<td>The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by:</td>
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<td>(a) providing workplace relations laws that are fair to working Australians, are flexible for businesses, promote productivity and economic growth for Australia’s future economic prosperity and take into account Australia’s international labour obligations; and</td>
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1 R Owens, J Riley and J Murray, The Law of Work (2nd ed, 2011), [1.1.1].
(b) ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders; and

(c) ensuring that the guaranteed safety net of fair, relevant and enforceable minimum wages and conditions can no longer be undermined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system; and

(d) assisting employees to balance their work and family responsibilities by providing for flexible working arrangements; and

(e) enabling fairness and representation at work and the prevention of discrimination by recognising the right to freedom of association and the right to be represented, protecting against unfair treatment and discrimination, providing accessible and effective procedures to resolve grievances and disputes and providing effective compliance mechanisms; and

(f) achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action; and

(g) acknowledging the special circumstances of small and medium-sized businesses.

In addition to the statutory regulation of the Fair Work Act 2009 (Cth), work is regulated under the common law as a relationship of economic exchange between employers and employees. The relationship may be informed by a contract of employment, which will be discussed in detail in Topic 4.

1.2 The international character of Australian industrial relations law

Australian industrial relations law is largely influenced by international laws and organisations which set standards of work to be followed.

1.2.1 The International Labour Organization

Significantly, the International Labour Organization (ILO) to which Australia is a party sets ‘International Labour Standards’. These Standards have the paramount goals of improving peoples’ working conditions, and ensuring that workers are treated in a fair and equitable way. The Standards also set fundamental human rights of workers, notably the right to join a trade union, and the right to rest and leisure. Although the Standards are non-binding, it is in the interests of nation states to enact them to ensure that they are not placed at a competitive disadvantage and to ensure that they are seen to promote justice and world peace. The Standards, as well as the other Conventions and Recommendations of the ILO,
are collectively known as the International Labour Code. Australian industrial relations law has the Code as its origin, and thus largely reflects its work standards today.\(^2\)

### 1.2.2 Globalising forces

In today’s increasingly globalised world there are new possibilities for work and subsequently the framework of industrial relations law. With new technologies aiding the exchange of information and enhancing communication, it seems that boundaries of place may be significantly broken down.\(^3\) This enables people to work from various locations, speeds up work processes and reduces transport costs. Furthermore, new goods and services are being developed and marketed globally, and companies are employing people across various locations to work on different parts of their products.\(^4\) In the globalised economy which reduces nation borders, state sovereignty is being increasingly challenged by transnational companies with huge economic power.\(^5\) This unfortunately results in an inequality of bargaining power as some nation states may be overpowered by other nation states with more economic clout.

The *Declaration on Social Justice for a Fair Globalization* has been enacted to respond to the need to ensure that the benefits of globalisation are distributed equally around the world. The Declaration has as its principal objectives, for example, the promotion of ‘a sustainable institutional and economic environment’, and promoting social security.\(^6\) Coupled with the *Declaration on Fundamental Principles and Rights at Work*, the *Declaration on Social Justice for a Fair Globalization* promotes a new regime of regulating the work standards in both the developing and the developed world.\(^7\) The concept of ‘decent work’ is promoted by the ILO through these Declarations which involves provisions conducive to human dignity which involve security, equity and freedom.\(^8\) The international framework of industrial relations law is thus increasingly focused on equality, which ought to translate to the national regulation of work in Australia.\(^9\)

\[\begin{align*}
\text{To order the complete version of the lawskool Industrial Relations Summary please visit www.lawskool.com.au}
\end{align*}\]

\(^2\) R Owens, J Riley and J Murray, *The Law of Work* (2nd ed, 2011), [2.2 & 2.3].

\(^3\) R Owens, J Riley and J Murray, *The Law of Work* (2nd ed, 2011), [2.4.1].

\(^4\) R Owens, J Riley and J Murray, *The Law of Work* (2nd ed, 2011), [2.4.2].

\(^5\) R Owens, J Riley and J Murray, *The Law of Work* (2nd ed, 2011), [2.4.3].

\(^6\) R Owens, J Riley and J Murray, *The Law of Work* (2nd ed, 2011), [2.5.2.2].

\(^7\) R Owens, J Riley and J Murray, *The Law of Work* (2nd ed, 2011), [2.5.2.4].

\(^8\) R Owens, J Riley and J Murray, *The Law of Work* (2nd ed, 2011), [2.5.2.4].