

LEGAL STUDIES

Evaluate how the law has responded to the changing needs of employees, employers and society's values in the workplace.

Workplace laws have significantly changed over time in order to adapt to the changing needs and values of society. In response, the Australian legal system has established new legislations such as the *Fair Work Act 2009* to protect the rights of individuals in the work force. The constant evaluation of current and impending laws ensure that employees and employers are provided sufficient protection and equality regarding unfair dismissal, Occupation Health and Safety, discrimination and sexual harassment in the workplace. Compensation and remedies have been put in place to protect individuals from injuries in the workplace. Workplace laws are continuously being reformed to protect the rights of individuals to balance the values of community.

Under the Common Law, employers are required to provide a high standard duty of care towards their employees, ensuring that negligence does not occur. The case of *Wilson and Clyde Coal Co V English (1938)* established the three primary duties which an employer is obligated to provide - the duty to provide fellow competent employees, an adequate safe workplace and a safe system of work.¹ These conditions have been adapted into the *Occupational Health and Safety Act 2000 (cth)*, which is objective to promoting health, safety and welfare for workers. It ensures workforces follow certain guidelines in conducting a safe working environment, hence preventing negligent work injuries and health risks. To ensure that these safety conditions are followed, severe penalties of \$85000 for individuals and \$850,000 for companies are imposed for breaching the Act, subsequently also acting as a deterrent. Increasing breaches have been made as society value changes, hence the law has responded through re-evaluating and imposing the *Occupational Health and Safety Amendment (Workplace Deaths) Act 2004*, which now carries the punishment of up to five years imprisonment with the placement heavy fines for the responsibility of workplace death. In the article "**Tragedy and Heartbreak- the stories behind the grim statistics of lost employees**", employee Daniel Croker died from the relinquishing injuries he suffered after falling off his horse during cattle mustering. His employer B.MacLaclan held vicarious liability and fined a severe \$96,250 for not providing suitable protective gear, as Croker had fallen with no head protection.² This case shows how the law has responded to workplace negligence, and how employees are increasingly being protected.

The *Workplace Injury Management and Workers Compensation Act 1998 (NSW)*, administered by WorkCover, requires all employees to be insured against workplace injuries and health implications. This remedy ensures that the injured employee receives compensation for their loss of wages, body part, personal possessions, medical expenses, and permanent suffering. WorkCover conducts inspections to ensure that physical and psychological hazards do not act as a barrier to a safe workplace.³ The law has responded to also protect employers and employees from workplace injuries through the enactment of the *Workcover Compensation Legislation Amendment Acts 2002 and 2003 (NSW)*. This Act acts as a remedy and provides the opportunity for the injured to attend rehabilitation to help them return to the workforce sooner, meaning that they can continue support their families and contributing to the economic society. In the article "**Asbestos disease campaigner Bernie Banton died in Sydney early this morning. He was 61**", Banton campaigned to receive compensation for the mesothelioma cancer he attained during his employment in James Hardies Company. He received \$800,000 in compensation for his workplace injury, making a significant case in marking the recognition of society's rights.⁴ Thus WorkCover effectively protects individuals from injuries conceived at workplace.

¹ M,Brogan. W,Gleeson. T,Foley. V,Siow. T,Ejsak.,2003, Heineman: LEGAL STUDIES, Marc Childs,Vic

² Author Unknown, "**Tragedy and Heartbreak- the stories behind the grim statistics of lost employees**", Sydney Morning Herald (24/4/06)

³ Workcover. 2003. *Law and Policy*. Available from: www.workcover.nsw.gov.au. Accessed 12.07.10

⁴ Elisabeth Sexton, "**Asbestos disease campaigner Bernie Banton died in Sydney early this morning. He was 61**", Sydney Morning Herald, (27/11/2007)

Certain groups in society are discriminated in the workplace due to gender, race, age, disability and marital status. Operating alongside federal and state law, *The Anti-Discrimination Act 1977* operates to prohibit and remove discrimination in the workplace. A widely controversial issue in the workplace involves sex discrimination. Women in employment often suffer from the “glass ceiling” effect, which prevents them from achieving a higher level position in their occupation, often being regarded as male domain. In the workplace, women tend to achieve lower superannuation, income, and work in lower paid jobs than men.⁵ Men are also subject to men in employment opportunities, as employers often discriminate women due to tendency for women to fall pregnant and take maternity leave award- thus also resulting in having less flexible working hours. The Sex Discrimination Act 1984 addresses all forms of harassment and discrimination faced by gender, including sexual harassment and pregnancy.⁶ An example of pregnancy discrimination is shown in the article “**Employer accused of sacking worker over pregnancy**”, where clerical assistant Mrs. Jiongqui was told that she would be unable to return to work after telling her boss Wongtas she was pregnant. She complained to the ombudsmen, and Wongtas was fined over \$200,000 for serious breaches in the *Fair Work Act (2009)*.⁷ However, through the *Fair Work Act (2009)*, the protection of women has been more efficient as it has made it “unlawful to take adverse action against an employee on discriminatory grounds”.⁸ Employees of AMP and Myer have been provided the opportunity to take up to six weeks leave on full pay for maternity leave. The Rudd government are also reviewing the benefits of providing paid maternity leave, to help social and economical security to the family. Thus the law has responded well in adapting to the needs of women in the workforce by implementing new legislations and benefits to help achieve equal employment opportunities.

The termination of an individual’s employment can be undertaken by dismissal or redundancy. Under common law, an employer has the entitlement to dismiss long term employees by giving eight weeks substantial notice. It may be as a result of misconduct in the workplace, negligence, unexplained absence, or being incompetent for the position. However ‘unfair dismissal’ often occurs in the workplace, subsequently breaching the contract at common law. In the early 1990’s, employees were able to request reimbursement for an unreasonable dismissal in the workplace under the Industrial relations act. However under WorkChoices, this claim was applicable to businesses with over one hundred employees. WorkChoices is restrictive in its nature, as presented in the case of *Village Cinemas Australia Pty Ltd v Carter (2007)*, where it stated that “the operational reason relied on by the employer need only be *one* ground of cause of termination”.⁹ However, the legal system has responded to society’s values and specifically, the needs of employees, through introducing the *Fair Work Act 2009*. This amendment act, released by the Labor Government, provided several changes to WorkChoices which benefited society and workers. The *Fair Work Act 2009* redefined a small business as one with less than fifteen employers rather than one hundred, which protects the needs of employers in that they are further protected from unfair dismissal. It also ensured that employers must provide employees warning that their conduct will result in termination. The Fair Work Act 2009 provides greater redundancy pay than WorkChoices to those whose jobs have become redundant, and has also extended its redundant payment. Thus the law has responded positively and effectively to the needs of individuals in the workplace through evaluating the values and in society.

The law has thus effectively responded to the changing needs of employees, employers and society’s values to benefit all individuals. Through re-evaluating legislation and enacting new awards and policies, the Australian legal system has successfully responded to protect the rights of individuals in the workplace in relation to safety, compensation, discrimination and termination. In conclusion, issues faced by the changing needs and social values of employers and employees have generated a sufficient response from the law.

⁵ M,Brogan. W,Gleeson. M,Hayes.N,Kusi-Appauh. N,thiering.,2006, Heineman: LEGAL STUDIES, Marc Childs,Vic. Pg 212.

⁶ M,Brogan. W,Gleeson. T,Foley. V,Siow. T,Ejsak.,2003, Heineman: LEGAL STUDIES, Marc Childs,Vic pg 416.

⁷ Paul Bibby, “Employer accused of sacking worker over pregnancy”, Sydney Morning Herald (7/7/10)

⁸ Australian government, Fair Work Australia <http://www.fwa.gov.au/index.cfm?pagename=legislationfwact> , <Accessed> 12/07/10

⁹ Village Cinemas Australia Pty Ltd v Carter (2007) 158 IR (‘Village Cinemas’) (Fairwork at p.217)