The year ahead in workplace law and culture

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2019 - The year ahead

- A recent development in contractual matters
- A new government, new laws?
- The evolving world of casuals and labour hire
- Workplace culture – support from the IRC?
Standard local government senior manager contract:

10.3 This contract may be terminated before the termination date by way of any of the following: ....

10.3.5 Council giving 38 weeks' written notice to the employee, or alternatively, by termination payment ...

Mr Stapleton sought an injunction to restrain his termination.

No injunction restraining termination of employment granted. Why?
A recent development in contractual matters

• At [20] – dispute resolution pre-requisite and separate?

“If that is right, then the Council’s entitlement under that subclause is to terminate the Contract without cause by giving the written notice or making the payment. Once that point is appreciated, I do not think it is seriously arguable that compliance with the dispute resolution mechanism in clause 17 (assuming without deciding that it is otherwise enforceable) is a contractual prerequisite to the Council’s exercise of the right under clause 10.3.5. In circumstances where the Council has a right to terminate without cause by giving the written notice or by making the termination payment under subclause 11.3, I do not think that could constitute, or be affected by, a dispute that engaged the dispute resolution provisions in clause 17.”

• At [24] – clause 10.3.5 the complete answer?

“… clause 10.3.5 again provides a complete answer because under clause 10.3.5 the Council can terminate the Contract without cause.”
A new government, new laws?

NSW Government has introduced 10 days of paid domestic and family violence leave per year for NSW public sector employees from 1 January 2019: M2018-03- Support for Employees Experiencing Domestic and Family Violence.

M2018-03 states: “Other public sector agencies … are strongly encouraged to provide the same leave provisions and support to their employees.”

Clause 21 L of LGSA: special leave for victims of family and domestic violence.

No IR election policy!

Ending forced council mergers
A new government, new laws?

**Wage theft:** new wage theft laws to address systematic, ongoing and widespread failure to pay money and other employment conditions. The new law will place criminal penalties, including fines and the possibility of jail for up to 14 years, in the NSW Crimes Act for individuals who are found to be purposefully taking part in systematic, ongoing and widespread failure to pay money and other employment entitlements.

**Domestic violence:** Every employee in every workplace will be able to take ten days (non-accumulative) paid domestic violence leave each year.
Gig workers: a new chapter in the Industrial Relations Act that defines ‘gig’ workers, defines the ‘platforms’ or ‘networks’ through which work is provided, and gives the IRC the power to make orders providing minimum rates of pay and ensuring those gig workers receive the same entitlement to superannuation, annual holidays, sick leave, and all the other benefits that employees are legally entitled to.

Unfair contracts: modernise and improve the unfair contract laws in the IR Act so they are fit for purpose and can be used more quickly and inexpensively.

Work health and safety: introduce tougher penalties for corporations and jail for individuals responsible for workplace death resulting from a breach of work safety laws.
The evolving world of casuals and labour hire

'Kick in the guts': Employers cry foul over casual truck driver's win

Employers facing $8b back pay bill' for casuals after 'double dip' ruling

WorkPac challenges 'double dipping' casual precedent
A continuing casual affair

Local Government (State) Award

• Clause 26:

(i) A casual employee shall mean an employee engaged on a day to day basis.

...

(viii) A casual employee shall not replace an employee of the employer on a permanent basis.

• Clause 28:

An employee of a labour hire business shall not replace an employee of the employer on a permanent basis.
Bullying complaints and workplace conflict continue to consume the resources and time of business. Proactivity in this area is needed, rather than just being reactive.

Culture will remain central to good workplace relations. Lessons from recent Royal Commissions: poor culture can lead to abhorrent behaviours. Employers need to stamp out inappropriate, unprofessional (& divisive) and unsafe behaviours.

Will the IRC support employers?
Workplace culture

- Horrible homophobic and racist behaviour: *Mt Arthur Coal Pty Ltd t/a Mt Arthur Coal v Goodall* [2016] FWCFB 5492

- Domestic violence: *William James Sandilands v Industrial Relations Secretary on behalf of Legal Aid NSW* [2018] NSWIRComm 1051

- Inappropriate sexual pictures after hours: *Fussell v Transport for NSW T/A Transport for NSW* [2019] FWC 1182

- Since 1 November 2018, NSW IRC unfair dismissal decisions, employers have had 100% success rate!
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