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# Book review

Editor: Judge Michael Shanahan

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## NUTSHELL: EMPLOYMENT LAW

*Nutshell: Employment Law* (1st ed) by Louise Floyd (Thomson Reuters, 2010) 160pp, ISBN 9780455228129

### GUIDANCE IN THE EVER-CHANGING FACE OF AUSTRALIAN EMPLOYMENT LAW

Employment law in Australia is undoubtedly a progressive area of law, with this year alone seeing the largest sexual harassment claim in Australian history<sup>1</sup> and the High Court overturning 27 years of jurisprudence regarding an employer's duty to ensure safety.<sup>2</sup> All this adds fuel to the fire in an oft misunderstood area of law.

In view of this, *Employment Law* is a timely publication. This pint-sized book provides a broad brush overview of the Australian labour law employment system. Particular emphasis is placed on understanding the *Fair Work Act 2009* (Cth). It covers an array of topics including: the National Employment Standards (NES) and awards, termination of employment, trade unions, superannuation and occupational health and safety.

Chapter 1 skilfully deals with two key questions that are pervasive in the employment law context:

- Why does labour law change so much?
- How do I work out my terms and conditions of employment?

In answering the first of these two questions, Floyd canvasses the theories of labour law and their application to the Australian legal system. The second question posed is one which is particularly relevant to practitioners who are frequently broached about this topic. As Floyd acknowledges, the answer to this question can be complex as it is influenced by contract law, enterprise bargaining workplace policy and the legislative maze.

Chapter 2 provides a useful guide to determining whether a person is an employee or an independent contractor. The chapter gives an overview of the seminal cases which assist in determining the characterisation of a worker. This demarcation is pivotal as it influences the law which applies to the working relationship.

Chapter 3 deals with duties implied by the common law into the employment relationship such as the duty of employees to obey reasonable demands and the duty of good faith. It also touches on restraint of trade, an area which frequently comes under the microscope in practice as a result of an increasingly transient workforce.

Chapter 4 goes on to discuss the minimum conditions of employment and enterprise bargaining. In particular, it deconstructs the NES, which are the cornerstone of employee working conditions. Importantly, Floyd cautions readers that the relevant legislative provisions will only be in their first year of operation at the time the book is released, and recommends that readers refer to the Australian Government website for cases illustrating the application of the legislation. The basic functions of the governing bodies that administer the *Fair Work Act 2009* (Cth) are discussed at the end of the chapter.

The commentary in Ch 5 draws on the important distinction between *unfair* and *unlawful* dismissal. It also touches on the issue of redundancy.

Chapter 6 dissects some of the main areas of trade union law and is in part based on one of Floyd's own journal articles discussing good faith bargaining, union right of entry and the legal notion of responsible unionism. Useful references are made to relevant case law and legislative provisions in an attempt to shed some light on this area of regulation.

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<sup>1</sup> See *Fraser-Kirk v David Jones Ltd* [2010] FCA 1060 (29 September 2010).

<sup>2</sup> *Kirk v Industrial Relations Commission; Kirk Group Holdings Pty Ltd v WorkCover Authority of New South Wales (Inspector Childs)* [2010] HCA 1.

The book wraps up with a discussion of Australian Constitutional issues and allied areas of the law (such as discrimination in the workplace and superannuation). Interestingly, there is a segment devoted to university employment law. Legal issues in the tertiary sector have recently come to the fore, particularly in the areas of intellectual property and alternative dispute resolution. In this segment, the book focuses on recent cases which highlight the extent to which an employer can claim intellectual property in its employee's inventions, as well as cases which demonstrate the capacity for university disputes to escalate.

While one may argue that the book would benefit from summaries at the beginning of each chapter, the book does not purport to be an all-encompassing guide. The book provides a snapshot of this area of the law, focussing on case law and legislation in an attempt to provide an understanding of policy. The book makes it clear that it is not a discourse on politics. For those interested in gaining a greater understanding, cross references to further material, including journal articles, are provided throughout.

The book is written by an author who is widely published in the area and who has commanded notable positions in both legal practice and academia.

It conceptualises complex aspects of the law in plain language and is a useful quick reference tool for practitioners and students alike.

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