
Creighton & Stewart's Labour Law, 6th ed
Stewart, Forsyth, Irving, Johnstone & McCrystal
The Federation Press 2016
1,248 pp \$174.99
Reviewed by John McDonald

Andrew Stewart has been writing in the field of industrial law for many years; this book is a far more detailed work than Stewart's Guide to Employment Law (currently in its 5th edition, 2015). Not only is the scope of Labour Law broader, with for example extensive material on collective bargaining, but it is also much deeper in its coverage of the elements of industrial law. Included in that coverage is significant discussion arising from the Productivity Commission's 2015 report on the workplace relations system. There is also commentary (some critical) on the development of new case law, and the underlying concepts. As in previous editions, an excellent history of the development of industrial law since federation is included.

The 28 chapters are collected into 6 parts, being general concepts, coverage and institutions, work relationships, employment conditions, termination and collective bargaining/industrial action. Given this tome exceeds 1,000 pages in length, topics of current and recent interest to the reviewer were selected as a guide to the utility of this work to the practitioner. Specifically, utility was assessed via the ease of finding the referenced relevant legislative provisions and case law, the level of detail, and the clarity of the commentary.

The first matter was the apparent rejection by the High Court of the common law principle of trust and confidence being implied into the employment contract (*Commonwealth Bank of Australia v Barker* (2104) 253 CLR 169). Whilst spread over several chapters within the text, coverage of this topic is excellent. The historical background and development of the orthodox position is set out, as is the key reasoning of the High Court in rejecting it. There is some critical commentary of those reasons, but then the text usefully goes on to review the related concept of good faith in employment relationships, in light of *Barker*.

The second chosen topic is the issue of dismissal and the general protections. Whilst the case law is still developing in this area, discussion of the legislative provisions is set out in a logical manner based on the elements constituting these protections. Specific elements of proof of victimisation (reason and intent) are considered in detail.

The third topic is the narrow issue of which, if any, State-registered charities are caught by the Fair Work Act in relation to claims of unfair dismissal. Again, the text contains a short but practical treatment of this, and also discusses the general application of the general protections for such employers. However, the book also contains a significant treatment of the constitutional framework supporting the Commonwealth's legislative powers, and limitations thereon, together with an outline of the scope of operation of the Fair Work Act, and that remaining for State industrial laws.

The final chosen topic is covered by the work health and safety chapter. This contains a quite terse but comprehensive summary of the principal elements of the harmonised Work Health and Safety Acts, together with a short history of their development. Some social commentary is included, but again the emphasis is on a practical consideration of the operation of the legislation. As with many other authors, there is no recognition that the Victorian legislation has very few differences from the harmonised model legislation (which was in essence based on

the Victorian Act). There is limited treatment of breach of statutory duty as a remedy (there being a partial prohibition in the Acts), but some useful footnotes and reference to an excellent paper on the subject by Neil Foster. Together with a discussion of the residual common law applications, and workers' compensation, this chapter forms a useful adjunct to the main text.

Any consideration of an industrial book would be incomplete without reference to the treatment of claims of unfair dismissal. Termination, a major part of the text, is dealt with to the warranted depth. However, that part is also set out in a manner such that reading the contents page usually provides sufficient reference to go straight to the commentary on a discrete issue, without using the index. The index, in turn, is excellent.

From the above, it is clear that this text will continue to be the standard reference for industrial practitioners in this increasingly complex area of law.