

Regulating Occupational Health and Safety in a Changing Labour Market

Richard Johnstone

Introduction

As many labour law scholars have pointed out,¹ labour law, particularly from the mid-20th century until recently,² assumed that its scope was the regulation of employment relationships (typically full-time and permanent, in the sense of indefinite duration), with the contract of employment as the pivot, and that an employer was a single (usually corporate) entity,³ with considerable freedom to determine the limits of its boundaries, and responsible only under the principles of agency and vicarious liability.

This model of labour law also underpinned occupational health and safety (OHS) regulation, apart, perhaps, from the provisions regulating construction safety. Based on the British Factories Acts which were first enacted early in the 19th century,⁴ and in force until the Robens-inspired statutes of the late 1970s to early 1990s, Australian OHS legislation regulated factories (which generally were defined as manufacturing establishments employing four or more persons);⁵ focused on “hardware” such as machinery, and limited “health” matters such as ventilation, flooring, overcrowding and lighting; relied on detailed, technical specification

1 See, particularly, Bennett L, *Making Labour Law in Australia: Industrial Relations, Politics and Law* (Law Book Company, Sydney, 1994); Collins H, “Ascription of Legal Responsibility to Groups in Complex Patterns of Economic Integration” (1990) 53 *Modern Law Review* 731; Howe J and Mitchell R, “The Evolution of the Contract of Employment in Australia: A Discussion” (1999) 12 *Australian Journal of Labour Law* 113; and O’Donnell and Mitchell (ch 28) in this collection.

2 Howe and Mitchell, above n 1; Johnstone R and Mitchell R, “Regulating Work” in Parker C, Scott C, Lacey N and Braithwaite J (eds), *Regulating Law* (Oxford University Press, Oxford, 2004).

3 See Collins, above n 1; Deakin S, “The Changing Concept of the ‘Employer’ in Labour Law” (2001) 30 *Industrial Law Journal* 72.

4 See Creighton W, *Working Women and the Law* (Mansell, London, 1979), pp 19-26; Gunningham N, *Safeguarding the Worker* (Law Book Company, Sydney, 1984), ch 2; Johnstone R, *Occupational Health and Safety Law and Policy: Text and Materials* (LBC Information Services, Sydney, 2nd edn 2004), pp 34-45.

5 *Factories, Shops and Industries Act 1962* (NSW) s 4; and see Merritt A, *Guidebook to Australian Occupational Health and Safety Laws* (CCH, Sydney, 1983), p 122.

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