

Chapter 14

Employment Law

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I Introduction

In Australia, employment relationships operate ‘within a framework defined by statute and by common law principles, informing the construction and content of the contract of employment.’¹ The various sources of law overlap and create a complex and dynamic system of regulation of employment. This is complicated in the higher education sector because some aspects of the context in which the sector operates are unique. The engagement of university academic staff in particular is not solely driven by commercial considerations, but must also take into account the fundamental purpose of the university. The purpose of this chapter is to provide an overview of how employment relationships in universities are regulated in Australia, and what particular legal issues may arise in the engagement of academic staff.

II University as Employer

From a legal perspective, universities are corporations and their employees are like other employees; however, their relationships differ significantly from other employment relationships as a result of the overlapping effect of four significant aspects of the university structure.

First, each university is regulated by separate and specific legislation (State-based, except the Australian National University, which is governed by Commonwealth legislation. See Chapter 1 by Squelch). Though the wording of each Act differs, in broad terms, the legislation sets out the framework within which the university will operate, including ‘the entire control and management of the affairs and concerns of the university’.²

Secondly, universities are distinct from other corporations because they are not established simply to generate a financial profit. So much is clear, for instance, from s 6(1) of the *University of Sydney Act 1989* (NSW):

The object of the University is the promotion, within the limits of the University’s resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.

Thirdly, the employment of academics by a university has a ‘distinctive feature’:

¹ *Commonwealth Bank of Australia v Barker* (2014) 312 ALR 356, [1].

² *University of Western Australia v Gray* (2009) 259 ALR 224, quoting trial judge at [96].

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