

At the Intersection of Education and Work: Young People, Equality and Regulation of the Labour Market*

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I Introduction

At the heart of modern labour law are two related questions: ‘what is the purpose of regulating work relationships?’ and ‘who is the subject of that regulation?’. In recent years, scholarly debates about these issues have interrogated the adequacy of traditional concepts for the global era. Members of the Centre for Employment and Labour Relations Law have been leaders in these discussions in Australia.¹ Yet how these questions should be answered in the context of the intersection between education and work has, to date, received little attention. While a wide range of laws in Australia regulate people who work, there are potential problems with the coverage of three different categories of worker – the apprentice, the person undertaking work as part of their formal education, and the person undertaking work experience on a less formal basis. Unless expressly included by statutory provision, and with the important exception of work health and safety (WHS) laws, these workers must generally fall within the legal concept of an ‘employee’ to obtain the protection of the law. While that may sometimes be the case, the uncertainties involved raise a number of further questions. One is whether a different regulatory framework (and hence, conceptual foundation) would enable law to respond better to the needs of these workers and the wider community – and, in particular, whether the concept of equality as dignity could provide a way forward.

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1 See especially R Mitchell (ed), *Redefining Labour Law* (Centre for Employment and Labour Relations Law, University of Melbourne, 1995); C Arup et al (eds), *Labour Law and Labour Market Regulation* (Federation Press, 2006); C Fenwick and T Novitz (eds), *Human Rights at Work* (Hart Publishing, 2010); B Gaze and A Chapman, ‘The Human Right to Non-discrimination as a Legitimate Part of Workplace Law: Towards Substantive Equality at Work in Australia?’ (2013) 29 *International Journal of Comparative Labour Law and Industrial Relations* 355.

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