

Researching Labour Law 'In Practice': Challenges in Assessing the Impact of Protected Industrial Action Ballot Procedures on Enterprise Bargaining Processes

Catrina Denvir and Shae McCrystal

I Introduction

It has previously been observed that two forms of writing – doctrinal and theoretical – account for almost the entire body of legal scholarship.¹ A far smaller fraction is dedicated to gathering new data about how the law works in action. The fact that doctrinal work dominates in the study of law both in Australia and elsewhere is said to reflect traditional concepts of legal reasoning.² Demands for more realistic and sociologically-based accounts of law have not gone unaddressed.³ The socio-legal studies movement has demonstrated that there is interest in the multidisciplinary study of the law. At the same time, these demands have not managed to displace the prevailing orthodoxy of law's isolation from other disciplines.⁴ It remains that, at least in Australia, socio-legal research and teaching is undertaken primarily within the social sciences.⁵

- 1 PH Schuck, 'Why Don't Law Professors Do More Empirical Research?' (1989) 39 *Journal of Legal Education* 323.
- 2 T Hutchinson and K Burns, 'The Impact of "Empirical Facts" on Legal Scholarship and Legal Research Training' (2009) 43 *Law Teacher* 153.
- 3 See, for example, S Halliday and P Schmidt (eds), *Conducting Law and Society Research: Reflections on Methods and Practices* (Cambridge University Press, 2009); P Cane and HM Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press, 2010); and A Ludlow and A Blackham (eds), *New Frontiers in Empirical Labour Law Research* (Hart Publishing, 2015).
- 4 C Tomlins, 'Framing the Field of Law's Disciplinary Encounters: A Historical Narrative' (2000) 34 *Law and Society Review* 911, as quoted by A Frazer, 'Industrial Relations and the Sociological Study of Labour Law' (2009) 19 *Labour and Industry* 73.
- 5 See, for example, the University of Sydney in which Socio-Legal Studies is part of the Faculty of Arts and Social Sciences and the University of Melbourne in which Socio-Legal Studies is part of the Faculty of Social and Political Sciences. Evidence exists of

This is a preview. Not all pages are shown.