

Remedies for Employment Termination in Australia: A Case of One Door Closing and Another Opening?

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Abstract

The eligibility of an employee to take legal action when his or her employment ends has become crucial to understanding the strengths and limitations of each Australian federal action because it determines both the jurisdiction of a court or tribunal to test the liability of an employer and its power to order a remedy. The legal options open to an Australian employee when his or her employment comes to an end are currently in a period of rationalisation. As unfair termination becomes increasingly unavailable to employees due to jurisdictional changes, employment discrimination is poised to become a more significant cause of action. This article also considers the employment laws of Hong Kong (both wrongful dismissal under s 7 and unfair dismissal under Part VIA of the Employment Ordinance) as a point of comparison with Australian developments.

A. Introduction to Australian Developments

1. Work Choices

The conservative Coalition government of John Howard introduced the Workplace Relations Amendment (Work Choices) Act 2005 (Cth) (Work Choices), changing the landscape of Australian federal labour law. In particular, Pt 12 Div 4 of the amended Workplace Relations Act 1996 (Cth) (WR Act) excluded many employees from federal unfair termination jurisdiction,

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