

## **Common Law versus Statutory Regulation of Individual Labour Rights in Australia: How is the public interest best served?**

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This paper argues that the focus of Australian labour law on statutory regulation of individual employment norms has resulted in an over-dependence on statutory solutions to workers' problems. While it is acknowledged that the role of Parliament is crucial to the evolution and maintenance of workers' rights, a political climate which lends itself to ideologically divergent legislative reforms within short spans of time often robs the discipline of its stability and growth if indeed such stability is founded upon legislation. However, if there exists a legal framework apart from legislation, which provides the foundation and ability to initiate juridical development, as is the role of the common law, the result will be an enrichment of the law. I will, in this paper analyse the judicial construct of individual employment law in Australia through an analysis of selected judicial decisions. The focus of the discussion will be upon employment law theories and implied terms. The Australian judicial approach will be contrasted with the approach in other common law jurisdictions. The aim of this paper is to discover areas of potential case law development as it is believed that the public interest is best served by legislative reform built upon a solid common law foundation of individual employment rights rather than case law built around legislative provisions.

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Dr Sundra-Karean is a Senior Lecturer with the Faculty of Business and Law, University of Southern Queensland. She has been in academia for 20 years, teaching on English, Malaysian and Australian LLB and Business degree programs. Dr Sundra-Karean's areas of research focus on comparative employment law. She has published in refereed international journals: *Theoretical Inquiries in Law, Asia Pacific Law Review, LAWASIA Journal* and the *Asian Journal of Social Science*. She is also a co-author of the book *Australian Constitutional Law, Commentary and Cases* (OUP) and has recently published a book on *Employment Law and Theory – A Malaysian Focus with a Comparative Perspective* (CLJ).

Dr Sundra-Karean's PhD thesis, completed at the University of Queensland, examined the protection of individual employment rights from a human rights perspective by introducing new theoretical models towards balancing the interests of employers and employees. Some of these theoretical models that form continuing areas of her research are constitutional constructs of horizontal private law rights emanating from the Constitution and the expanding role of implied terms within the

employment contract. Recent research papers by Dr Sundra-Karean include an analysis of the path dependence phenomenon within Malaysian labour law through its impact upon migrant labour regulation and a contribution towards the hard law /soft law debate within international labour law.