Third Biennial Labour Law Conference of the New Zealand Labour Law Society

In conjunction with Victoria University of Wellington Law School

List of Presenters and Topics. (This list is subject to alteration and amendment).

Name	Keynote Speakers
Dr Virginia Mantouvalu (University College London)	**Human Rights and Labour Law**. Dr Mantouvalu's presentation will address the question of whether labour rights are human rights, a proposition that has attracted increasing interest and controversy among lawyers, academics, trade unionists and other activists. This question has several facets: labour rights may be incorporated in human rights instruments, human rights law may be used as a strategy in advancing labour rights but underpinning these facets is the core normative issue of whether labour rights are human rights.
Professor Anthony Forsyth, (Law School, RMIT University, Melbourne)	**From the 'IR Club' to the Productivity Commission: Australia's '30 Years War' over Labour Law Reform**: Debate over Australia's system of workplace regulation has raged almost uninterrupted since the mid-1980s and the so-called 30 Years War between the 'Industrial Relations Club' (federal industrial tribunals, peak union bodies and key employer organisations) blamed for imposing barriers to higher levels of efficiency and productivity in the nation's workplaces and those seeking increased deregulation continues today. Meanwhile, the Productivity Commission has released its Draft Report on the Review of Australia's Workplace Relations Framework - finding the system, although not dysfunctional, in need of major repairs. This presentation will highlight some key moments in the 30 Years War, then focus on the Productivity Commission's Draft Report and recommendations - and assess the likely twists and turns in the IR debate as we head into the next federal election.

Professor Paul Secunda (Labor and Employment Law Program Marquette Law School, Wisconsin)	**The Coming International Trend of Superannuation Workplace Pensions**
	Human Rights-Labour Rights
Dr Jonathan Barrett (Commercial law, Victoria Business School)	**Employees-Citizens of the Human Rights State:** considers the position of rights-bearing citizens as employees. It is argued that the rights and responsibilities of citizenship should be fully exercisable within employer organisations and that contractual terms which restrict an employee's rights should be deemed void.
Angelo Capuano (Law School Monash University)	**Discrimination on the basis of "social origin"** Discrimination on the basis of "social origin" is prohibited in a number of international human rights treaties. Given that the concept of "social origin" discrimination is ambiguous and largely unexplored in case law and academic literature, this paper will focus on: (1) articulating the meaning that the term "social origin" bears in international human rights treaties; and (2) discussing what application that meaning might have in national contexts.
	Enforcing Labour Law
Helen White (Barrister)	**Creating The "Elegant" Solution:** The paper will consider the successful and failed changes in the era of the ERA 2000 and suggest that by learning why some concepts have been adopted by the public, business and even the National Government and others haven't, we can successfully entrench new concepts to fix the growing problems we face. It will say the lesson to be learned from successful changes is to create "elegant" solutions that make clear simple links between the problem and the principle that is being entrenched to solve the problem in the legislative solution and that changes must involve an education of the public and

	engage them on why employee engagement and collective bargaining is so important to addressing power imbalance.
Tess Hardy and John Howe (Law School, Melbourne University)	**Gatekeepers in Labour Law Enforcement:** Studies of regulation and compliance suggest that imposition of penalties on a corporate business is not always effective in motivating key individuals within firms to improve their employer's compliance profile. It has been suggested to address this concern, corporate regulators should target 'gatekeepers' - individuals both within and outside the firm who are in the best position to monitor, influence and control corporate conduct, and who may bear some responsibility for breaches by corporate employers. The threat of personal liability is intended to operate as an incentive for these gatekeepers to perform their responsibilities effectively and to deter corporate wrongs. In this paper, we explore the gatekeeper analogy in the labour law context
Tess Hardy	**To What Extent Should Head Franchisors Be Held to Account for Workplace Contraventions Committed in their Franchise Business?** Franchising arrangements have flourished in Australia and New Zealand in the past two decades. At the same time, workplace contraventions continue to be commonplace amongst many well-known brands, including McDonald's, Bakers Delight and 7-Eleven. While head franchisors possess strong market power and wield considerable influence and bureaucratic control over the compliance behaviour of their franchisees, they often remain legally insulated from liability for employment contraventions. However, a number of recent regulatory developments in Australia have raised questions about the extent to which should be held responsible for workplace contraventions occurring in their franchise business.
Susan Robson	**Protections, loopholes and the Employment Court:** A challenge of regulating future labour markets lies in the expression, implementation and enforcement of statutory protections, particularly for those members of the workforce classified as having little or no market power. This paper focuses on the role of the Employment Court in the enforcement of statutory protections by examining its recent consideration of proceedings under

	the Equal Pay Act 1972, Minimum Wage Act 1983, Wages Protection Act 1983, and Part 6A Employment Relations Act 2000.
Gaye Greenwood, and Erling Rasmussen (AUT University)	**Current and Future Labour Market Regulation: Challenges for workplace conflict** One objective of the ERA 2000 was for the early resolution of employment relationship problems close to the workplace and the framing of workplace conflict as Employment Relationship Problems (ERP's) heralded a paradigm shift from adversarial escalation of disputes to collaborative problem solving by mediation. Our research suggests that in practice there is a propensity to bypass the intentions of the ERA 2000 by either confidential settlement negotiation or conflict escalation to a personal grievance; thus, the aim of strengthening employment relationships through processes of early, low-cost, fast and fair conflict resolution by state sponsored institutions appears yet to be realised.
Grant Morris (VUW Law School)	**Purity versus Eclecticism: Mediating Disputes in the New Zealand Labour Market:** Mediation is one of the most common ways to resolve employment disputes in New Zealand. Most of this mediation is carried out by the Resolution Services branch of the Ministry of Business, Innovation and Employment. This paper focuses on the styles of mediation used by this team. The paper concludes that Resolution Services' eclectic approach to mediation styles in employment disputes is both consciously practiced and very effective and that the Resolution Services employment mediation team successfully embodies the ideal of practical mediators who actively use scholarship and theory to support practice.
	Industrial Conflict
Dr Shae McCrystal (University of Sydney Law School)	**Independent Contractors and Strike Action in New Zealand:** A follow up to Shae's 2013 paper, 'Organising Middle Earth? Collective Bargaining and Film Production Workers in New Zealand' exploring liability that could arise where a group of contractors collectively withdraw their labour in the pursuit of better terms and

	conditions of engagement. This is explored through the lens of labour law and competition law, and a comparative analysis is used, by drawing parallels with the legal position in Australia.
Tim Oldfield (SBM Legal)	**Strikes and lockouts at the start of the 21st Century**: The paper asks if the recent amendments to the ERA which restrict industrial action in ways not previously seen in New Zealand are necessary given the historically low level of work stoppages and goes on to consider if industrial action an effective way to regulate low-paid workers' terms and conditions of employment in the 21st century. It considers what alternatives are available as a method of regulating low-paid workers' terms and conditions of employment? Should the state be permitted to intervene in the bargain.
	Continuing Problems in Labour Law
Professor Paul Roth (University of Otago Law School)	**Privacy law reform in New Zealand: will it touch the workplace**? This paper will deal with the collection of information about employees and job applicants, with a particular focus on surveillance and biometrics. The collection of information about workers in relation to both their private lives and their on-the-job conduct will continue to be a flashpoint at the employment law/privacy law interface, and this is only likely to increase as technology develops new ways of collecting and analysing such information. There are several reasons why New Zealand's Privacy Act 1993 currently lacks bite in this area. In particular, the collection limitation principle, derived from international standards, has been watered down through its interpretation and application in New Zealand law and practice, in comparison with its more strict application to the workplace elsewhere. Somewhat unusually, the Privacy Commissioner is obliged to take business efficiency into account when deciding whether the Privacy Act has been breached (s 14(a)) and also tends to avoid forming views on the application of employment law, even though the collection limitation principle requires that personal information be collected by lawful means. It seems unlikely that the current privacy law reform process will alter this situation.

Henry Holderness and Simon Schofield (University of Canterbury Law School)	**An Employer's Right to Organise and Run Its Business:** This paper attempts to provide a framework to reconcile tensions between the Employment Relations Act 2000 and the Companies Act 1993 and argues that, to resolve such conflicts, the employment institutions ought to give due deference to the decision making power of directors of employer companies and acknowledge the company law duties under which they have to operate, while at the same time encouraging employer transparency through an emphasis on the employer's good faith employment obligations to its employees. The paper's basic conclusion is that, although more acknowledgement of company law directors' duties is desirable in redundancy cases under the ERA, there is clearly room for an approach which reconciles the current tensions and inconsistencies.
Suzanne Innes-Kent (Clerk, Employment Court)	**Bullying in workplaces:** The MBIE Guidelines to combat bullying in workplaces are made necessary by an increasing worker awareness of individual rights in the workplace. This awareness is a direct result of the increasing individualisation of, and erosion of collective, workplace conditions. The paper traces the development of individual rights since the Industrial Arbitration and Conciliation Act. It then establishes by empirical data that bullying is a small but significant phenomenon in NZ workplaces. It canvasses recent developments in Australia, compares the state of the law in New Zealand and concludes that it is time for employment law to tackle workplace bullying by strengthening provisions of both the Employment Relations Act and the (soon to be enacted) Health & Safety legislation.
	Emerging Issues: Precarious Work and Wok-Life Balance
Dr Annick Masselot, and Dr Amanda Reilly (University of Canterbury and VUW)	**Precarious Work and Work-Family Reconciliation: Options for Law Reforms:** Work-family reconciliation discourse is often dominated by the concerns of middle class, professional women. This paper focuses instead on low-wage workers who face growing challenges in managing work and family commitments due to the growth in casualised, precarious work which is characterised by unreliable work, irregular schedules, and zero hour contracts. It examines New Zealand's regulatory framework with a view to critically assessing

	how fit for purpose it is in terms of supporting work-family reconciliation for low-wage workers and considers options for legal reforms.
Raymond Harbridge et al (University of Melbourne)	**The Ageing Workforce:** The world's population is in the middle of a significant demographic shift associated with ageing, particularly in developed countries. The ratio of older persons to the working aged population is rising rapidly. Fewer working people are now supporting retired people. Once reaching 55 – 64 years of age, labour force participation falls dramatically. This fall in older worker labour market participation represents a major policy challenge that requires change at the individual, organisational and policy levels. We report on one cause of early retirement: perceptions of older workers and the stereotypes that have developed around those perceptions. Stereotypes lead to discrimination against older employees and this is not mitigated by anti-discrimination legislation. Age bias is robust. We present a research agenda around the ageing workforce and the workplace of the future.
Pam Nuttall (AUT University)	**Zero Hours Employment**
Joss Opie (Buddle Findlay)	**The Right To Reasonably Limited Working Hours In The Smartphone Era**: Under the International Covenant on Economic, Social and Cultural Rights, everyone in New Zealand has the right to rest, leisure and reasonable limitation of working hours. However, New Zealand law does not generally limit the number of hours a person may work. According to figures from the 2013 census, almost 220,000 people work between 50 and 59 hours per week, and some 160,000 people work 60 hours or more per week. In this article, I argue that New Zealand is not complying with its obligations under the ICESCR in respect of working hours, or with related obligations concerning the family and health. I propose a number of ways in which New Zealand could better comply with these obligations and in this context, I consider the impact smartphones have on work, and the challenges they create in placing limits on work.

Dr Amanda Reilly, and Suzy Morrissey (Victoria Business School)	**Why New Zealand fathers should have an independent entitlement to paid paternal leave:** This paper critically examines New Zealand's paid parental leave provisions. Rather than focusing on the desirability, or otherwise, of extending the period of eligibility, this paper focuses on the fact that primary entitlement for paid parental leave rests with eligible birth mothers (although it is possible to transfer this payment to a spouse/partner). The central thesis of the paper is that fathers should have an independent entitlement to a separate period of paid parental leave which is not tied to their partner's employment status. It concludes that there are advantages for men, women and children to adopting a separate entitlement to paid parental leave.
Josephine Burke and Leigh Thomson (Open Polytechnic)	**What are business internships, and do they offer opportunities for a symbiotic relationship?** In the current business environment, there is room for relationships within internships to include similarities to those involved in modern apprenticeships. However, many available internships are unpaid, with the main benefit being promoted as the opportunity to gain industry experience. While this experience may be beneficial, such opportunities can also be influenced by the economic environment, where instances of multiple internships occur. While there may be comparisons with the reciprocal association involved in apprenticeships there are difficulties emerging. Using global internships as a background, this paper looks at the situation in New Zealand, and poses questions around the symbiotic and exploitative aspects of the relationship.
	Workplace Health and Safety
Dawn Duncan (PhD Candidate, VUW Law School)	**Regulating work that kills us slowly: The challenge of chronic work-related health problems:** New Zealand's health and safety and compensation laws were designed for "accidents" that happened in factories, mines and workshops, and not for chronic health problems that result from stress, bullying or poor job design. As at 2014 more than three quarters of New Zealanders work in services, or government, health and education sector jobs, meaning a large number of people will be working in jobs with hazard profiles associated with

	the development of these conditions. This paper will argue that regulating for the health and safety of workers in future labour markets requires a shift in thinking beyond the accident, and the development of a different set of legislative machinery.
Viktoriya Pashorina-Nichols (Hons student, VUW Law School)	**The Health And Safety Reform Bill: Why Must Worker Participation Be Enhanced Further?**
Jeff Sissons (General Counsel NZCTU)	**A bad day at the sausage factory:** The health and safety law reforms lose their bearings around worker engagement.' The paper will describe key issues relating to worker participation and engagement frameworks under the Health and Safety in Employment Act 1992, the new Health and Safety at Work Act and the Australian Model Workplace Health and Safety Law along with the evidence of what works, the legislative process that lead to the ultimate shape of the Health and Safety at Work Act.