

# Unfair dismissal laws courting trouble

In the early years of the last century, a man named Addis took a job as manager of an English company's Calcutta office. His contract said he could be dismissed with six months' notice. One day, the company sacked him, and rather than letting him work out his notice as the contract required, immediately put in place another manager to carry out his job. Addis went back to England and sued the company for breach of contract.

In 1909 the case ended up in the House of Lords, which found that the only damages Addis could claim for the breach were those for salary and commission he would have earned during the six-month notice period.

The common law of contract would not compensate victims of wrongful dismissal for loss or hurt arising from the manner of the dismissal.

This principle from *Addis v Gramophone Company Ltd* remains the law in Australia today.

It represents just one corner of the arcane and complicated common law of employment which, if the federal government succeeds in instituting its legislative reforms, will govern the field of unfair dismissals for the workers in the thousands of firms with 100 or fewer employees, once they are freed from

The new laws will set the labour market back, write

**John Howe, Jill Murray and Anthony O'Donnell.**

the state and federal statutory unfair dismissal schemes.

The rules in this field have deep roots in bygone social and economic times. The common law permits employers to dismiss an employee at any time with notice, "for any reason or none". The notice period, if not specified in the contract, must be "reasonable". What is reasonable is determined with reference to the social standing of

but are central to our social status and self-esteem. Jobs give us friendships and social engagement.

Today, we expect regulation to promote efficiency, and businesses that are unsure about the legal rules governing employment are unlikely to prosper.

The modern ideal of the high-trust workplace does not sit easily with the old common law rights to dismiss without due process.

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one type of occupation over another. A corporate executive is likely to be entitled to more notice than an office cleaner.

Wrongful dismissal may give rise to a right to damages but, in line with the *Addis* decision, damages will be limited to salary for the period of notice.

It is unsurprising that these common law doctrines strike us as grossly unfair and out of step with modern ideas about work.

Jobs today are not only the major source of most individuals' wealth,

The process for obtaining common law remedies, such as they are, is difficult. When considering action in the civil courts, workers will need to assess the amount of damages possible (in most cases, limited to salary for the contractual period of notice) and the possibility of an award for costs against them if they lose.

In the absence of a statutory unfair dismissal procedure, the common law might evolve to address the limitations of *Addis*.

The emerging doctrine of mutual

trust and confidence may place obligations on employers to dismiss fairly. Such developments will be on a case-by-case basis, which will often mean significant uncertainty.

Whereas the statutory scheme gives both employers and workers a clear statement of their rights and obligations, small and medium-sized employers will need to scour High Court reports to find out exactly where the law is heading in this area. Or else pay lawyers to tell them what the law is.

The radical system advocated by the government doesn't so much deregulate the labour market as throw many workers and their employers back to the pre-modern age of the common law.

Perhaps after a decade or so struggling in the morass of the common law, small business will start clamouring for the certainty and accessibility of a statutory scheme.

In the meantime, let's hope small and medium businesses have access to either good lawyers or a good law library, because future claims for wrongful dismissal will mean dusting off those old cases.

■ *John Howe and Anthony O'Donnell are with the Law School, University of Melbourne; Jill Murray is with the Law School, La Trobe University.*