The Impact of “Good Faith” Obligations on Collective Bargaining Practices and Outcomes in Australia, Canada and the USA

Abstract submitted by Assoc Prof Anthony Forsyth, Monash University, for panel on “The reform of the Australian workplace representation regime” at the CRIMT-CIRA Conference: “Employee Representation in the New World of Work: The Dynamic of Rights, Voice, Performance and Power”, Quebec, Canada, June 16-18 2010

This paper will build on the author’s previous work examining the parallels between the regulation of good faith bargaining (GFB) in Australia’s Fair Work Act 2009 (Cth), and the much longer-standing GFB laws of the USA and Canada. The paper will consider the extent to which North American consideration of concepts such as information disclosure, “surface” and “hard” bargaining, and limits on “direct dealing” and communication with employees during bargaining, are influencing the interpretation and operation of Australia’s GFB laws. At a more “macro” level, the paper will assess the early impact of the new Australian legislation on collective bargaining practices and outcomes, by examining the approaches to bargaining of several leading companies before and after the legislation took effect (for example, Telstra, Optus, Cochlear, Commonwealth Bank, Westpac, ANZ). Through analysis of these examples and other available data, comparisons will be drawn between the effectiveness of the Fair Work Act in promoting collective bargaining, and similar regulation in Canada and the United States.