

Protecting and Promoting Small and Medium Enterprises: A Role for Labour Law in the New Labour Law Era?

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Introduction

The substantial economic and political changes occurring from the 1980s onwards in Western economies prompted a re-evaluation of the functions and proper scope of labour law. Labour law's concern with protecting employees from the worst exigencies of market forces and from exploitation by the owners of capital has given way to an increasing interest in the more broadly facilitative role labour law can play in the labour market, particularly in response to the competitive demands of a globalised economy.¹ From a number of perspectives, academic as well as policy oriented, the traditional concerns of labour law have been subjected to a new regulatory analysis.²

In this context, there has been a debate in labour law about whether labour laws and labour market policies should explicitly protect businesses and promote business development. In his article "Regulating the Employment Relation for Competitiveness", Collins suggested that the dominant objective of labour law policy in the 21st century "is to improve the competitiveness of businesses so that they may survive and prosper in an increasingly global economic system".³ In similar vein, Ferdinand von Prondzynski has asked: "[C]ould employment law or labour law in its new form be understood at least in part as a tool for facilitating and protecting commercial or business objectives?"⁴ This theme is consistent

1 See, for example, Collins H, "Regulating the Employment Relation for Competitiveness" (2001) 30 *Industrial Law Journal* 17; Deakin S and Wilkinson F, *The Law of the Labour Market* (Oxford University Press, Oxford, 2005), esp ch 5; Conaghan J, "Labour Law and 'New Economy' Discourse" (2003) 16 *Australian Journal of Labour Law* 9.

2 See, for example, Arup C, "Labour Law As Regulation: Promise and Pitfalls" (2001) 14 *Australian Journal of Labour Law* 229.

3 Collins, above n 1, at 18.

4 von Prondzynski F, "Labour Law as a Business Facilitator" in Collins H, Davies P and Rideout R (eds), *Legal Regulation of the Employment Relation* (Kluwer Law International, London, 2001).

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