Editorial note

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This special issue of the *New Zealand Journal of Employment Relations* showcases some of the best papers presented at the Fourth Biennial Labour Law Conference of the New Zealand Labour Law Society held on17-18 November 2017 in Christchurch. The conference focussed on labour law in transition in a global and technological world, with the theme intended to encompass new developments and emerging areas in labour law. The presentations covered a wide range of topics including: de-regulation of the workplace and competitive attitudes towards employment issues; aspects and implications of the recent amendments to health and safety laws; workplace stress, bullying and harassment; restructuring, redundancy and redeployment; modern workplace environments and cyber-work; and equality, human rights and precarious work. The conference attracted a large number of participants from within New Zealand, including academics, practitioners, judges from the Employment Court and members of the Employment Relations Authority as well as government and parliamentary officials and union members. A good range of Australian speakers attended the conference, as the New Zealand Labour Law Society has built good relations with the Australian Labour Law Association. Participants from Europe and Asia were also present.

A large number of excellent papers were presented at the conference and submitted for publication to a special issue of the *New Zealand Journal of Employment Relations.* As a result, two special issues will be published. This first special issue focusses specifically on the impact of technology on labour law and the relationship between human rights and employment law. The next special issue will include papers broadly concerned with health and safety and matters related to employment agreement.

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There are eight articles in this first issue and a summary of this content is provided hereunder.

Chief Judge Christina Inglis – "A Brave New Technological World: Opportunities for Gain and Pain..."
Modern work is increasingly fragmented, with traditional employment relationships being replaced with "gig" relationships without clear division between employer and employee. While this new employment model may benefit the highly skilled and mobile, the uncertainty of fragmented employment may increase the vulnerability of those with dependents or reduced bargaining skills. Additionally, if issues do arise within these contemporary employment contexts, legal resolution of problems may be difficult due to the increasingly high cost of legal action, especially when the issue involves complex legal questions, such as whether an employer-employee relationship exists. Although the accessibility of legal action is being challenged through traditional means, such as pro bono work and Community Law schemes, it is worthwhile considering whether technology could hold the solution to this and other legal

issues. Technology may help streamline existing legal processes; for example, in improving research efficiency. Alternatively, it seems possible that technology could radically alter legal processes through providing online dispute resolution services. Whatever the case, as lawyers and academics, it is critical to keep an open mind to the possibilities of technology and its application to contemporary challenges in employment law.

Judy Fudge – "Regulating for Decent Work in a Global Economy"
The title of this article captures three important shifts in nomenclature in contemporary debates about labour law: from labour to work; from law to regulation; and from the national state to the global space. These shifts signal a trend towards broadening, not simply in the sense of expanding the personal scope of labour law, but, more radically, in terms of encompassing a plurality of platforms, techniques and spaces for regulating work. "Decent work" also captures a change in how we understand the normative basis for regulating work, which involves a movement away from unequal bargaining power and subordination to a more amorphous, contested and contextualised understanding of the values that work regulation ought to achieve**.** This article focusses on two aspects of the global economy – financialisation, and global value/supply chains – to illustrate the claim that it is opportune to move from an overarching narrative of labour law to one of regulating for decent work. This article will also provide some examples of what is meant by regulating for decent work in a global economy. To conclude, it suggests the importance of developing approaches to regulating for decent work that are both attentive to the path along which labour market institutions evolve and the need to avoid rosy-tinted nostalgia.

Judge Coral Shaw – "Reflections on the United Nations Dispute Tribunal 2009-2016"
Employment disputes between UN staff members were historically addressed internally through peer review, with a subsequent right of appeal to the UN Administrative Tribunal. However, this system for resolving UN employment disputes was inherited from the League of Nations and was highly inefficient. Members of the UN Administrative Tribunal were not required to have a legal or judicial background. Additionally, the Tribunal only met irregularly, creating a significant backlog of employment disputes. Even when decisions were made, the Tribunal was only able to produce non-binding recommendations. Despite criticisms of this system as early as 1995, a new UN employment dispute resolution process was not developed until 2009. In the 2009 reform, two tribunals were established: the Disputes Tribunal, and the Appeals Tribunal. Judges were elected by the General Assembly and came from international jurisdictions. Although UN leadership initially viewed this system with hostility, seeking to reduce the powers of the tribunals, attitudes have slowly and steadily changed. Today, the system, established by the 2009 reform, is highly regarded by UN leadership, and was publicly endorsed in 2015 by the Chef de Cabinet. The experiences of employment dispute resolution at the UN level demonstrates that, in any employment dispute context, lawyers and academics must speak up in order to ensure that the rule of law is maintained through the process of dispute resolution.

Troy Sarina and Joellen Riley – "Re-Crafting the Enterprise for the Gig-Economy"
New technological developments have heralded the era of the "gig economy" as workers increasingly move away from full-time employment. In the gig economy, digital platforms are used to mediate work contracts between customers and workers. Workers are employed for particular, time-limited tasks without expectation of continuing work. Existing literature has acknowledged that the new gig economy poses risks to workers' employment rights and benefits. Although much scholarship has considered how to categorise gig economy work as employment, and thereby protect it under existing statutory frameworks, this article considers

an alternative approach to improving workers' benefits from the gig economy. Under the micro-enterpreneurship approach, co-operatives are utilised to bring significant benefits to gig economy workers through challenging the corporate groups' status of digital platforms. Co-operatives, which are democratically controlled by members and reliant on the economic contributions of members, have been encouraged by the ILO for a number of years and are popular in numerous areas, such as transport and construction. They have a strong heritage in New Zealand and are increasingly popular in Australia due to legislative changes. Although co-operatives have not been uniformly successful, it seems, today, that co-operatives may offer a viable means for modern workers to truly and equally participate in the "sharing economy".

Paul Roth – "Indigenous Peoples and Employment Law: the Australasian Model"
Indigenous values have been increasingly received in New Zealand and Australian workplaces since the 1980s. Today, a number of aspects of employment practice in Australasia support indigenous cultural values. Examples include extended leave allowing for attendance at cultural ceremonies and flexible approaches to bereavement leave, meaning that indigenous employees may be able to attend funerals for the broader indigenous community. The Australasian model can be contrasted with both the North American model and international labour standards. Although indigenous values in North America are less accepted in mainstream employment law than in Australasia, indigenous peoples receive significant sovereignty in their tribal reserves. Subsequently in tribal areas, indigenous values are a key aspect of employment practices. Considering international labour standards shows that the Australasian inclusion of indigenous values in the workplace is consistent with these standards. Overall, embracing indigenous values in the workplace is positive, improving indigenous worker engagement and worker wellbeing and reflecting the importance of indigenous identity. However, issues may arise where employers are faced with the difficult task of balancing competing cultural values or non-discrimination standards (for example, balancing gender discrimination issues and multiple indigenous approaches) or where managerial prerogative is challenged. Although inclusion of indigenous values in Australasian workplaces is beneficial, care must be taken to apply such values sensitively and in a balanced way.

Johnathan Barrett and Amanda Reilly – "Too Modest a Proposal? Work Rights Under the Proposed Constitution Aotearoa"
In 2016, Sir Geoffrey Palmer and Andrew Butler published "Constitution Aotearoa", a proposed written constitution for New Zealand. This proposed constitution includes an entrenched, supreme Bill of Rights with explicit mention of a number of civil political and socio-economic labour rights. Although such a high level of recognition for labour rights is overdue, Constitution Aotearoa still takes insufficient action to protect such rights. International human rights documents, such as the UDHR, ICCPR and ICESCR, explicitly protect labour rights and acknowledge these to be an important aspect of human dignity. Supreme human rights charters of numerous jurisdictions, including Germany, Canada, South Africa and the European Union, reflect this international protection of labour rights. However, comparing the proposed protection for labour rights in Constitution Aotearoa with alternative international approaches highlights the weaknesses of this new constitution. Critically, labour rights in Constitution Aotearoa are non-justiciable. The emphasis on non-justiciability arises from the Constitution's narrow and erroneous emphasis on the vertical state-citizen relationship. In addition to this weak protection of rights, the Constitution omits to protect important contextual principles of employment law, such as good faith. While Constitution Aotearoa's inclusion of diverse labour rights is a step towards greater recognition of such rights in New Zealand, this does not go far enough to protect these fundamental rights.

Alysia Blackham – "Recent Developments in Australia and New Zealand Age Discrimination Law: A Comparative Perspective"

Increasing life expectancies, coupled with pension and labour market reforms, have led to greater participation of the elderly in New Zealand and Australian workplaces. However, social attitudes towards elderly employment have not kept pace with demographic change. Ageist attitudes are still prevalent in both New Zealand and Australia, and age discrimination in recruitment and training of elderly workers is a significant concern. This article outlines the New Zealand and Australian statutory frameworks prohibiting age discrimination and discusses recent age discrimination jurisprudence. From this analysis, it is clear that age discrimination is ineffectively captured by both New Zealand and Australian law. A number of factors contribute towards this ineffectual treatment of age discrimination, including ageist judicial attitudes, the prevalence of alternative dispute resolution processes that settle strong discrimination cases out of Court and, therefore, do not create precedent, the procedural requirements for bringing Australian age discrimination claims, the flawed use of comparators in identifying age discrimination, and judicial failure to consider intersectionality. While legislative change is ultimately required to effectively address these issues, it is clear that the Courts must lead the way for this change with a "more sympathetic" approach to statutory interpretation of non-discrimination provisions in age discrimination jurisprudence.

Ashleigh Dale – "Addressing Modern Slavery in New Zealand"

Whether through exploitation of migrant workers coming for the Christchurch rebuild or through overseas recruitment agencies, media attention has illustrated that modern slavery is an increasing issue for New Zealand. Today, a number of statutes form a framework of laws that seek to prohibit modern slavery behaviours in New Zealand, including the Crimes Act 1961, the Immigration Act 2009, tax legislation and health and safety legislation. Although these laws have generally been recently amended to better address modern slavery behaviours, this framework is still inadequate in discouraging such behaviours in New Zealand. Change must be made both to the enforcement of the existing laws and to the legislation itself with clarification of existing standards and the introduction of new law. This could include increasing the number of labour inspectors, punishing serious breaches of employment law with higher penalties to ensure effective deterrence, educating migrant workers on their employment rights and providing appropriate avenues for pursuing breaches of migrant workers' employment rights, clarifying the law around legitimate wage deductions, and creating a code for minimum accommodation standards. Although positive steps have been taken towards more effectively deterring and preventing modern slavery behaviours in New Zealand, more must be done to protect victims of modern slavery.