K&L GATES

STATE OF THE WORKPLACE

A look at recent trends and emerging issues in Australia's employment laws

JANUARY 2025

WELCOME

We are delighted to welcome you to the inaugural edition of *State of the Workplace*, the new flagship presentation of our Labour, Employment and Workplace Safety practice.

In this edition, we take a look back at another tumultuous year in Australian employment law following significant changes. Almost every area of Australian employment law has over the past two years been subjected to sweeping reform. This change will continue with the commencement of the Wage Theft laws in January 2025.

In our first edition we look at some of the key changes that have immediately impacted our clients including new rules relating to collective bargaining, the redefining of safety through the lens of psychosocial risk and most recently the introduction of the right to disconnect.

The recently released Annual Report from the Fair Work Commission tells us that employee claims are rising with general protections and unfair dismissal claims making up over half of the Fair Work Commission's workload and over 40,000 total claims lodged in the 2023-2024 year. In addition, the regulator continues to be active with the Fair Work Ombudsman reporting recovery of AU$473 million in underpayments for nearly 160,000 workers and over 4000 investigations conducted into complex or significant matters.

We expect to see these figures continue to rise as we begin to feel the cumulative effect of the recent widespread legislative changes.

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We hope you enjoy this publication and please let us know if there is any topic you would like us to look at in future editions.

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IN THIS ISSUE

STATE OF THE WORKPLACE

2023/2024: THE YEARS IN NUMBERS

By Michaela Moloney and Carla Camassa

The numbers do not lie. Here are a few that show the current lay of the land for the Australian employment sector.

THE WORKFORCE AT A GLANCE

Gender in the Spotlight

The current gender pay gap is **21.7%**.

In Australia, **22%** of chief executive officers are women.

Contract and Casual

The number of casual employees in Australia is **2.7 million** (22% of all employees).

The number of employees employed on a fixed term contract is 3% (345,000 employees).

Of these:

- Those working on a contract with a total term length of one year or less was **73%**.
- Those working with less than nine months remaining on their contract was **60%**.

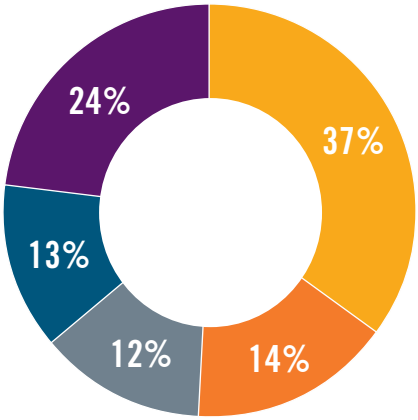
Industries with the highest percentage of independent contractors include:

- Education and training (**8%**).
- Public administration and safety (**8%**).
- Information media and telecommunications (**6%**).

All About the Fair Work Commission

The total number of applications to the Fair Work Commission lodged in 2023-2024 was 40,190, a **27%** increase on the prior year.

The most common types of applications were:



Staff conciliators held over 11,000 conciliations and conferences in 2023-2024: **82%** of all lodgements were finalised within 8 weeks and **96%** were finalised within 16 weeks.

In 2023 to 2024 the Commission published a total of 12,030 statutory documents, an increase from 11,041 the year prior. This figure includes all decisions and orders published.

Fair Work Ombudsman

Large corporate underpayments of AU$330 million were recovered for close to 110,000 employees from large corporate entities in 2023–2024. An overall total of AU$473 million was recovered for 160,000 underpaid workers in 2023–2024.

Anonymous Reports

The ombudsman received over 17,000 anonymous reports. Of those, 928 were in languages other than English, with a significant representation of young employees (5,291 reports and visa holders (4,042 reports).

The most heavily represented industries were:

- ACCOMMODATION AND FOOD SERVICES
- ADMINISTRATIVE AND SUPPORT SERVICES
- BUILDING AND CONSTRUCTION
- RETAIL

Investigations Into Requests for Assistance

- The ombudsman conducted 4,035 investigations in response to requests for assistance involving a workplace dispute.
- From these investigations, over AU$15.4 million in underpayments was recovered.

Enforcement Action

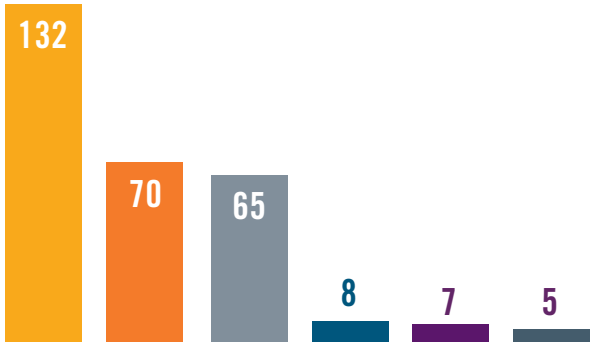
There was a total of 3,489 cases (up from 3,150) involving enforcement tools, including:

- Infringement notices – 760 (up from 626).
- Compliance notices – 2,574 (up from 2,424).
- Enforceable undertakings – 15 (same as previous year).
- Litigations commenced – 64 (down from 81).

Safety in Numbers

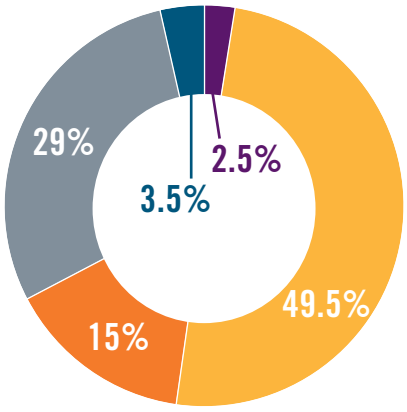
Safety related prosecutions are on the rise.

In 2023, the most recent reporting year, there were 287 work health and safety prosecutions, divided as follows:



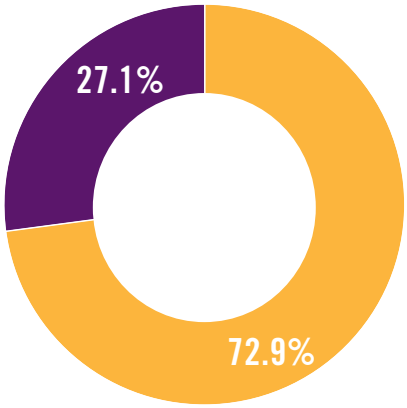
- VICTORIA
- QUEENSLAND
- NEW SOUTH WALES
- WESTERN AUSTRALIA
- SOUTH AUSTRALIA
- NORTHERN TERRITORY

With respect to the degree of injury suffered:



- SERIOUS INJURIES
- FATALITIES
- NON-CAUSATIVE BREACHES (I.E. WHERE NO INJURY RESULTED)
- MINOR INJURIES
- UNKNOWN

With respect to pleas:



A PLEA OF GUILTY WAS ENTERED

THERE IS UNKNOWN DATA

The category of offence with the highest number of prosecutions was Category 2 (where failure with a health and safety duty exposes an individual to a risk of death or serious injury or illness).

The total financial penalty imposed in 2023 was AU$39.95 million (an average of approximately AU$138,720 per incident).

Workers Compensation

The most recent data from the Australian Bureau of Statistics shows that the number of people with a work-related injury or illness was 497,300.

The occupation groups with the highest rates of work-related injuries were:

- Community and personal service workers (**7%**).
- Machinery operators and drivers (**6.5%**).
- Labourers (**5.7**).
- Technicians and trades workers (**5.3%**).

The most common injuries were:

- Sprains, strains or dislocations (**26%**).
- Chronic joint or muscle conditions (**20%**).
- Cuts or open wounds (**12%**).
- Fractures and broken bones (**8%**).
- Stress or other mental health condition (**7%**).
- Crushing injury, internal organ damage or bruising (**5%**).
- Burns (**4%**).
- Other (**18%**).

The most common cause of injury or illness was "lifting, pushing, pulling or bending" (**24%**).

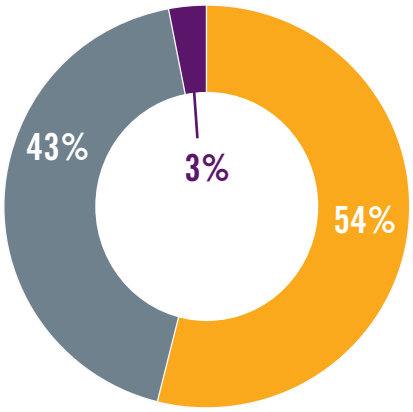
Overall, **31%** received workers compensation for the injury or illness.

Of those who took time off work, the injuries or illnesses that had the highest average number of days off were:

- Stress or other mental health conditions – 44 days off.
- Fractures or broken bones – 29 days off.
- Chronic joint or muscle conditions – 22 days off.

Of those who experienced a work-related injury in the last 12 months, over half (**57%**) received some sort of financial assistance.

Of those who received financial assistance:



APPLIED FOR AND RECEIVED WORKERS' COMPENSATION

DID NOT APPLY FOR WORKERS' COMPENSATION

APPLIED FOR AND DID NOT RECEIVE WORKERS' COMPENSATION

The proportion of people who experienced a work-related injury and were on workers' compensation has increased from **27%** in 2017–2018 to **31%** in 2021–2022.

The number of serious workers' compensation claims in 2022-2023 was 139,000, at an incidence rate of 10.7 serious claims per thousand employees.

The main causes of serious claims were body stressing (**32.7%**), falls, trips and spills (**21.8%**) and being hit by a moving object (**15.8%**).

Diseases were responsible for **34.5%** of serious claims. Musculoskeletal and connective tissue diseases were the most common type of disease, accounting for **14.5%** of disease claims overall.

The occupations with the highest frequency rates of serious claims per million hours worked were:

- Labourers (**22.9**).
- Community and personal service workers (**20.7**).
- Technicians and trades workers (**18.3**).

In 2020–2021, the median cost of a serious mental health claim was AU$58,615. This was more than three times the median compensation amount for all serious claims (AU$15,743).

Mental health conditions accounted for **10.5%** of serious claims in 2022-2023, being a **19.2%** increase in the number of claims compared to the year prior, and a **97.3%** increase when compared to claims 10 years ago. This rise is translating into a corresponding rise in workers' compensation premiums in most states:

Jurisdiction	Premium Rate 2022–2023	Premium Rate 2023–2024
Victoria	1.27%	1.8%
New South Wales	1.48%	1.6%
Queensland	1.23%	1.29%
South Australia	1.8%	1.85%
Western Australia	1.822%	1.727%
Tasmania	2.03%	1.9%

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MAPPING THE FAIR WORK ACT: A TIMELINE

By John Monroe, Jamie Robinson, Julia Vaiano and Olivia Hagioglou

There have been significant changes to employment and industrial relations laws over the past few years, and there are more significant changes to come. Laws dealing with employment and industrial relations are significant policy agenda items for leading political parties. As a result, the laws that govern these areas usually change dramatically following an election; the outcome of the 2022 federal election was no exception.

2022

7 DECEMBER 2022

- The objectives of the *Fair Work Act 2009* (Cth) (FWA) expanded to include job security and gender equity.
- Employers prohibited from including pay secrecy terms in employment contracts.
- New processes for employers and employees in relation to enterprise bargaining, including for terminating enterprise agreements and the Fair Work Commission's (FWC) powers to correct errors in enterprise agreements.
- Enterprise agreements (known as "Zombie agreements") which came into effect pre-FWA sunsetted for 12 months.

2023

7 JANUARY 2023

- Job advertisements must not include pay rates that would breach the FWA, modern awards or enterprise agreements.

1 FEBRUARY 2023

FOR NON-SMALL BUSINESSES:

- Employees (including casuals) are entitled to 10 days paid domestic and family violence leave.

6 MARCH 2023

- The FWA expressly prohibited sexual harassment, and the FWC has new powers to deal with these matters.

6 JUNE 2023

- New requirements in relation to multi-employer bargaining, including allowing for employees and unions to apply to the FWC for authorisation to join employers into bargaining for multi-enterprise agreements.
- The Better Off Overall Test (also referred to as BOOT) and how it applies to enterprise agreements made on or after 6 June 2023 requires a "global assessment" and consideration of factors, such as the patterns or kinds of work or types of employment that are reasonably foreseeable at the time the agreement is made.
- The FWC was given new powers to deal with disputes relating to requests for flexible work and requests for unpaid parental leave (including to essentially override an employer's decision to refuse such requests).

1 JULY 2023

- The monetary cap for small claims proceedings was increased to AU$100,000 (from the previous AU$20,000).

1 AUGUST 2023

FOR SMALL BUSINESSES:

- Employees (including casuals) are entitled to 10 days of paid domestic and family violence leave.

6 DECEMBER 2023

- Fixed-term contracts exceeding a period of 24 months are longer be permitted (unless an exception applies).
- Employers are required to provide fixed-term employees with a Fixed Term Contract Information Statement.
- "Zombie agreements" are no longer lawful.

15 DECEMBER 2023

- Employees, unions and host employers can apply to the FWC for orders relating to labour hire employees – Part 2 to 7A.
- When one of these orders applies, labour hire employers must pay their employees, who are supplied to a host employer, the same rate they would receive under the host employer's enterprise agreement or other applicable workplace instrument.
- Employers that become a small business as a result of downsizing in the lead up to bankruptcy or insolvency may still be required to pay their employees redundancy pay.
- New rights and protections were afforded to workplace delegates, including the right to reasonable access to workplace facilities and to communicate about matters of industrial concern. Employers cannot hinder or obstruct delegates from exercising their rights.
- Being subject to family and domestic violence has been added into the FWA as a protected attribute, strengthening anti-discrimination laws.
- Officials of registered organisations, who do not hold an FWA entry permit, may enter workplaces to assist health and safety representatives.
- The bargaining representative who applied for a protected action ballot order must have attended the compulsory conference for the subsequent action to be protected.
- Amendments to the *Asbestos Safety and Eradication Agency Act 2013* have expanded the functions of the Asbestos Safety and Eradication Agency to include matters relating to silica and silica-related diseases.
- Where first responders have been diagnosed with post-traumatic stress disorder, there is now a rebuttable presumption that their employment significantly contributed to their condition for the purposes of a workers' compensation claim (referenced in the *Safety Rehabilitation and Compensation Act 1988*).

2024

27 February 2024

- Franchisees of a common franchisor are able to bargain for common terms and conditions in the single-enterprise agreement stream.
- Employers and employees can transition from multi-enterprise agreements to a single enterprise agreement before the nominal expiry date of the agreement where certain conditions are met.
- A bargaining representative can apply to the FWC for a declaration that bargaining has reached an impasse, allowing the FWC to make an intractable bargaining determination that establishes the terms and conditions of employment.
- Maximum penalties for selected civil remedy provisions increased for corporations (excluding small businesses), and there is a lower threshold definition of the meaning of "serious contravention".

- A failure to comply with a term of an award can lead to a civil penalty of the greater of a maximum penalty of AU$495,000 per breach or three times the amount of the underpayment. While multiple breaches of the same term are often counted together as a "course of conduct", this is outcome not guaranteed.
- The maximum penalty for a serious contravention, which since February 2024 has been one which is either knowing or reckless as to an underpayment, is now AU$4,950,000 (or three times the amount of the underpayment, if greater).
- An individual who is "involved in" a contravention, including aiding, abetting, counselling, procuring, inducing or being knowingly concerned in the contravention (whether directly, indirectly, through act or omission) may also be subject to civil penalties—currently a maximum of AU$19,800.
- An employer that is issued a compliance notice by the Fair Work Ombudsman may be required to calculate and pay the amount of any underpayment. Additionally, the Federal Court, Federal Circuit and Family Court have the power to grant an order to comply with the notice. Penalties for failing to comply with notices have also increased.
- The ability to unwind amalgamated unions was restricted, with applications to de-merge needs to be made within two to five years after amalgamation.
- To defend a sham contracting claim, employers must prove that they reasonably believed the worker was engaged as a contractor at the time the representation was made.

JULY 2024

- Enterprise agreements and workplace determinations made after 1 July 2024 are to include delegates' rights, and delegates' rights terms will be included in all modern awards from 1 July 2024.
- Registered organisations or unions can apply to the Fair Work Commission for an exemption certificate to circumvent the 24-hour notice requirement for right of entry, where underpayment of wages or entitlements are suspected.
- There is a new criminal offence for industrial manslaughter and increased penalties in the Commonwealth Work Health and Safety Act.

26 AUGUST 2024

- A new definition of "casual employee" in the FWA allows for consideration of the practical reality of what is going on in the workplace, not just what was in the employment contract on day one (essentially overturning the High Court of Australia's decision in *WorkPac Pty Ltd v Rossato* [2021] HCA 23).
- A new definition of "employer" and "employee" in the FWA requires consideration of the following (unless an exception applies):
  - Real substance, practical reality and true nature of the relationship.
  - Whole relationship between the parties, including the terms of the contract and how the contract is performed in practice.
- A new framework for protecting the interests of certain workers in the gig economy. The FWC will have the power to set minimum standards for workers in employee-like forms of work, including those engaged in the gig economy.

- Eligible employees have a new "right to disconnect" outside of work hours (effective 26 August 2025 for small business employers).

1 JANUARY 2025

- Employers who intentionally engage in conduct which results in an underpayment of their employees may, after 1 January 2025, be charged with the offence of wage theft. The criminal penalties for such an offence will be:
  - If the court can determine the underpayment amount for the offence—the greater of three times the underpayment amount and whichever of the following applies:
    - For an individual, 5,000 penalty units (or AU$1,650,000).
    - For a body corporate, 25,000 penalty units (AU$8,250,000).

There have been significant changes to employment and industrial relations laws over the past few years, and there are more significant changes to come.

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"REASONABLE ADDITIONAL HOURS" AND "REASONABLE REFUSALS"— HOW LONG IS A PIECE OF STRING?

By Greta Marks and Laura Dann

In a time where technology has made us all more available than ever, and working flexibly and from home is common in many industries and workplaces, the lines between work and home life are beginning to blur.

Australian employees now have a legal "right to disconnect" outside of their working hours. Additionally, there have recently been a number of high-profile cases arising in relation to "reasonable additional hours".

While these are not entirely new concepts, in the last couple of years, they have been gathering momentum and attracting greater scrutiny.

REASONABLE ADDITIONAL HOURS

Many employment contracts (particularly for employees who are not award-covered or with annualised salaries) will contain a clause along the lines that a full-time employee will work 38 hours per week plus reasonable additional hours.

This is the statutory maximum that can be directed without the overlay of reasonableness. After 38 hours, an employee may refuse to work the additional hours if they are unreasonable.

There is an important distinction between requiring an employee to work additional hours and an employee independently choosing to perform additional work outside their contracted hours. While this may raise other issues of workload and health and safety, the concept of "reasonable additional hours" usually relies on the employee being *required or directed* to work them.

As a stand-alone provision, if the requirement or request is found to be unreasonable, an employer may be in breach of the Fair Work Act (FWA) and be liable for civil penalties and payment of compensation. In addition, workloads and the reasonableness of hours and connectivity have become an increasingly common aspect of many disputes. As an employer, it is important to know your rights and obligations, as to be cognisant of where to expect change in the coming years.

Determining Whether Additional Hours Are "Reasonable"

The FWA prescribes 10 factors that must be taken into account when assessing the reasonableness of additional hours:

1. Any risk to employee health and safety.
2. The employee's personal or family circumstances.
3. The needs of the workplace or enterprise.
4. Whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours.
5. Notice given by the employer of any request or requirement to work additional hours.
6. Notice given by the employee of their intention to refuse to work additional hours.
7. The usual patterns of work in the industry or part of the industry.
8. The nature of the employee's role, and their level of responsibility.
9. Whether the additional hours are in accordance with averaging terms in a modern award or enterprise agreement or with an averaging arrangement.

10. Any other relevant matter.

While a prescriptive list assists, the question remains as to how to weigh these factors and how effective they are in practice.

Health and Safety: A Threshold Issue

Aside from health and safety being first on the list of factors when determining whether additional hours are reasonable, employers have an overarching obligation under relevant health and safety legislation to ensure the health and safety of workers. Simply put, if an employee is being required to work additional hours such that their health and safety (including mental health) is in jeopardy, the hours will not be reasonable, and the employer is at risk of breaching its health and safety obligations.

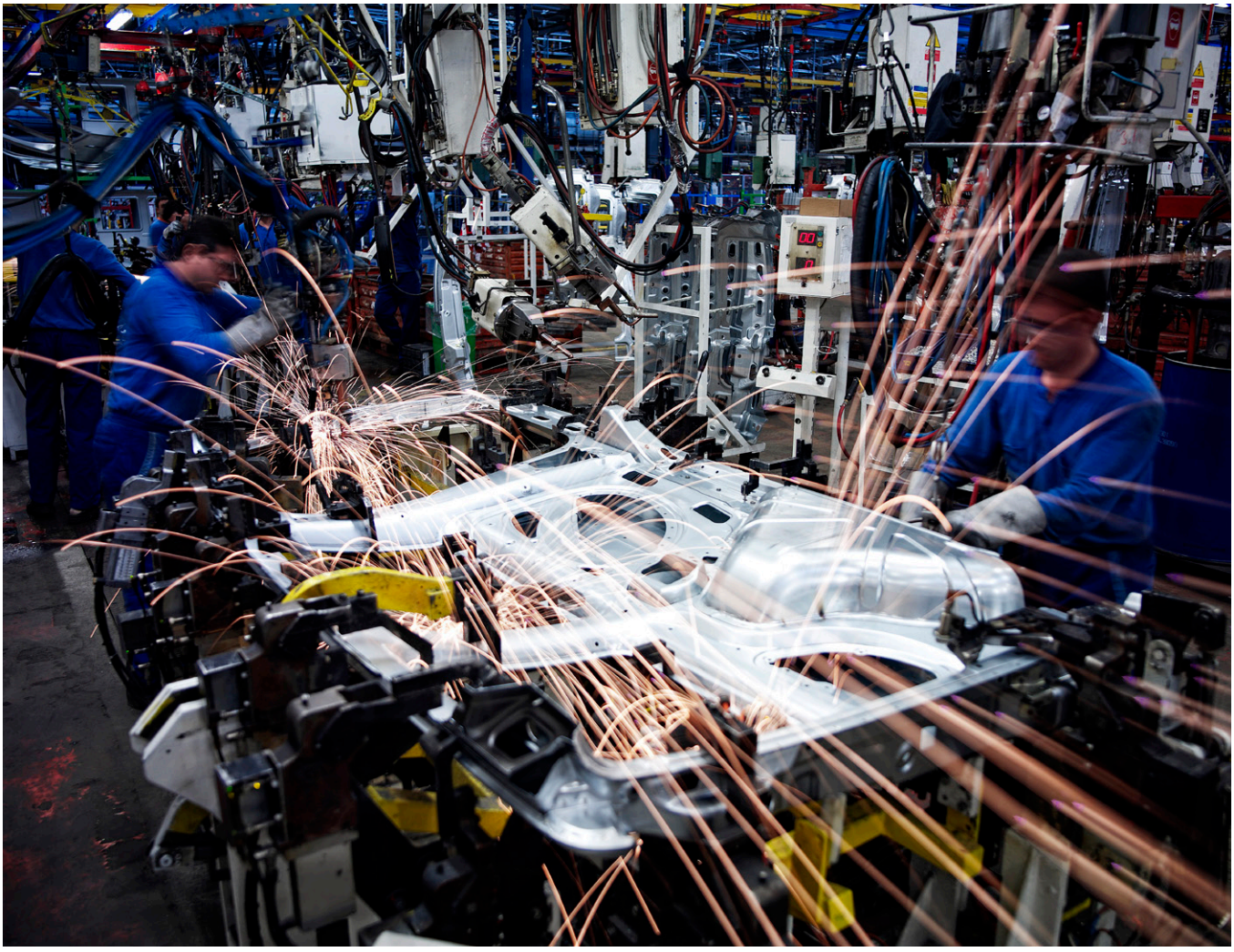
This will, of course, depend on each individual employee, the amount of work required, the period during which that work is required (i.e. the intensity of the work), opportunities for rest and the impact of additional hours on them, including from a psychosocial perspective.

THE RIGHT TO DISCONNECT

From 26 August 2024, employees have a right to refuse to monitor, read or respond to contact, or attempted contact, from an employer or a third party about work outside of their working hours unless the refusal is unreasonable.

For clarity, this right does not prohibit employers from contacting employees outside of their regular working hours. However, an employer is prohibited from taking adverse action against an employee who exercises or proposes to exercise their right to disconnect from the workplace.

These new laws will come into effect for small business employers and their employees on 26 August 2025.



Determining Whether a Refusal Is "Reasonable"

In determining whether an employee's refusal to monitor, read or respond to work-related contact or attempted contact is reasonable, the following factors must be considered:

- The reason for the contact or attempted contact.
- How the contact or attempted contact is made and the level of disruption it causes the employee.
- The extent to which the employee is compensated for:
  - Remaining available to perform work during the period in which contact is made or attempted.
  - Working additional hours outside of the employee's ordinary working hours.
- The nature of the employee's role and their level of responsibility.
- The employee's personal circumstances (including family or caring responsibilities).

An employee's refusal will be unreasonable if the contact is required by law.

Resolving Disputes About the "Right to Disconnect"

If there is a dispute between an employer and employee as to whether a refusal is reasonable, the parties must attempt to resolve the issue at the workplace level.

If discussions at the workplace do not resolve the dispute, either party may apply to the Fair Work Commission (FWC) to make an order to stop refusing contact or taking certain actions, or to otherwise deal with the dispute.

The FWC can then make an order to:

- Prevent the employee from continuing to unreasonably refuse contact.
- Prevent the employer from taking any disciplinary action against an employee for exercising their right to disconnect.
- Prevent the employer from continuing to require the employee to monitor, read or respond to contact.

REASONABLENESS VERSUS SALARY AND SENIORITY

There is a tension between the reasonableness of additional hours, the reasonableness of refusals to respond to contact outside of work hours and an employee's salary, seniority and level of responsibility.

While such factors help to determine reasonableness, this is not to say senior executives on high annual salaries can be required to regularly work unlimited hours above 38 or be required to respond to emails and calls all night and all weekend. It is not a linear, or a one-size-fits-all, assessment.

That being said, having substantial responsibility within the needs of your workplace and norms of your industry, paired with a salary reflective of that role, can signify a reasonable expectation of working additional hours and may mean a refusal to respond to contact out-of-hours is unreasonable.

WHAT SHOULD EMPLOYERS LOOK OUT FOR?

Reasonableness needs to be assessed on a case-by-case basis, depending on factors including the employment contract, the employee's circumstances and the communications between the employer and the employee about hours and workload.

However, there are a few things to keep in mind:

- Know how many hours your employees are working. A recent "test" case brought by a union on behalf of several employees was based, in large part, on "work diaries" kept by the relevant employees setting out the hours they worked each day. If an employer has no way of knowing how many hours its employees are working each week, it will be more difficult to spot issues with workload. It will also put the employer at a disadvantage in dealing with any claim.
- Check your employment contracts. Do they contain adequate "set-off clauses" or specify that reasonable additional hours may be required? Depending on the role and salary, it may assist to expressly state that the employee's salary has been set to compensate for an expectation of additional hours.

Australian employees now have a legal "right to disconnect" outside of their working hours.

- Have mechanisms in place to help employees feel comfortable about raising concerns about their workload as those concerns arise.
- Have systems in place to deal with refusals and complaints from employees who do not want to work additional hours or have raised issues about their workloads. It is important to ensure such matters are dealt with appropriately and that employees are not subjected to adverse action (inadvertent or otherwise) on the basis of their complaint, enquiry or refusal.
- The employee previously complained about their workload. While the employee may not have been expressly directed to work additional hours, it may be that the workload required of the employee necessitates additional hours and needs to be reviewed.
- Speak to employees about whether they feel comfortable being contacted outside of work hours. Some employees may not have an issue monitoring or responding to contact outside of work hours, whereas others may want to completely switch off.
- Ensure that any positions which have an expectation of out-of-hours communication (and are remunerated on this basis) clearly reflect this expectation in the position description.

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GENDER IN THE SPOTLIGHT: AUSTRALIA'S SHIFTING COMMUNITY STANDARDS AND LEGISLATIVE REFORMS

By Leila Moddel, Meg Aitken and Ella Krygier

Gender inequality in Australia has long been discussed but has been in the spotlight in 2023 and into 2024. The box office hit "Barbie", along with the huge success of the Australian women's football team, the "Matildas" in the 2023 FIFA World Cup, has led to a cultural shift that some are calling the "Barbie and Matildas' effect".

However, this cultural shift has been a long time coming. In 2018, the National Inquiry into Sexual Harassment in Australian Workplaces was commissioned by the Federal Government against the backdrop of the #MeToo movement. In March 2020, the Respect@Work report was released, making 55 recommendations designed to prevent and respond to sexual harassment in the workplace and create safer, more respectful and productive Australian workplaces. Many of the recent changes to legislation reflect the key recommendations in that report.

POSITIVE DUTY TO ELIMINATE SEXUAL HARASSMENT

As part of the Respect@Work reforms, the *Sex Discrimination Act 1984* (Cth) (SDA) was amended to include a positive duty on employers or persons conducting a business or undertaking to take reasonable and proportionate measures to eliminate sexual harassment in the workplace.

This positive duty shifts the focus from reactively responding to complaints of sexual harassment to proactive and preventative actions taken to eliminate, as far as possible, discrimination on the ground of sex, sexual harassment or sex-based harassment, hostile conduct on the ground of sex and related acts of victimisation in a workplace context. It places far more onerous obligations on employers to proactively deal with sexual harassment and broader concepts of sex discrimination in the workplace.

In practice, reasonable and proportionate measures will differ depending on the employer, its industry, resources and workforce; however, all employers must have measures in place to satisfy the positive duty. With effect from December 2023, the Australian Human Rights Commission now has the power to enforce compliance with the positive duty in the SDA.

PROHIBITION OF SEXUAL HARASSMENT

To accompany the positive duty under the SDA, the *Fair Work Act 2009* (Cth) (FWA) now explicitly prohibits sexual harassment and provides that employers who do not take reasonable steps to prevent sexual harassment may be vicariously liable for the sexual harassment committed by their employees. This follows a broadening of the Fair Work Commission (FWC) to make orders to stop sexual harassment, which was introduced in November 2021.

Further, the FWA has expanded the powers of the FWC to allow it to arbitrate a dispute regarding allegations of sexual harassment in connection with work, as well as make financial and compensatory orders. These measures are an effort to deter perpetrators of sexual harassment, as well as provide another forum for complaints of sexual harassment to be heard.

INCREASED TIME LIMIT FOR DISCRETIONARY TERMINATION OF A COMPLAINT

The *Australian Human Rights Commission Act 1986* (Cth) and the SDA previously allowed a complaint under the SDA, *Disability Discrimination Act 1992* (Cth), *Racial Discrimination Act 1975* (Cth) and *Age Discrimination Act 2004* (Cth) to be terminated if it was not made within six months of when the alleged conduct occurred. The Respect@Work legislation increased this time limit such that the president of the Australian Human Rights Commission now only has the power to terminate a complaint under the relevant legislation if such compliant is made at least 24 months after the alleged conduct occurred.

This reform means that employers may be required to deal with complaints that are up to 24 months old, creating complexity in collating evidence and responding to claims.

PAID DOMESTIC VIOLENCE LEAVE

In an effort to support employees who require time off to deal with the impact of family and domestic violence, the entitlement to family and domestic violence leave under the National Employment Standards (NES) in the *Fair Work Act 2009* (Cth) has been increased from five unpaid days per annum to 10 paid days in a 12-month period.

Importantly, and contrary to the treatment of most other leave entitlements under the NES:

- All employees (including part-time and casual employees) will be entitled to 10 days of paid family and domestic violence leave in a 12-month period.
- Employees do not have to accrue the leave and are entitled to the full 10 days upfront.
- The leave does not accumulate from year to year if it is not used and renews annually on an employee's work anniversary.

In an effort to protect employee safety when accessing paid family and domestic violence leave, the Fair Work Regulations now contain specific provisions which provide that information about paid family and domestic violence leave must not be recorded on pay slips.

PAY SECRECY

To encourage greater transparency in relation to pay and the gender pay gap, it is now unlawful to include a term in a contract that would prevent employees from sharing (or not sharing) information about their pay or employment terms and conditions. Given that statistically women are still paid less than their male colleagues, this change is designed to facilitate positive discussions about merit and skills-based pay without placing employees in breach of any confidentiality provisions contained in employment contracts.

WORKPLACE GENDER EQUALITY AGENCY REPORT

For the first time, in February 2024, the Workplace Gender Equality Agency published its gender pay gap report, which reveals the median gender pay gaps for nearly 5,000 private sector employers in Australia with 100 or more employees.

The key results from the report reveal that:

- The median base salary gender pay gap is 14.5%, and the median total remuneration gender pay gap, including bonuses and incentives is 19%.
- 30% of employers have a median gender pay gap within the target range of -5% and +5%.
- 62% of median employer gender pay gaps are over 5% and in favour of men.
- 50% of employers have a gender pay gap of over 9.1%.

The report has been the focus of mainstream and social media and a topic of widespread public interest. Critically, however, it is important to acknowledge that the report is not a comparison of like roles. It shows the median difference between pay of women and men across businesses and industries. Equal pay for equal work has been a legal requirement in Australia since the Equal Pay Case in 1969. While it may be too early to see the impact of the Respect@Work and Secure Jobs, Better Pay reforms, gender equality is clearly on the agenda, both in the workplace and in society more broadly.

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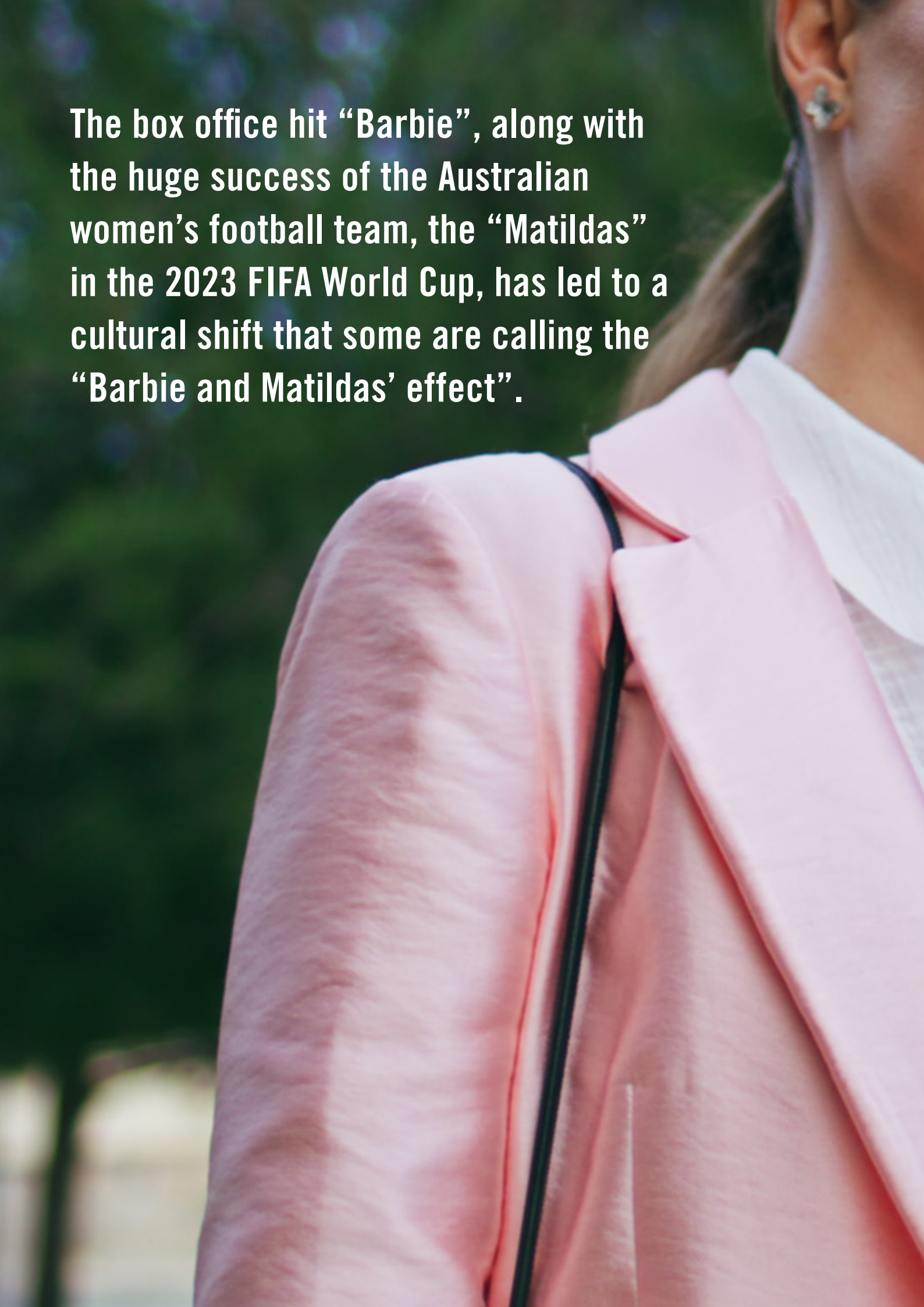

The box office hit “Barbie”, along with the huge success of the Australian women’s football team, the “Matildas” in the 2023 FIFA World Cup, has led to a cultural shift that some are calling the “Barbie and Matildas’ effect”.

MIND THE GAP: REFORMING THE MIGRATION SYSTEM TO ADDRESS AUSTRALIA'S SKILLS SHORTAGE CRISIS

By Romulus Bocos and Alison McConvill

The Australian migration system is on the brink of significant change. On 21 March 2023, following a comprehensive review, *The Review of the Migration System* was released outlining 32 potential reforms for the government to explore and potentially implement. The reforms are set to address the current skill shortages in Australia which are compounded by the decreasing trend in temporary and permanent residents.

While detailed information on the upcoming reforms remains limited, several key areas have already been amended. These areas hold the potential to shape the future of employment and migration in Australia.

PAST CHANGES

Temporary Skilled Migration Income Threshold

The Temporary Skilled Migration Income Threshold (TSMIT) is the minimum salary payable to a sponsored employee in the following visa streams:

- Temporary Skill Shortage (subclass 482) (TSS).
- Employer Nomination Scheme (subclass 186).
- Skilled Employer Sponsored Regional (Provisional) (subclass 494).

On 1 July 2023, the TSMIT was increased from AU$53,900 to AU$70,000. The Department of Home Affairs announced that it will be further increased to AU$73,150 from 1 July 2024. Accordingly, employers seeking to sponsor an employee from 1 July 2024 in the above visa categories must demonstrate both that they are paying guaranteed annual earnings at least equal to the new TSMIT and at least equivalent to the annual market salary rate.

Working Holiday Maker Visa (Subclass 417 Visa)

Since 1 July 2023, the concession permitting working holiday makers to work for the same employer organisation for more than six months has been removed. This restriction was temporarily relaxed in January 2022 to combat prolonged labour shortages caused by the COVID-19 pandemic.

Although this restriction was reintroduced on 1 January 2024, the Department of Home Affairs has relaxed it. Employees are not required to ask for permission to work with the same employer for more than six months if he or she works in different locations, including working from home. Work in any one location must not exceed six months. The employee can work for the same employer in Australia for more than six months without asking permission if he or she works in northern Australia and only in certain industries, or anywhere in Australia in plant and animal cultivation, natural disaster recovery work and certain other sectors, including agriculture, food processing, health, aged and disability care and childcare, tourism and hospitality.

Expanded Access to 186 TRT Stream

Previously, only TSS visa holders with an occupation listed on the medium- or long-term strategic skills list were eligible to apply for permanent residency. However, the government has announced that as of 25 November 2023:

- All TSS visa holders are now eligible to apply for permanent residency via the temporary residence transition (TRT) stream of the Employer Nomination Scheme (subclass 186) visa.
- The requirement for the visa holder to have worked for the nominating employer for three years has been reduced to two years.

Student Visa (Subclass 500 Visa)

During the COVID-19 pandemic, there was a temporary relaxation of the visa condition restricting visa holders from engaging in full-time work while pursuing their courses of study. However, as of 1 July 2023, this restriction was reintroduced and the number of hours visa holders can work per fortnight was increased from 40 hours to 48 hours. This adjustment appears to be in response to the ongoing skills shortage in Australia and acknowledges the additional workforce contributions by international students.

Temporary Graduate Visa (Subclass 485 Visa)

Previously, temporary graduate visa holders in the post-study work stream were granted a two-year stay in Australia. However, since 1 July 2023, individuals with specific degrees in areas experiencing verified skills shortages can extend their visa period to a four-year stay. This reform addresses the demand for skilled professionals in critical sectors and provides eligible applicants with an extended period to contribute to the Australian workforce.

Subclass 403 Visa

A lesser-known and underutilised visa type is the temporary work (international relations) visa (subclass 403), the Government Agreement stream, in particular. This visa stream allows a person to work in Australia under the terms and conditions of a bilateral agreement between the Australian government and a government of another country. The Department of Foreign Affairs and Trade (DFAT) is one of the government entities responsible for issuing letters of support that are needed by subclass 403 visa applications. As at the time of this writing, DFAT has two pilot programs in place, one with the government of the United Kingdom and the other one with the Indonesian government.

Innovation and Early Careers Skills Exchange Pilot

The Innovation and Early Careers Skills Exchange Pilot (IECSEP) is a pilot program that is part of the Australia-United Kingdom Free Trade Agreement. It is available to UK citizens and has two streams:

- The Early Careers Skills stream, which allows participants to undertake a short-term placement, secondment or intra-corporate transfer for up to one year in Australia.
- The Innovation stream, which allows highly skilled and experienced participants, with a demonstrated contribution to innovation, to undertake opportunities for up to three years in Australia.

Indonesia-Australia Comprehensive Economic Partnership Agreement

The Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) is another pilot program that gives Indonesian businesses the opportunity to send employees to undertake workplace placements for up to 12 months in Australia. Australian businesses that have an interest in and connections with Indonesia may find this pilot particularly interesting; therefore, enquiries from our readers are welcome.

Both IECSEP and IA-CEPA are operational, and DFAT has issued letters of support.

UPCOMING CHANGES

The newly announced Skills in Demand visa will replace the TSS visa. This will be a significant change to the current temporary skills shortage framework. As per announcements by the Department of Home Affairs, this will involve a three-tiered system for applicants based on their occupation and annual earnings.

This new visa will bring the following changes:

- More time for visa holders to find another sponsor if their employment is terminated (beyond the current 60 days).
- A clearer pathway to apply for permanent residency.
- Independent verification of skills shortages in Australia.
- Additional incentives to attract and retain skilled workers.

As at November 2024, the Skills in Demand visas have not been implemented yet, though the Department of Home Affairs has announced it will happen during 2024.

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The reforms are set to address the current skill shortages in Australia which are compounded by the decreasing trend in temporary and permanent residents.

WAGE THEFT: NEW CONSEQUENCES FOR INTENTIONAL UNDERPAYMENT

By Nick Ruskin and John Monroe

Underpayments continue to be a dominant issue and a focus of the Fair Work Ombudsman (FWO) and the federal government. In December 2023, the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* introduced a new criminal offence for employers that intentionally underpay employees.

The new wage theft offence will carry the maximum penalties of:

- Imprisonment of 10 years.
- If a court can determine the underpayment amount, the greater of three times the amount of the underpayment and AU$1.565 million for an individual or AU$7.825 million for a company.
- If a court cannot determine the underpayment amount, up to AU$1.565 million for an individual and up to AU$7.825 million for a company.

Underpayments, even by well-intended employers, can have serious consequences with the new Act resulting in a five-fold increase in civil penalties. Self-reporting will not serve as a defence to prosecution by the FWO (although the changes propose "cooperation agreements" which may limit prosecution if there has been a voluntary, frank and complete disclosure).

These changes will not take effect before 1 January 2025.

We have set out below some steps that businesses can take to proactively manage underpayments.

KNOW YOUR INSTRUMENT

- Proactively review industrial instruments.
- Consider impacts of any transfer of business.
- Examine known underpayments.
- Conduct a broad review to capture other issues.
- Improve payroll systems to better manage compliance.

COMMON UNDERPAYMENTS

Businesses need to be aware of the following areas:

- Overtime for casual and part-time workers.
- Minimum engagement.
- Failure to pay allowances.
- Use of wrong base rate.
- Annualised salaries.

ASSESSING UNDERPAYMENTS

- Identify the root cause and fix systems and processes to prevent continuing underpayments.
- Understand the scope and extent of any issues.
- Calculate back payments for current employees.
- Calculate back payment for former employees.
- Note the six-year limitation period.

CONSIDER THE POWERS OF THE FWO

- Review the FWO compliance and enforcement policy.
- Assign an individual to gather information and investigate underpayments to be prepared for when the FWO issues a notice to produce records or documents.
- Consider whether voluntary disclosure is a suitable strategy Proposed changes may allow for cooperation agreements, which would reduce prosecution risks if employers provide voluntary, frank and complete disclosure.

COMMUNICATING AND ENGAGING STRATEGICALLY WITH STAKEHOLDERS

- This includes employees, senior management, the Board and external bodies.

RECTIFICATION

- Have a clear idea of what rectification will look like in terms of length of back payments, interest and other steps that will be taken.
- Before agreeing to a timetable, ensure that payroll and external providers can meet it.
- Consider what steps need to be taken to avoid underpayments in the future, including the requirement for any new systems or processes and training.

POTENTIAL OUTCOMES

Below are issues to consider if actions are not taken:

- Reputational risk damage.
- Loss of trust from employees, clients and customers.
- FWO actions, which can include a compliance notice, enforceable undertakings, a contravention letter, an infringement notice and prosecution.
- Individuals who are involved can be held liable as accessories to their employer's breach; see *Fair Work Ombudsman v DTF World Square Pty Ltd* (in liquidation) (No 3) [2023] FCA 201, where the general manager and human resources manager were liable as accessories.
- Underpayments may be a serious contravention which happens when a court finds that the person or business knew they were contravening an obligation under workplace laws, and the contravention was part of a systematic pattern of conduct affecting one or more people.

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REDEFINING SAFETY: A REACTIVE APPROACH TO PSYCHOSOCIAL RISK NO LONGER ACCEPTABLE

By Dominic Fleeton and Amelia Hasson

Psychological health and safety has been a long-standing, though under-recognised, aspect of Australian work health and safety law. In the past 12–24 months, there has been an explosion of interest in this area, and it has become a key area of strategic focus for state governments and regulators alike. There continue to be significant changes to the legal requirements for managing psychosocial risks, which are imposing increasingly demanding and challenging requirements on organisations to manage these risks.

THE BUSINESS CASE FOR MANAGING PSYCHOSOCIAL RISK

Throughout Australia, workers' compensation claims for psychosocial risks have significantly increased in frequency and cost. In 2019–2020, these claims increased by 78%, representing 28% of all disease claims. In that period, the average cost of a serious mental health claim was AU$55,300, a staggering 288% increase since 2000. These claims inevitably result in increases to an organisation's workers' compensation insurance premium.

The cost of these claims has been so significant that the Victorian Parliament has passed the Workplace *Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Bill 2023* (Vic). This amendment carves out psychological injury claims predominantly caused by stress or burnout arising out of events that are usual or typical and reasonably expected to occur in the person's employment. This measure is based in large part on concerns about the ongoing financial viability of the workers' compensation system in Victoria.

Even if an individual who suffers a psychosocial injury does not submit a workers' compensation claim, his or her employer may be confronted with a range of challenges, such as the absence of the individual (whether frequent or prolonged), the impact of the individual's absence on his or her team and its workload, and difficulty in navigating day-to-day interactions with the individual. A reduction in psychosocial injury, through the proactive management of psychosocial risks, would be of benefit to all concerned and, anecdotally, our experience is that organisations that engage in such proactive management may benefit in terms of employee engagement and retention and organisational culture.

NEW LEGAL UNDERSTANDING OF PSYCHOSOCIAL RISK

Risks to mental health and safety have traditionally been understood as arising from work "going wrong" or stressors in workers' personal lives spilling over into the workplace. However, that understanding has been challenged on the basis that stress occurs as a result of many psychosocial risks that arise from the normal performance of work. These risks are often inherent in the work itself and may surface whenever and wherever (whether at home, on a site or in an office) a person is performing work.

Specific regulations for psychosocial risks have now been introduced into all but one jurisdiction in Australia, as shown below.

- At the Commonwealth level, the *Work Health and Safety Amendment (Managing Psychosocial Risk and Other Measures) Regulations 2022* (Cth) and the Code of Practice on Managing psychosocial hazards at work, 2022.
- In Queensland, the *Work Health and Safety (Psychosocial Risks) Amendment Regulation 2022* (Qld) and Code of Practice on Managing Psychosocial Hazards at Work.
- In New South Wales, the *Work Health and Safety Amendment Regulation 2022* (NSW) and Code of Practice on Managing Psychosocial Hazards at Work.
- In South Australia, *Work Health and Safety (Psychosocial Risks) Amendment Regulations 2023* (SA) and a Code of Practice on managing psychosocial hazards at work.
- In Tasmania, *Work Health and Safety Regulations 2022* (Tas) and the adoption of the Commonwealth Code of Practice.
- In Western Australia, the *Work Health and Safety (General) Regulations 2022* (WA) and the Code of Practice on Psychosocial Hazards in the Workplace.
- In the Northern Territory, the *Work Health and Safety (National Uniform Legislation) Regulations 2011* (NT) and the adoption of the Commonwealth Code of Practice.
- In the Australian Capital Territory, the *Work Health and Safety Amendment Regulation 2023*.

The new regulations generally define psychosocial risk as being a risk to a person from a hazard that arises from, or relates to, any of the following that *may* cause psychological harm:

- The design or management of work.
- The work environment.
- Plant, machinery and equipment at a workplace.
- Workplace interactions or behaviours.

This definition illustrates that psychosocial risks can arise from a broad range of activities and interactions, including those with third parties, such as customers and suppliers.

The various codes of practice identify a range of common psychosocial risks, including:

- High or low job demands.
- Low job control.
- Low role clarity.
- Low reward and recognition.
- Poor support.
- Poor organisational change management.
- Poor organisational justice.
- Poor workplace relationships, including interpersonal conflict.
- Remote or isolated work.
- Poor environmental conditions.
- Traumatic events.
- Violence and aggression.
- Bullying and harassment, including sexual harassment.

MOVING FROM REACTIVE TO PROACTIVE MEASURES

Many organisations have treated, and continue to treat, psychosocial risks as employment issues for their people and culture or human resources function to address, either through the pre-employment disclosure process or *reactively* as they arise in the workplace.

This approach is no longer sufficient. The legislation requires organisations to *proactively* manage psychosocial risks in the same way as other health and safety risks, except that there is no requirement to apply the hierarchy of controls to them. Note that the Commonwealth, Queensland, South Australia and the Australian Capital Territory do have this requirement.

To comply with the new legislation will require a fundamental shift towards a co-ordinated approach between work health and safety functions, people and culture or human resources functions and risk functions to implement, workforce wide, systemic interventions directed at mitigating the prevalence and impact of psychosocial risks. For example, there is no reason why psychosocial risks should not be subjected to the same rigorous risk assessments that are conducted for physical risks. Those risk assessments should involve all stakeholders, co-ordination and co-operation between people and culture or human resources, safety and other relevant functions, and consultation with the workforce.

Given the subjective nature of many psychosocial risks or the harm that could be caused by those risks, it is key that organisations take a risk-based and evidence-based approach to identifying and managing these risks. Industry-wide and organisation-specific data about psychosocial risks will be particularly important in informing the risk assessment process and helping an organisation to demonstrate the robustness of its psychosocial risk management system.

The people and culture or human resources function will have an instrumental role in this system by helping to identify reasonably practicable controls, implementing various controls and ensuring that adopting control measures for psychosocial risks do not have unintended industrial or employment consequences or increase the organisation's exposure to claims in that space. For example, while codes of practice may promote or recommend role redesign as a control measure for psychosocial risks, changing a worker's role needs to be carefully managed to avoid triggering a demotion or constructive dismissal.

APPLYING A NEW LENS TO INCIDENT RESPONSES

An incident may occur in a workplace due to psychosocial risks, either directly, such as with an assault or, indirectly through interaction with physical risks, such as a heart attack caused by work-related stress.

Organisations need to adapt their current incident response protocols to ensure that they are suitable to respond to psychosocial incidents.

In addition, where an organisation investigates a psychosocial incident, that investigation must also

be conducted in a way that manages psychosocial risks for those involved. The Queensland Code of Practice expressly requires organisations take a trauma-informed approach when responding to psychosocial risks. In other words, the goal is to try to ensure that the process itself does not (a) create any new psychosocial risks and (b) does not unnecessarily exacerbate any existing psychosocial risks.

While the existing regulator notification requirements under safety legislation apply to psychosocial incidents that meet the threshold of being notifiable, most of the language in the current legislative provisions is directed toward physical injuries. We anticipate there will be changes to these notification requirements to incorporate serious injuries from psychosocial risks. These changes have already occurred in the Australian Capital Territory, which has made sexual assault at the workplace a notifiable incident.

IS YOUR ORGANISATION COMPLIANCE READY?

Inspectors are entering workplaces to assess the level of compliance with the new regulations and codes of practice on psychosocial risks. There have been a number of instances of regulators issuing improvement notices, including in response to complaints about yelling, intimidation and other forms of incivility.

If your organisation is still on the journey towards full compliance, the following actions may be in order:

- Look at existing controls for psychosocial risks in the safety management system, identify gaps and make an action plan to fill those gaps for psychosocial risks, which might include updating risk registers, risk assessments, and policies or procedures, as well as providing specific training for workers and managers on psychosocial risk.
- Consider the implications of any new safety controls for psychosocial risks from an employment and industrial relations perspective and co-ordinate with your organisation's people and culture or human resources team and other key internal stakeholders.
- Obtain data about psychosocial risks to inform the monitoring and review of your organisation's psychosocial safety management system, including to address feedback and support the organisation's ongoing improvement.
- Plan how to consult with workers, as required, and any other persons who have shared duties for psychosocial risk throughout the above processes.
- Ensure that personnel with responsibilities for incident response and investigations across the organisation (including safety, people and culture or human resources and legal functions) are equipped to adopt a trauma-informed approach.

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BARGAINING AND RIGHT OF ENTRY

By Nick Ruskin and John Monroe

Since the federal government's Secure Jobs, Better Pay reforms of the *Fair Work Act 2009* (Cth) (FWA), there has been an expansion of multi-employer bargaining. The new regime, which commenced on 6 June 2023, requires employers now more than ever to take a strategic and proactive approach to bargaining.

Consideration is given to the following:

- Increased power of unions to initiate bargaining.
- What is involved in bargaining in "good faith" (noting that the good faith bargaining requirements themselves remain unchanged).
- The likely consequences of expanding the operation of multi-employer bargaining.
- The changes to the Better Off Overall Test.
- How to best navigate bargaining and negotiations in the new landscape.

MULTI-EMPLOYER BARGAINING

The key change to multi-employer bargaining concerns "single interest bargaining". Under the new regime, two or more employers with clearly identifiable "common interests" will be able to bargain together under a single interest employer authorisation, made by the Fair Work Commission (FWC), in certain circumstances. This increases the possibility of industry-wide or sector bargaining.

Employers or employee bargaining representatives can apply to the FWC to make a single interest employer authorisation, meaning that an authorisation could still be granted over the objection of one or more employers.

While a single interest employer agreement can only be made with the agreement of employers proposed to be covered by it, employers, or employee organisations covered by the agreement, can apply to the FWC to extend its coverage to new employers and their employees. This is subject to meeting specified requirements, including demonstrating clearly identifiable common interests, that a majority of affected employees support the variation to be included and that the addition of the new employer would not be contrary to the public interest. There are certain exceptions where the FWC will not be able to include an employer in a single interest employer authorisation, or add them to the coverage of a pre-existing single interest employer agreement.

The FWC issued its first authorisation under the single interest bargaining provisions in September 2023 in respect of 10 entities operating Catholic schools in Western Australia.

The legislation has also varied the "supported bargaining" framework with enhanced provisions for bargaining with multiple employers of workers that require additional support (e.g. low paid workers).

INTRACTABLE WORKPLACE DETERMINATIONS

Changes to the FWA empower the FWC to deal with "intractable bargaining" disputes through arbitration for matters where there is no reasonable prospect of the bargaining representatives reaching agreement. The intractable bargaining regime makes it easier for the FWC to arbitrate over enterprise bargaining outcomes, simultaneously reducing an employer's degree of power over the process.

The Closing Loopholes No. 2 legislation makes amendments to the powers of the FWC to make intractable bargaining workplace determinations which set terms and conditions, much like enterprise agreements or modern awards. The newest amendments mean that when the FWC makes such a determination about the matters still in dispute, the terms it makes must be no less favourable than those in an existing applicable enterprise agreement.

Given the inherent nature of bargaining is that some terms and conditions may be traded in exchange for others, these amendments have the effect of reducing employers' bargaining powers in such negotiations and make the prospect of seeking such a determination less appealing to employers.

Intractable bargaining determinations will now be available, as follows:

- For multi-enterprise agreements, unless a supported bargaining authorisation or single interest employer authorisation is in operation.
- Unless the parties have first unsuccessfully attempted to resolve the disputes, with the help of the FWC, through section 240 of the FWA.
- If bargaining has been taking place for at least nine months.

A number of applications for such determinations have been made since the changes were implemented. However, several applications, following years of unsuccessful bargaining and multiple successive instances of industrial action, have resulted in the parties reaching some form of agreement prior to the applications being heard. The first application to actually be made involved Fire Rescue Victoria and the United Firefighters Union, in which the parties were given a two-week period to agree on the matters which remain in dispute prior to any arbitration with a Full Bench ultimately deciding that no matters had been agreed meaning all terms were able to be arbitrated.

RIGHT OF ENTRY

Union officials holding a current right-of-entry permit can enter a workplace to investigate a suspected breach of the FWA or a fair work instrument, to hold discussions with employees and to investigate breaches of occupational health and safety laws.

The union must provide a written entry notice at least 24-hours (but no more than 14 days) before entry when investigating a suspected breach or to hold discussions with employees.

Pursuant to changes under the Occupational Health and Safety Act, if the union "reasonably suspects" that a breach of the Occupational Health and Safety Act or Occupational Health and Safety Regulation has occurred or is occurring, it may enter the workplace without prior notice to the employer for the purpose of investigating the suspected contravention (provided it has union members at the workplace or the workplace employs people who would be eligible members of the union).

Further, the Closing Loopholes No. 2 legislation means registered organisations or unions will be able to apply to the FWC for an exemption certificate to circumvent the requirement for an advance entry notice to be given at least 24 hours before entering a premises. The FWC will be required to issue an exemption certificate if the FWC is satisfied that a suspected contravention involves the underpayment of wages or entitlements affecting a member of the registered organisation or union or the FWC reasonably believes that advance notice of the entry given by an entry notice might result in the destruction, concealment or alteration of relevant evidence. The changes commence from 1 July 2024.

In the event this right of entry relating to suspected underpayments is misused, the new laws enable the FWC to ban the exemption certificate or otherwise impose specified conditions on the exemption certificate for a specified period.

The new regime, which commenced on 6 June 2023, requires employers now more than ever to take a strategic and proactive approach to bargaining.

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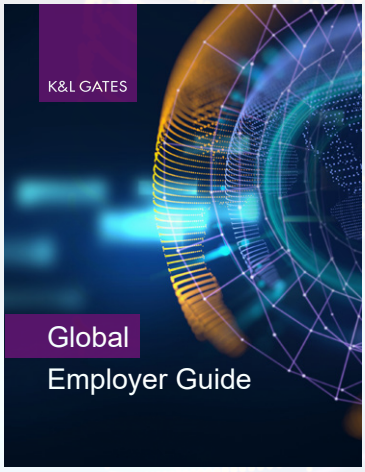
GLOBAL EMPLOYER GUIDE

In today's global economy, more companies than ever have employees in numerous countries, often relying on a mobile global workforce to expand into new markets and meet strategic and operational needs. Driven by the many questions we receive from our clients, we have prepared the Global Employer Guide—a concise, easy-to-read summary of employment law requirements across numerous jurisdictions.

Updated annually by our Global Employer Solutions® team, the Global Employer Guide references laws in nearly 20 countries. From Australia to the United States and many places in between, the guide reflects the changes in each country over the past year, including pandemic-related changes where applicable.

A few of the topics covered include:

- Termination.
- Visa processes.
- Employee rights.
- Contract requirements.
- Transfer of business considerations.
- Privacy standards.
- Union involvement.



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In Australia, our Labour, Employment and Workplace Safety team is a full-service national employment, industrial relations and work health and safety practice. As one of the largest practices of this kind in the country, we offer extensive capabilities and resources.

Working with local and as well as international employers, we develop and implement strategies that allow our clients to improve operational management and workplace relations. Our job is to deliver practical solutions that align with business objectives and values, while considering their legal and operational implications. We take pride in being highly responsive and acting as a sounding board and trusted advisor. Because of our size, we have the resources to allocate the most appropriate team members to the engagement, based on their skills and experience with the matter. Our collaborative, client-first approach has led to building and maintaining long standing relationships with our clients.

In addition to representing our clients in legal matters, we regularly deliver general and bespoke training sessions to clients on employment, industrial and work health and safety law, including conducting effective workplace investigations, appropriate workplace behaviour, termination of employment, responding to incidents, bullying and harassment, dealing with out-of-hours conduct and a range of work health and safety matters, including executive due diligence training for boards and senior executives. We are able to tailor our training to your organisation's specific policies and requirements.

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“K&L Gates has been able to work in within our highly legislated landscape to provide current advice and able to use learned experience to inform future options. The advice is tailored to the client’s needs and level of sophistication.”

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“We receive a significant level of partner involvement and direction in matters involving K&L Gates. While the advice they provide is legally correct, they always seek to consider practical solutions.”

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