

THE FIFTH ANNUAL MELBOURNE EMPLOYMENT LAW CONFERENCE

A TWO-DAY CONFERENCE ORGANISED BY
TELEVISION EDUCATION NETWORK PTY LTD

CROWN TOWERS HOTEL MELBOURNE
THURSDAY 20 & FRIDAY 21 FEBRUARY 2020

Casual employment post Workpac
Hours of work and employer obligations
Privacy in the workplace – whose right is it anyway?
Challenges of an ageing workforce
Conducting effective workplace investigations
Managing ill or injured workers – a lifecycle case study
Mental health in the workplace
You're fired! Are summary dismissals unfair?
Exiting senior employees
When your data flies out the door with a departing employee
Managing performance in the age of adverse action claims
Wage theft and underpayments

FEEDBACK FROM LAST YEAR'S CONFERENCE:

"I am always impressed with this conference. The quality of presenters (particularly this time) was top notch. The conference covers a broad range of topics and allows me to keep abreast of changes."

"The material presented was well prepared and the speakers were of extremely high standard. Thoroughly enjoyed the privilege of attendance such a well organised conference."

"Great content, great presenters. Very topical & interesting."



The professional development specialists

DAY 1 THURSDAY 20 FEBRUARY 2020

Morning Chair: Ross Jackson, Partner, Maddocks, Melbourne

MORNING THEME: REGULATING THE EMPLOYEE RELATIONSHIP

9.00 - 9.10am

Introduction and welcome

9.10 - 9.55am

Session 1: Casual Employment Post Workpac

Considerable media attention was afforded to the Full Federal Court decision in *WorkPac Pty Ltd v Skene*, which confirmed the tests for the characterisation of casual employment. The resulting outrage led to the Federal Parliament regulating to address “double dipping”. But is the issue now finally settled? This topic examines:

- *WorkPac Pty Ltd v Skene*: understanding the Court's decision and its impact
- The new Fair Work regulation
- Compliance with casual conversion clauses in modern awards
- What is the ‘trigger point’ for casual conversion and when can an employer refuse?
- Continuing legal risks with casual employment and how to manage them
- Casual employment and the rise of class actions
- Future reforms - what employers should expect on the horizon for casuals

Speaker: Stephen Woodbury, Partner, Ashurst, Sydney

9.55 - 10.05am Panel Comments and Questions

10.05 - 10.50am

Session 2: Working Beyond the Nine to Five: Hours of Work and Employer Obligations

An employee can work a maximum of 38 hours in a week unless an employer asks them to work reasonable extra hours. Sounds simple enough in theory, but what is meant by ‘reasonable’? And, what are the risks of employers when staff are putting in more than the maximum hours of work? This session unpacks the tricky issues surrounding hours of work, including:

- What does the award, enterprise agreement or other registered agreement say?
- Understanding the spread of hours and averaging arrangements that may apply
- What factors determine whether additional hours are reasonable?
 - Addressing increased work flow versus employee fatigue
 - What do your workplace policies say?
 - Responding to an employee complaint regarding long hours - tips and tricks
- Two jobs with a single employer - do the hours count as one? Lessons from *Lacson v Australian Postal Corporation*
- Case study: King & Wood Mallesons' Worksafe investigation

Speaker: Erin Hawthorne, Partner, Seyfarth Shaw Australia, Melbourne

10.50 - 11.00am Panel Comments and Questions

11.00 - 11.25am Networking Break and Morning Tea

DAY 1 THURSDAY 20 FEBRUARY 2020

11.25am - 12.10pm

Session 3: Privacy in the Workplace: Whose Right is it Anyway?

Do employees have a right to privacy in the workplace? And, when is it appropriate to monitor employees' off-duty conduct? With the rapid rise of technology in the workplace, it has never been easier for employers to monitor their staff - but when are they breaking the law? This session examines the tricky issue of workplace privacy rights, including:

- When do employers attract obligations under the Privacy Act?
- Do employees have a right to privacy in their telephone conversations, voicemail or text messages?
- Does this right extend to out of hours conduct?
- Employer access to employees' social media content
- Do employees have rights to privacy in their e-mail messages and internet usage while using the employer's computer system?
- GPS tracking, biometrics and video surveillance - what are your compliance obligations?
- Health checks and drug and alcohol testing in the workplace - a potential breach of privacy?

Speaker: Kristen Lopes, Partner, Colin Biggers & Paisley Lawyers, Sydney

12.10 - 12.20pm Panel Comments and Questions

12.20 - 1.05pm

Session 4: The Challenges of an Ageing Workforce

With the average retirement age continuing to rise, a growing number of older employees are remaining in the workforce. While an ageing labour market can provide invaluable experience and expertise, they do come with their own unique demands and challenges, particularly when it comes to flexible working arrangements. This session examines the implications of an ageing workforce for employers. It covers:

- Avoiding age-based discrimination and unconscious bias
- Reasonable adjustments to accommodate age-related declines in physical strength or cognitive ability
- Accommodating demands for flexibility - health issues, caring for elderly parents or grandchildren
- Spotlight on flexibility arrangements for older employees:
 - What are flexible working arrangements?
 - Who can request flexible working arrangements?
 - Understanding recent changes to Modern Awards
 - What must an employer do with a request?
 - When can an employer refuse a request for flexible working arrangements?

Speaker: Kristen Lopes, Partner, Colin Biggers & Paisley Lawyers, Sydney

1.05 - 1.15pm Panel Comments and Questions

1.15 - 2.15pm Luncheon

DAY 1 THURSDAY 20 FEBRUARY 2020

Afternoon Chair: *Lindy Richardson, Partner, Maddocks, Melbourne*

AFTERNOON THEME: THE CHALLENGES OF MANAGING EMPLOYEES

2.15 - 3.00pm

Session 5: Conducting Effective Workplace Investigations: The What, Why and How

Workplace investigations into alleged misconduct must be done in a fair, sensitive and timely fashion. This session will ensure you understand when and why you should be investigating alleged misconduct, and all the key steps involved in an effective workplace investigation. It covers:

- What is the employer's duty of care in workplace investigations?
- Alleged misconduct and the appropriate avenue - choosing between informal intervention or a formal investigation
- Formal investigations - internal or external investigations
- Privilege considerations
- When should you advise a respondent or claimant not to attend work due to a workplace investigation?
- Procedural fairness considerations in conducting investigations
- Dealing with evidence collected during investigations - what goes into the report?
- Case study examples of flawed investigations

Speaker: *Mark Howard, Partner, HWL Ebsworth Lawyers, Melbourne*

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3.55pm

Session 6: Managing Ill or Injured Workers: A Lifecycle Case Study

An employee is absent and provides a medical certificate that states they are unfit for work due to medical reasons. The absence continues, with the employee periodically submitting further certificates without providing any further detail about their condition or when they will be able to return to work. What happens next? This session examines this scenario and considers:

- What are your options for injured workers?
- Can they perform the inherent requirements of the role?
- What reasonable adjustments are you required to make?
- Getting an opinion from employee's nominated doctor
- When can you seek an independent medical exam?
- Can you terminate an employee for refusing to undergo an IME?
- What happens if the medical advice is inconsistent?
- When should you implement a return to work plan?
- How far should you be involved in the rehabilitation process?
- Dealing with regulatory compliance covering injured workers
- When is it appropriate to dismiss an injured worker?
- Have you considered the risks of terminating?
Understanding your exposure to discrimination, unfair dismissal, workers compensation and adverse action claims

Speaker: *Mark Branagan, Partner, Thomson Geer Lawyers, Melbourne*

3.55 - 4.05pm Panel Comments and Questions

4.05 - 4.25pm Networking Break and Afternoon Tea

DAY 1 THURSDAY 20 FEBRUARY 2020

4.25 - 5.15pm

Session 7: Mental Health in the Workplace

We all know the importance of resilience and wellbeing. However, the challenge for employers is knowing how to effectively prioritise mental health in the workplace. This practical session examines best practice guidance on how to best manage mental health in the workplace.

It covers:

- What is the impact of mental health on the workplace?
- Pre-employment disclosures of mental health
- Fitness for work procedures and mental health
- Psychological injury, fit for work and an employer's obligations
- When is it appropriate to terminate employment?
- Mental health issues at work and the interplay with general protections and adverse action
- Ensuring a safe workplace for all employees
- Developing effective wellbeing programs that incorporate mental health

Speaker: Harold Downes, Safety, Employment & IR Partner, Mills Oakley Lawyers, Brisbane

5.15 - 5.25pm Panel Comments and Questions

DAY 2 FRIDAY 21 FEBRUARY 2020

Day 2 Chair: *Brian Lacy AO, Barrister, Victorian Bar, Melbourne*

MORNING THEME: TERMINATING EMPLOYEES

9.00 - 9.45am

Session 8: You're Fired! Are Summary Dismissals Unfair?

Deciding whether an employee's conduct is sufficiently serious to justify termination without notice or payment in lieu of notice can be a challenging exercise. Examining recent FWC unfair dismissal decisions and relevant principles, this session covers:

- Contractual principles governing breaches justifying summary termination
- Fair Work Act definition of 'serious misconduct' and the scope of its application
- Examples of matters that justify summary dismissal
- Understanding the Fair Work Commission's discretion and the factors that must consider in determining whether summary dismissal is justified
- Affording the employee procedural fairness
- Can a failure to follow lawful and reasonable direction justify dismissal?
- Recent cases

Speaker: *Adrian Barwick, Special Counsel, WilliamsonBarwick, Sydney*

9.45 - 9.55am Panel Comments and Questions

9.55 - 10.40am

Session 9: Exiting Senior Employees: All Good Things Must Come to an End

Executive employees are a crucial part of any big organisation. When they leave, it can be a major disruption for your business. Ensuring their contract covers all the essential termination clauses is key. This session covers:

- Restraints of trade clauses in the executive employment contract:
 - When are they enforceable?
 - Is the restraint period relative with position?
 - Lessons from recent cases
- Termination clauses in the executive employment contracts:
 - Negotiating clear exit conditions
 - Notice periods
 - Changes to an executive's position and notice
- When is gardening leave appropriate?
- The role of Deeds of Release, agreed exits and good behaviour bonds
- The rise of general protections claims amongst senior executives
- Case law update, including *King v Pia Mortgage Services Pty Ltd*; *Robinson v Western Union Business Solutions Australia Pty Ltd*

Speaker: *Skye Rose, Principal, Moores, Melbourne*

10.40 - 10.50am Panel Comments and Questions

10.50 - 11.10am Networking Break and Morning Tea

11.10 - 11.55am

Session 10: When Your Data Flies out the Door with a Departing Employee

A significant and recurring problem for businesses is the loss or misuse of data including confidential information, especially when an employee is departing the organisation. Responding swiftly is critical, as is taking steps to mitigate against the risk in the first place. This session covers:

- Understanding an employee's obligations with respect to confidential information and trade secrets
- Best practice for return of property and data prior to employee exit, reinforcing obligations, at exit, forensic examination of devices
- Strategies for recovery of data from an employee, including seeking undertakings, search orders, injunctions
- Reviewing the contract of employment and policies and procedures, to ensure the business is adequately protected
- Training employees to understand and abide by their obligations with respect to confidential information, and reinforcing their understanding upon exit

Speaker: *Denise O'Reilly, O'Reilly Workplace Law, Burleigh Heads, Qld*

11.55am - 12.05pm Panel Comments and Questions

12.05 - 1.05pm Lunch

DAY 2 FRIDAY 21 FEBRUARY 2020

AFTERNOON THEME: LIABILITY ISSUES FOR EMPLOYERS

1.05 - 1.50pm

Session 11: Managing Performance in the Age of Adverse Action Claims

Legitimate performance management of employees should be a straightforward process. However, complications can, and do, arise when performance management coincides with the employee lodging a complaint or grievance, or extended stress leave. If not properly handled, these issues can lead to time-consuming and costly adverse action claims. This session covers how employers can navigate the perilous path between performance management and adverse action claims, including:

- How can the general protection provisions be used by an employee subject to performance management?
- Dealing with an opportunistic employee who quickly lodges a complaint or grievance following performance management
- Performance management followed by long-term stress leave:
 - How can you get the performance management process back on track?
 - Minimising the risks in the performance management process when extended leave is involved
 - When should you seek medical evidence?
- Steps you can take to safeguard the decisions and actions taken in the legitimate performance management process, including termination
- A review of recent case law

Speaker: Nick Ruskin, Partner, K&L Gates, Melbourne

1.50 - 2.00pm Panel Comments and Questions

2.00 - 2.45pm

Session 12: Wage Theft and Underpayments: Storm Clouds on the Horizon

From the retail sector to agriculture and hospitality, it seems that no industry is immune from wage theft. With criminal sanctions and other reforms on the horizon, now is the time to understand how to conduct an effective wage theft audit and the key steps you must take to minimise the risks and manage the fallout. This session will examine:

- Understanding how wage theft can arise
- Tips for conducting an effective wage theft audit
- Reviewing operations and implementing changes to ensure compliance
- Best practice strategies to consider if a suspected breach has occurred
- When should you self-disclose?
- Future reforms on the horizon – what will they mean for employers?
- Tips to minimise exposure to wage theft litigation
- Lessons from recent cases involving underpayments

Speaker: Belinda Winter, Partner, Cooper Grace Ward Lawyers, Brisbane

2.45 - 2.55pm Panel Comments and Questions

2.55pm Conference Close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the conference, online access to the conference papers and refreshment breaks and lunch.

The registration fee does not include any travel or accommodation. Delegates are advised to make their own travel arrangements.

Conference Papers

TEN no longer provides printed copies of conference papers at its events. Access to the papers will be available online to all delegates in the lead-up to the conference (as the papers become available), during the conference and for 30 days after the conference. The papers will be available in .pdf format for easy download to your local computer or portable device.

At the conference TEN will supply printed copies of the PowerPoint presentations used at the conference.

CPD Units/Points

Lawyers (except WA): 7 CPD units (substantive law)

WA Lawyers: 6 CPD points (substantive law)

The Conference Venue

Crown Towers Melbourne

Whiteman Street, Southbank

Phone: (03) 9292 6688

www.crownhotels.com.au

Crown Towers Melbourne is part of the Crown Entertainment Complex and one of three Crown hotels on Southbank. It is situated within easy walking distance from the Melbourne CBD.

Conference Accommodation Discount Rate

Television Education Network has organised a **discount rate** with Crown for delegates. Please book via the Crown Hotels website (www.crownhotels.com.au) and quote **"event10"** in the promotional code field to **receive 10% discount** off the Rate of the Day.

This rate is strictly subject to availability. Delegates are advised to make their own accommodation arrangements directly via the Crown website.

If you encounter any problems booking your accommodation please do not hesitate to contact our Conference Executive, Jenna Pickrell, on (03) 8601-7729 or email: jenna@tved.net.au

Travelling to the Conference Venue

Delegates are advised to make their own travel arrangements.

Conference Dress

Smart casual attire is suitable. *(note: the temperature in the conference room varies depending on where you are sitting. Light dress is generally OK, but it is advisable that you bring a jacket/long sleeved top in case you need it.)*

Cancellation Policy

Cancellations must be received in writing at least 10 days prior to the Conference for a 85% refund. Substitute delegates accepted at any time.

Conference Terms

Program subject to change without notice. The information and views presented in the conference are not necessarily those of TEN, and participants rely on these at their own risk. TEN is not responsible for any financial or other losses incurred by delegates or for injury or damage to persons or property. TEN's maximum liability for conference cancellation or any other loss or liability is the refund of the registration fee paid.

TEN is not responsible for financial loss incurred by you as a result of the cancellation or postponement of the conference as a result of strikes, natural disasters, and other Acts of God such as volcanic ash clouds in Australian airspace. We therefore strongly advise you to take out travel insurance if your attendance plans involve air travel or other significant travel to the conference venue.

REGISTRATION FORM TAX INVOICE*

Registration is simple; complete the form below and fax or post your registration to us or register online.

Television Education Network Pty Ltd, (ABN 19 052 319 365)

GPO Box 61, Melbourne, Victoria 3001

Fax (03) 9670 0588 Phone (03) 8601 7700 Enquiries : Jenna Pickrell [jenna@tved.net.au]

Register online: <http://www.tved.net.au> – go to CONFERENCES

Please register me for the **5th Annual Melbourne Employment Law Conference** – a 2-day conference to be held in Melbourne on Thursday 20 & Friday 21 February 2020 [conf code: MELFEB20]

[] **Discount Registration** – for registrations made on or before 31 January 2020 – **\$1980** (\$1800 + \$180 GST)

[] **Full Price Registration** – **\$2145** (\$1950 + \$195 GST)

[] **Subscriber First Discount Registration** – I am a Subscriber First member and entitled to a **10% discount** off the full registration fee – **\$1930.50** (\$1755 + \$175.50 GST)

The papers from this conference will be available in electronic form only approximately 1 week after the conference has been held. You can pre-order the papers now online via our website at www.tved.net.au. The papers are **\$198** (\$180 + \$18 GST) [Code: PMELFEB20].

Multiple registration discount? If you would like to send more than two people from your company to this conference, please ask Jenna about the discounts available for multiple registrations: The more you send, the greater the discount. jenna@tved.net.au or phone (03) 8601 7729.

One-day only? We do accept bookings for attending one day only (either day 1 or day 2). To organise a one-day booking, please contact Jenna Pickrell (details above).

Personal Details

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