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REGISTRATION  
OPTIONS  
FACE TO FACE  
OR ONLINE

# 18<sup>TH</sup> ANNUAL EMPLOYMENT LAW CONFERENCE

Positive Duty to Prevent Sexual Harassment

The Impact of Psychosocial Factors in the Workplace

The Mismanagement of Disciplinary Procedures and Psychiatric Injury

Navigating Employer Privacy Obligations

Flexible Work, Return-to-Office, and the Right to Disconnect

Best Practices for Managing Employee Performance

Fixed-Term, Casual, or Contractor?

Workplace Investigations – Getting It Right from Start to Finish

Cruel Intentions: The Criminalisation of Wage Theft

Same Job, Same Pay – What Have the Courts had to Say?

The Complexities of Managing Sick and Injured Employees

General Protection Laws and Unfair Dismissal

A 2 Day Conference

**Thursday 31 July & Friday 1 August 2025**

JW Marriott Gold Coast Resort and Spa

## Feedback from last year's conference:

- Excellent speakers and topics, as always. Great mix of topics and overall management of the conference is always thorough, thoughtful and well-executed. Thank you for 2 days well spent.
- All speakers are clearly experienced and knowledgeable. Topics are so relevant to what I deal with and have to respond to in the workplace.
- Always well spoken presenters and relevant content at a great venue.



Your Trusted CPD Partner for 50 Years

# DAY 1: THURSDAY 31 JULY 2025

## MORNING THEME: PREVENTING HARM AND PROTECTING RIGHTS

9.00 - 9.15am

Introduction and welcome

9.15 - 10.00am

### Session 1: Offence is the Best Defence: Positive Duty to Prevent Sexual Harassment

With workplace sexual harassment laws shifting towards proactive prevention, organisations can no longer afford to be reactive. The positive duty to prevent sexual harassment requires employers to take meaningful steps to foster safe, respectful, and inclusive workplaces. Failure to do so not only increases legal risk but can also damage workplace culture, reputation, and employee wellbeing. This session unpacks what the positive duty entails, how it intersects with other legal obligations, and what practical steps organisations must take to comply.

Attendees will gain insights into:

- How does the positive duty fit within equality, anti-discrimination, and work health and safety laws?
- The shift from reactive to proactive compliance - Why the law now requires businesses to prevent, not just respond to, workplace sexual harassment
- Key measures for compliance - What 'reasonable and proportionate' steps look like, from risk assessments and policies to leadership training and reporting mechanisms.
- Vicarious liability - When organisations are held accountable for the actions of employees and how to mitigate this risk
- Stop sexual harassment orders - How these orders operate and what they mean for employers
- Building a safe workplace culture - Embedding long-term cultural change to create a respectful and inclusive work environment

Speaker: Stephen Marriott, Special Counsel, Ai Group Workplace Lawyers, North Sydney, NSW

10.00 - 10.10am Panel Comments and Questions

10.10 - 10.55am

### Session 2: Under Pressure: The Impact of Psychosocial Factors in the Workplace

The increasing recognition of psychosocial hazards in the workplace has placed employers under greater scrutiny. From workplace relationships and job demands to organisational culture and remote work, psychosocial factors can significantly impact employee mental health, safety, and productivity. With a growing number of claims arising from psychosocial risks, businesses must understand their obligations and implement effective strategies to eliminate or minimise harm. This session provides a practical guide to navigating the evolving legal landscape and managing psychosocial hazards effectively. Attendees will gain insights into:

- What is a psychosocial hazard? - Identifying workplace factors that can cause or contribute to mental health risks.
- The link between psychological and physical harm - How stress, bullying, job insecurity, and other hazards can manifest in both mental and physical injuries.
- Elimination vs minimisation - Understanding the legal duty to prevent harm and determining the most effective control measures.
- Intersections with other areas of employment law - How psychosocial risks overlap with workplace health and safety, discrimination, and industrial relations law.
- Managing Psychological Hazards at Work Code of Practice 2024 - Key takeaways and what employers need to do to comply.
- Best practice for responding to psychosocial injury claims - Practical steps for managing complaints, mitigating legal risk, and fostering a psychologically safe workplace.

Speaker: Claire Bratley, Special Counsel, Corrs Chambers Westgarth, Brisbane, Qld

10.55 - 11.05am Panel Comments and Questions

11.05 - 11.30am Networking Break and Morning Tea

# DAY 1: THURSDAY 31 JULY 2025

11.30am - 12.15pm

## Session 3: Do as I Say, Not as I Do: The Mismanagement of Disciplinary Procedures and Psychiatric Injury

The High Court's decision in *Elisha v Vision Australia Ltd* [2024] HCA 50 has reshaped the legal landscape surrounding employer responsibilities in disciplinary procedures. The case serves as a stark reminder that breaching contractual disciplinary procedures can result in significant liability, with the Court awarding \$1.44 million in damages for psychiatric injury. Employers must now be more vigilant in ensuring procedural fairness and adherence to employment contracts to mitigate risks. This session delves into the implications of this ruling, offering practical guidance on mitigating risks through effective policy management and adherence to procedural fairness. Key issues covered include:

- Understanding the *Elisha v Vision Australia* decision
- Evaluating how employment contracts that explicitly integrate company policies, especially those related to disciplinary actions, can lead to enforceable obligations, as highlighted in the *Elisha* case.
- Strategies to maintain consistency and fairness in applying disciplinary processes, thereby minimizing the risk of breaching contractual obligations and potential liability for psychiatric injuries.
- How deviations from established disciplinary protocols can result in significant damages for psychiatric injury, emphasizing the need for strict adherence to contractual terms
- Identifying critical considerations when revising employment contracts and disciplinary frameworks to ensure they reflect current legal standards and protect against potential liabilities
- Practical approaches to ensure compliance with contractual obligations, including regular training and audits, to reduce the risk of litigation related to disciplinary procedures.

*Speaker: Stephen Woodbury, Partner, Ashurst, Sydney, NSW*

12.15 - 12.25pm Panel Comments and Questions

12.25 - 1.10pm

## Session 4: It's None of their Business: Navigating Employer Privacy Obligations

Employers handle vast amounts of personal information about their employees, but where does the line between legitimate use and privacy breaches lie? While the Privacy Act includes an employee records exemption, its scope is often misunderstood—leaving organisations vulnerable to complaints, reputational damage, and regulatory scrutiny. This session clarifies the boundaries of employer privacy obligations, examining when the exemption applies and where businesses risk crossing the line. It covers:

- Understanding the employee records exemption and APP 6 - When privacy protections apply and when they don't
- Primary vs secondary use of personal information - Determining whether an employer's use of employee data aligns with its original collection purpose
- Employment relationship vs privacy rights - Assessing whether specific employee information is directly related to employment or falls outside the exemption
- Internal disclosures and privacy risks - When sharing employee information within an organisation could constitute an interference with privacy
- Lessons from recent case law - Key takeaways from ALI and ALJ (Privacy) [2024] AICmr 131 and its implications for employer privacy obligations
- The role of intent in privacy breaches - Understanding how an organisation's purpose and intent affect compliance risks when using and disclosing personal information
- The impact of recent privacy reforms on employers

*Speaker: Leah Mooney, Director, KPMG, Brisbane, Qld*

1.10 - 1.20pm Panel Comments and Questions

1.20 - 2.15pm Luncheon

# DAY 1: THURSDAY 31 JULY 2025

## AFTERNOON THEME: FLEXIBILITY, PERFORMANCE AND WORKFORCE MANAGEMENT

2.15 - 3.00pm

### Session 5: It's a Balancing Act: Flexible Work, Return-to-Office, and the Right to Disconnect

The landscape of work has fundamentally shifted, marked by evolving legal frameworks, the push for a return to traditional office settings, and the growing demand for digital boundaries. This session delves into the complexities of navigating these changes, focusing on the interplay between flexible work arrangements, return-to-office policies, and the "right to disconnect." How should employers adapt to these shifts and foster a balanced and productive work environment in this new era of work? This session covers:

- The evolving legal landscape of flexible work, including recent Fair Work Act changes
- Employee rights to request flexible work arrangements and employer obligations in response
- The concept of "reasonable business grounds" for refusing flexible work requests, particularly in return-to-office contexts
- Dispute resolution and appeal processes for rejected flexible work requests
- The legal and practical implications of the "right to disconnect" in a digital work environment
- The cultural shift towards return-to-office mandates and the associated risks and mitigation strategies
- Practical guidance on balancing flexible work and return-to-office policies

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

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3.55pm

### Session 6: Performance Under Review: Best Practices for Managing Employee Performance

Managing employee performance is essential for business success, but poorly executed processes can lead to disputes, disengagement, and legal risk. Employers must ensure that performance reviews, improvement plans, and disciplinary actions are conducted fairly, transparently, and in line with legal obligations to prevent claims of unfair treatment. This session provides employers with practical strategies to implement effective and defensible performance management processes. It covers:

- Ensuring structured and consistent performance evaluation methods to avoid bias
- Best practices for performance improvement plans (PIPs) and managing underperformance
- Procedural fairness in performance-related decisions to minimise disputes
- How to document performance concerns effectively to support future actions
- Recognising common pitfalls that may escalate into formal disputes
- Strategies for communicating performance concerns to employees professionally and lawfully
- Ensuring performance management aligns with contractual, statutory, and workplace policies

Speaker: Elizabeth Devine, Principal, Devine Law at Work, Sydney, NSW

3.55 - 4.05pm Panel Comments and Questions

4.05 - 4.25pm Networking Break and Afternoon Tea

4.25 - 5.10pm

### Session 7: Fixed-Term, Casual, or Contractor? Navigating the Legal Minefield of Workforce Engagement

Choosing between fixed-term, casual, or contractor arrangements has become increasingly complex due to legal reforms and case law developments. Each option carries distinct risks and compliance obligations that HR professionals must navigate. This session will explore:

- The new restrictions on fixed-term contracts under Fair Work Act s 333E and key exceptions
- Casual employment risks, including misclassification and conversion rights
- Independent contracting risks, sham contracting, and worker misclassification
- Recent case law and regulatory scrutiny on employment status
- Managing contract renewals and avoiding unintended permanent employment claims
- Workforce flexibility vs compliance risks in structuring employment arrangements
- Financial and legal consequences of getting employment classifications wrong

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

5.10 - 5.20pm Panel Comments and Questions

# DAY 2: FRIDAY 1 AUGUST 2025

## MORNING THEME: UPHOLDING FAIRNESS AND REGULATORY COMPLIANCE

9.00 - 9.05am

### Introduction and welcome

9.05 - 9.50am

### Session 8: Workplace Investigations - Getting It Right from Start to Finish

Allegations of misconduct, bullying, discrimination, and harassment must be handled with care, confidentiality, and legal precision. A flawed investigation can expose employers to unfair dismissal claims, adverse action disputes, reputational harm, and costly litigation. With increasing scrutiny on how workplace investigations are conducted, HR professionals need clear, defensible, and legally compliant processes to navigate these high-risk situations. This session provides practical, step-by-step guidance on conducting thorough, fair, and legally sound workplace investigations. It covers:

- When to initiate an investigation and key triggers for action
- Applying procedural fairness and natural justice in every step
- Managing confidentiality while balancing transparency obligations
- Addressing challenges in remote and hybrid workforce investigations
- Common investigation missteps that lead to legal claims and how to avoid them
- Deciding when to use internal HR teams vs external investigators
- Documenting findings and implementing outcomes to withstand legal scrutiny

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

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

### Session 9: Cruel Intentions: The Criminalisation of Wage Theft

The Closing Loopholes legislation has ushered in significant changes to how intentional wage theft is regulated, with criminal penalties now on the table for employers who underpay workers. The shift from civil to criminal liability means businesses must proactively review payroll compliance or risk severe consequences, including prosecution. This session will unpack the legal, practical, and compliance challenges posed by these reforms, ensuring employers understand their obligations and risk mitigation strategies. Key topics include:

- Defining intentional underpayment and the legal threshold for criminal liability
- Clarifying payment obligations under modern awards and enterprise agreements
- Identifying common wage underpayment risks and how to prevent them
- Techniques for payroll audits and accurate wage assessments
- The role of self-reporting in mitigating risk and avoiding prosecution
- The Small Business Wage Compliance Code and what it means for employers
- Understanding the new criminal penalties and how they interact with existing civil sanctions

*Speaker: Wendy Fauvel, Partner, Herbert Smith Freehills, Brisbane, Qld*

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

# DAY 2: FRIDAY 1 AUGUST 2025

11.15 - 12.00pm

## Session 10: Same Job, Same Pay - What Have the Courts had to Say?

The same job, same pay provisions in the Fair Work Act have been in force since late 2023, and we now have the guidance on the operation of the framework and the implications of non-compliance. This session will look at the operation of the framework, including:

- The policy underlying the introduction of the same job, same pay laws.
- What does “same job, same pay” actually mean?
- The definition of a regulated labour hire arrangement order.
- Considerations of the Fair Work Commission when determining the outcome of an application.
- Circumstances where the Commission cannot make labour hire arrangement orders.
- Civil penalties and anti-avoidance provisions.

Speaker: *Jamie Wells, Partner, Mills Oakley, Brisbane, Qld*

12.00 - 12.10pm Panel Comments and Questions

12.10 - 1.10pm Lunch

## AFTERNOON THEME: THE LAST RESORT: MANAGING ABSENCE, GENERAL PROTECTIONS AND TERMINATION

1.10 - 1.55pm

## Session 11: Under the Weather: The Complexities of Managing Sick and Injured Employees

The management of sick and injured employees poses multifaceted challenges for employment lawyers and HR professionals, balancing legal compliance with the practical needs of business operations. This session examines the evolving legal landscape and provides actionable insights to support both employee wellbeing and organisational resilience. It covers:

- Determining thresholds for prolonged sick leave: When is it time to take action?
- Guidelines on contacting employees during sick leave: Establishing appropriate timing and methods
- Understanding the conditions for contacting an employee's doctor while maintaining privacy
- Assessing the appropriateness of performance management or show cause meetings during sick leave
- Navigating workplace accommodations and return-to-work processes
- Strategies to mitigate risks associated with prolonged absences and potential litigation
- Practical approaches for balancing organisational needs with compassionate management practices

Speaker: *Adrian Barwick, Director, WilliamsonBarwick, Sydney, NSW*

1.55 - 2.05pm Panel Comments and Questions

2.05 - 2.50pm

## Session 12: General Protection Laws and Unfair Dismissal: Riding the Wave of Recent Trends

In 2024, a notable increase in general protections and adverse action claims has reshaped the workload of the Fair Work Commission. Although the legal framework remains largely settled, emerging case law and practical experiences offer valuable insights into current issues. This session will explore:

- Categories of general protections - the various rights that underpin employee protections in the workplace
- When is a complaint founded on a right or entitlement?
- What are prohibited reasons in the context of adverse action? Examining the factors that trigger statutory prohibitions and how employers can inadvertently breach these requirements
- Who may make an application for a breach of general protections and the criteria that determine standing
- Insights from recent decisions and war stories

Speaker: *to be advised*

2.50 - 3.00pm Panel Comments and Questions

3.00pm Conference Close

# GENERAL INFORMATION

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## Conference Registration Fee

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The registration fee includes attendance at the conference and conference papers. Refreshment breaks and lunches are included for face to face attendees.

## Conference Papers

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TEN does not provide printed copies of the conference papers or Powerpoints. Access to the papers & Powerpoints will be available online to all delegates in the lead-up to the conference (as they become available).

## CPD

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**Lawyers:** 11 CPD units/points (substantive law)

## CPD Certificate

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All delegates attending the conference will receive a CPD Certificate confirming attendance.

## Travelling to the Conference Venue

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Delegates are advised to make their own travel arrangements.

## Conference Dress

Smart casual attire is suitable (note: the temperature in the conference rooms can vary depending on where you are sitting. Short sleeves are generally OK, but it is advisable that you bring a jacket/long sleeved top just in case you need it).

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## JW Marriott Special rate for delegates attending this conference

### JW Marriott Gold Coast Resort & Spa

158 Ferny A venue, Surfers Paradise, Qld

[Reservation link: Book your group rate for 18th Annual Employment Law Conference](#)

The JW Marriott is offering a special group rate of \$325 per night for delegates attending the conference. This rate is available for Wednesday 30 & Thursday 31 July 2025.

- Full payment is due 1 day after booking
- The credit card used at the time of booking will be charged in full
- Booking will be non-refundable and no cancellations permitted

This offer is subject to availability and the cut-off date is 30.6.25.

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  - a. "TEN" means Television Education Network Pty Ltd
  - b. "you" means the person who has registered to attend or the person or persons who attend[s] the conference (if different from the person registered)
  - c. "conference" means the live face to face or live or recorded online educational event or which you have registered (by whatever name called and includes conferences, masterclasses, webinars and webinar series).
  - d. "live conference" means a conference other than a recorded conference.
  - e. "recorded conference" means a recording of a presentation or a series of presentations which you can view at a time of your choosing
  - f. "online" in relation to a conference means a conference you attend by viewing the conference over the Internet
  - g. "face to face" in relation to a conference means a conference held in an external venue where you view the conference in the conference room

## General – all conferences

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13. If TEN cancels the conference, you will be entitled either to a refund of the registration fee you have paid or to a credit equal to that fee which you can use to purchase another TEN product within 12 months of the first day of the cancelled conference.

## Cancellation by You – all conferences

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14. Refunds for registration cancellation by you other than under Clause 6(b):
  - a. If notice of cancellation is actually received by TEN more than 10 days before the first day on which the conference is to be held, 85% of the registration fee you have paid
  - b. Otherwise, no refund.

## Governing Law – all conferences

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