

2

REGISTRATION
OPTIONS

FACE TO FACE
OR ONLINE

10TH ANNUAL MELBOURNE EMPLOYMENT LAW CONFERENCE

Redefining Casual Employees

Underpayments and Wage Theft

What it Now Means to be an 'Employee' or 'Employer'

Flexible Work and the Right to Disconnect: What Is Reasonable In 2025

Navigating the Three Ds in Recruitment: Diversity, Disability and
Discrimination

Employment Contracts: Navigating End-of-Term Challenges from Day One

Defining Acceptable Employee Behaviour in the Digital Age

Preventing Sexual Harassment in the Workplace

Addressing Mental Health and Injuries in the Modern Workplace

Preparing for the Increased Presence of Unions in the Workplace

A Guide to Managing Underperformance, Warnings and Dismissal

The When, How (and By Whom) of Conducting HR Investigations

A Two-day Conference

Thursday 20 & Friday 21 February 2025

Crown Melbourne or Online

Feedback from last year's conference:

- 👉 This is an excellent conference - the topics are relevant and the presenters are excellent. Lunch is amazing!
- 👉 Amazing speakers, great content, quality papers, pragmatic application of legislation in practice.
- 👉 The content is very relevant, and at the right level - covers wide range of very relevant and very current topics.
- 👉 Great content and presenters the information provided was very valuable to me in my HR role, question time was a great feature too. Great venue and food were a bonus.
- 👉 It was useful, practical information and was presented in an easy-to-understand manner. it was great to have cases to compare their insights to through the presentations.



The Professional Development Specialists

DAY 1: THURSDAY 20 FEBRUARY 2025

**CHAIR DAY 1: ELIZABETH DEVINE,
PRINCIPAL, DEVINE LAW AT WORK,
SYDNEY, NSW**

MORNING THEME: RECENT WORKPLACE REFORMS

9.00 - 9.15am

Introduction and welcome

9.15 - 10.00am

Session 1: Return To Form? How the Closing Loophole Reforms have Redefined 'Casual' Employees

In 2020, the Rossato decision clarified that when it comes to determining whether an employee is in fact casual, the Courts will look at the real substance of the relationship rather than its form. While that decision ended years of legal uncertainty, it was not to last. In response to that decision, the government has changed the way in which casual employees are to be defined yet again following the Closing the Loophole reform package introduced in late 2023. To help HR professionals get across these changes and understand what they mean for their organisation, this session explores:

- The legal changes under Closing the Loophole legislation, including the new definition of casual employee and the new employee choice pathway to permanent employment
- The test to be applied when considering the application of the test to individual workplaces (and what to look out for) and specific issues which may arise in practice
- Practical guidance to assist workplaces determine whether their employees are genuinely casual
- Tips for what to look for when reviewing and amending employment agreement templates

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

10.00 - 10.10am Panel Comments and Questions

10.10 - 10.55am

Session 2: Underpayments and Wage Theft: Criminal Minds or Innocent Criminals?

Underpayments of wages and superannuation continue to be an ongoing issue in many workplaces. Recent reforms have introduced significant changes to the penalties for underpayments as well as the new criminal offense of wage theft. This session explores the changes to the law regulating underpayments and wage theft and what this means for workplaces. It covers:

- The new maximum penalties for underpayments and the new threshold for serious contraventions
- A deep dive into the new offence of wage theft, what evidence may prove intentional conduct and trigger criminal consequences and the role of cooperation agreements
- Steps workplaces are expected or should have in place to identify and respond to underpayments
- What should happen when an underpayment is identified - what are the options to remedy, dealing with communications to employees, unions and self-reporting to Fair Work Ombudsman

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

10.55 - 11.05am Panel Comments and Questions

11.05 - 11.30am Networking Break and Morning Tea

DAY 1: THURSDAY 20 FEBRUARY 2025

11.30am - 12.15pm

Session 3: What's in a Name? What it Now Means to be an 'Employee' or 'Employer'

Recent reforms have introduced statutory definitions for 'employee' and 'employer' into the Fair Work Act, reversing the impact of recent High Court decisions. Under the changes, proper consideration of the real substance, practical reality and true nature of the relationship is required to determine the nature of the employment relationship. But what does this actually mean in practice? And what role does HR play in this process? To breakdown these changes, this session explores:

- The changes to definition of employee and employer and its application to independent contractors, non-workers etc
- What is required by the new multi-factor test - what does proper consideration require and how to prove this
- The impact of these reforms on individual workplaces, including capacity to set conditions for independent contractors
- The broader impact of the changes by workshopping recent Federal Court decisions including *Chioto v Silk Contract Logistics* [2023] FCA 1047 - how would this case have been different if heard now?

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

12.15 - 12.25pm Panel Comments and Questions

12.25 - 1.10pm

Session 4: Flexible Work and the Right to Disconnect: What is Reasonable in 2025 (and What Does the FWC Say?)

Over the last 12 months, there have been significant changes made to the law as it relates to flexible work arrangements. Under these changes, flexible work arrangements now go to the Commission if there is a dispute. For employers, these changes, understandably, raise many questions. In what circumstances is the FWC considering it reasonable to have flexible arrangements? What types of arrangements are considered reasonable? What does WFH even look like in 2025? And, how do the new 'right to disconnect' laws fit in? To help employers get across these recent changes and consider what changes are required in their own workplace, this session explores:

- The reforms and provide an overview of the options available and entitlements of employees for flexible work arrangements
- The new powers of the FWC to review decisions to refuse requests for flexible working arrangements, right of appeal and steps workplaces should be taking in light of this
- Aspects of the reforms causing the most issues in workplaces and how to manage the cohort of employees who haven't returned to the workplace
- The applicable timeframes, what is a valid request, what may now constitute reasonable business grounds, how to now assess, the practicalities of alternative arrangements and how do these changes fit into your business model
- How these issues have played out in recent FWC decisions including *Gregory v Maxia*
- How a right to disconnect may operate in practice within the proposed model, the different perspectives for and against and its potential impact (for better or worse) on different types of employees across industries and the organisational hierarchy

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

1.10 - 1.20pm Panel Comments and Questions

1.20 - 2.15pm Luncheon

DAY 1: THURSDAY 20 FEBRUARY 2025

AFTERNOON THEME: HIRING AND MANAGING EMPLOYEES

2.15 - 3.00pm

Session 5: Navigating the Three Ds in Recruitment: Diversity, Disability and Discrimination

Increasingly organisations are competing for talent and giving out messages about a culture which values diversity and inclusion. But in reality, how far are organisations walking the talk and ensuring their recruitment practices and workplace procedures are compliant with the anti-discrimination laws?

This session provides a practical guide to avoiding complaints of discrimination, including:

- The multi-layered anti-discrimination framework and its application to employment
- The difference between direct and indirect discrimination and the test for crossing the line
- Can job advertisements specify particular characteristics for applicants?
- Affirmative action and discrimination distinguished
- Is there an obligation to disclose age, disability or medical information when applying for a job?
- Tips for subverting unconscious bias in recruitment
- Are electronic questionnaires and algorithms used in recruitment discriminatory?
- What can you ask or not ask in interviews?
- The impact of recommendations from the Disability Royal Commission, and other proposed reforms to discrimination laws
- Cases and examples including *Chalker v Murrays Australia Pty Ltd* [2017] NSWCATAD 112; *Fair Work Ombudsman v Yenida Pty Ltd & Anor* [2018] FCCA 1342; *ABCC v Corestaff WA Pty Ltd* [2020] FCA 893; *Galstaun v Adept Underpinner Pty Ltd* [2021] NSWCATAD 75

Speaker: Cathy Lyndon, Special Counsel, MinterEllison, Brisbane, Qld

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3.55pm

Session 6: Employment Contracts: Navigating End-of-Term Challenges from Day One

An employment contract is vital to the relationship between the employer and the employee. This session examines the problems and pitfalls in drafting employment contracts and the key issues that need to be addressed in your agreement to mitigate risks and ensure a smooth transition when the employment relationship ends. It covers:

- Creation of IP during employment - Who does the IP belong to?
- What you can and can't do with restraint clauses
- What factors influence reasonableness when constructing restraint clauses?
- Non-solicitation clauses - the right and wrong way of doing
- Protecting an employer's goodwill - how far will courts go?
- Confidential information and departing employees - extent of employer's rights

Speaker: Tom Brett, Partner, Gilbert + Tobin, Sydney, NSW

3.55 - 4.05pm Panel Comments and Questions

4.05 - 4.25pm Networking Break and Afternoon Tea

DAY 1: THURSDAY 20 FEBRUARY 2025

4.25 - 5.10pm

Session 7: Navigating Boundaries: Defining Acceptable Employee Behaviour in the Digital Age

In today's increasingly digital and remote working environment, the boundaries between personal and professional life are more blurred than ever. Employees often express themselves outside of work in ways that could impact their professional roles, raising important questions about employer rights and employee freedoms. This session explores the evolving landscape of employee behaviour and opinion in and out of the workplace, including:

- How far can employers regulate employee conduct outside of work? What constitutes "private life," and where does it intersect with professional responsibilities?
- Freedom of expression vs. employment obligations - understanding the limits of free speech in the workplace through analysis of recent examples
- To what extent can employment contracts and policies govern an employee's behaviour outside of work hours?
- Evaluating the role and effectiveness of Codes of Conduct and workplace policies in guiding employee behaviour.
- How can employers navigate and enforce rules around social media usage without infringing on employee rights?
- Understanding employer rights and responsibilities in managing workplace relationships, including handling potential conflicts of interest and consent issues.
- Practical guidance for employers on identifying, managing, and mitigating conflicts of interest and other personal relationship issues that can impact the workplace.

Speaker: Martin Alden, Partner, Cornwalls, Melbourne, Vic

5.10 - 5.20pm Panel Comments and Questions

DAY 2: FRIDAY 21 FEBRUARY 2025

**CHAIR DAY 2: MARK BRANAGAN,
PARTNER, THOMSON GEER,
MELBOURNE, VIC**

MORNING THEME: CONTEMPORARY CHALLENGES IN THE WORKPLACE

9.00 - 9.05am

Introduction and welcome

9.05 - 9.50am

Session 8: Preventing Sexual Harassment in The Workplace: The Practicalities of Compliance

Under the Fair Work Act, workplace sexual harassment is now prohibited, and a person or company can be liable for sexual harassment conducted by an employee or agent unless they can prove they took all reasonable steps to prevent the sexual harassment. But what does this mean in a legal sense? And what steps does the regulator expect workplaces to have taken to comply with their legal obligations This session shall take a practical approach to assist individual workplaces understand their new obligations and what steps they need to take to discharge them under the recent legislative changes. In particular, this session explores:

- The obligations of the employer when it comes to preventing sexual harassment and what evidence do you need to discharge reverse onus under protection legislation
- Practical case studies highlighting what measures have met the reasonable steps standard (and what may fall short)
- The role workplace culture plays in workplace sexual and tips for creating the right culture
- Practical tips for how to be proactive in the workplace and demonstrate compliance with positive duty, including tips for HR to manage complaints against managers or senior executives and ongoing relationships in the workplace

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

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

Session 9: Strategic Adjustments: Addressing Mental Health and Injuries in the Modern Workplace

One of the more challenging aspects of the role for HR professionals is managing the ill and injured in the workplace. With mental health diagnoses on the rise, this area of practice is set to become more complex. This session shall explore the key issues HR professionals need to navigate when managing the ill and injured in the workplace, with a focus on those who are experiencing mental health challenges. It covers:

- The practicalities of performance reviews, supervision and managing ill or injured employees using de-identified examples
- Obligations of the employer and options for supporting employees - what is reasonable or appropriate e.g. flexible working, remote work and return to work mandate issues
- The issues arising from long term absentee employees - how to get them back to work
- Navigating the delicate balance and when and how it may be appropriate to consider termination

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

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

DAY 2: FRIDAY 21 FEBRUARY 2025

11.15 - 12.00pm

Session 10: Back With Force: Preparing for the Increased Presence of Unions in the Workplace

It is clear from the legislative agenda of the Federal Government that unions are back at the centre of the industrial relations system and back with force. While the Closing the Loophole reforms have beefed up the rights of unions and union representatives, it is less clear what this return to collectivism means for individual workplaces. How will it impact practices and procedures and what steps need to be taken to prepare? This session shall look at the impact of the union-based reforms from the perspective of an individual workplace and look at:

- The union protections framework and where it will sit from an enforcement perspective
- The rights workplace delegates and union representatives now have from these recent reforms (e.g. right of entry, union delegate rights etc)
- Steps employers can take to comply (what must they do vs what not to do) and practical steps employers can consider to mitigate risk
- How these reforms have played (or could play out) in cases including Qantas baggage handlers' case

Speaker: Rohan Doyle, Partner, Herbert Smith Freehills, Melbourne, Vic.

12.00pm - 12.10pm Panel Comments and Questions

12.10 - 1.10pm Lunch

AFTERNOON THEME: MISCONDUCT AND UNDERPERFORMANCE

1.10 - 1.55pm

Session 11: Going & Going & Gone & A Practical Guide to Managing Underperformance, Warnings and Dismissal

Managing underperforming employees is stressful for HR professionals, employees and employers alike. While some of this stress is sadly unavoidable, ensuring that your workplace has robust and compliant policies, practices and procedures in place will go a long way to alleviate as much of that stress as possible. To help guide HR professionals through this process, this session explores:

- What is poor performance, how this measured and communicated and examples of valid reason for dismissal and circumstances in which to seek specialist legal advice
- When a dismissal will be unfair in light of recent cases, including *Weston v Coal & Allied Mining Services Pty Ltd* [2023] FWC 93, *Yen Yap v Club Assist* [2022] FCWA 520
- Steps workplaces can take to ensure the employee was afforded procedural fairness including what might be required to show they have had reasonable opportunity to improve performance
- What a good performance management process looks like and what may happen when an employee is unfairly dismissed or wrongfully terminated
- How to manage the performance of employee-like workers in light of recent reforms

Speaker: Jennifer Wyborn, Partner, Clayton Utz, Canberra, ACT

1.55 - 2.05pm Panel Comments and Questions

DAY 2: FRIDAY 21 FEBRUARY 2025

2.05 - 2.50pm

Session 12: The When, How (and By Whom) of Conducting HR Investigations into Workplace Behaviour

When a complaint is made by an employee within an organisation, it is up to HR to get to the bottom of the complaint. Knowing when you need to conduct an investigation is one thing. Knowing how to go about it is a whole other ballgame. This session explores:

- When it is now required to conduct a workplace investigation in light of recent amendments and where the legal obligations now lie
- When it might otherwise be beneficial for a workplace to conduct an investigation
- How to use the findings to address issues or improve workplace culture
- The types of investigations that can be run, the pros and cons of each, how to run them, who they each involve and tips when engaging external third parties
- Key issues which can arise during or from an investigation - dealing with sensitive and/or privileged information, managing reporting and disclosure notifications

Speaker: Melissa Scadden, Managing Partner, Justitia, Melbourne, Vic.

2.50 - 3.00pm Panel Comments and Questions

3.00pm Conference Close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the conference and conference papers. Refreshment breaks and lunch on both conference days are included for delegates attending the face to face event.

Conference Papers

TEN will 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

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

CPD Certificate

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

The Conference Venue

Crown Towers Melbourne

8 Whiteman Street, Southbank

Discount Delegate Accommodation at Crown

Crown is offering 10% to 15% discount for conference delegates. You can book directly using the Crown Direct website.
<https://www.crownhotels.com.au/crown-direct/login>

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 rooms can vary depending on where you are sitting. Short sleeves/summer tops are generally OK, but it is advisable that you bring a jacket/long sleeved top just in case you need it).

TERMS AND CONDITIONS

1. In these terms,
 - 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

2. TEN may change the program for a live conference as described in the brochure you have downloaded or in the TEN website without notice to you in any manner and at any time.
3. The information and opinions of presenters at the conference are not necessarily those of TEN and are in the nature of general information and not professional advice and you rely on these at their own risk. TEN is not responsible for the accuracy of the information or the correctness of the opinions offered by presenters at the conference.
4. TEN is not responsible for any financial or other losses incurred by you or for injury or damage to persons or property which occur at or in connection with the conference.

Copyright

5. The copyright in materials prepared by presenters at a conference and made available to you by TEN is and remains the property of each presenter.
6. You are entitled to use those materials for private study and research only.
7. The copyright in the live stream and in any recording of a conference offered online is the property of TEN.
8. You are entitled to watch a conference for private study and research only.

Conference cancellation by TEN – all conferences

12. TEN reserves the right to cancel a conference for any reason.
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

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

15. The agreement between TEN and you is governed by the laws in force in the State of Victoria and the courts and tribunals of that State have sole jurisdiction to determine disputes arising in relation to it.

