



9TH ANNUAL MELBOURNE EMPLOYMENT LAW CONFERENCE

When do Additional Work Hours become Unreasonable?

Has Flexible Work become a Non-Negotiable Right?

Avoiding the Knee Jerk Reaction in Employment Investigations

Do Employees have a Right to Privacy?

Closing the Loophole: The Next Wave of Workplace Reforms

No Bargains for Employers in the new Industrial Relations Reforms

Respect@Work: What Does it Mean in Practice?

Risk Management Approach to Mental Health in the Workplace

Modern Awards in the Spotlight

In the Firing Line: The Risk of Accessorial Liability

Restructuring and Redundancies: Difficult Decisions Ahead

Making Executive Decisions: Enquiring, Hiring and Firing

A Two-day Conference

Thursday 14 & Friday 15 March 2024

Crown Towers Melbourne

Feedback from last year's conference:

- Excellent quality materials/papers, outstanding presenters - experts in their field. Very enjoyable prof development days. The venue was fabulous too. Great conference.
- Excellent speakers, chairpersons and content. One of the best conference I have been to in my 35 years of practising law.
- Great speakers, well-organised conference, excellent venue.
- Relevant material, a lot of new information and good format. Overall very worthwhile. Thanks.



Leaders in online CPD for business professionals

DAY 1: THURSDAY 14 MARCH 2024

**CHAIR DAY 1: MARK BRANAGAN,
PARTNER, THOMSON GEER,
MELBOURNE**

**MORNING THEME: EMPLOYEE RIGHTS,
WELLBEING AND BEHAVIOUR**

9.00 - 9.10am

Introduction and welcome

9.10 - 9.55am

Session 1: The Tipping Threshold: When do Additional Work Hours become Unreasonable?

A number of factors have led to employees working what they may consider to be additional and unreasonable hours, ranging from increased demands by employers, working flexibly and/or remotely and the shrinking labour market. What can employers require of the employees in terms of additional hours and what happens if the response is a “no”? This session will examine the current rules and obligations, including:

- What constitutes additional hours?
- When is it reasonable to ask employees to work additional hours?
- What factors need to be considered?
- How are claims of unreasonable hours dealt with by the courts? *Australian Meat Industry Employees Union v Dick Stone Pty Ltd* [2022] FCA 512
- Why have there been so few cases on unreasonable hours?
- Workplace health and safety risks and breaches
- Minimising the risks of overworking through:
 - work culture awareness and communication
 - time management training
 - assessing employee workload
 - streamlining and automating processes
- Will claims rise with remote and flexible working?
- Overseas experiences with the “right to disconnect” laws - will Australia follow suit?

Speaker: Stephen Woodbury, Partner, Ashurst, Sydney

9.55 - 10.05am Panel Comments and Questions

10.05 - 10.50am

Session 2: Has Flexible Work become a Non-Negotiable Right?

Flexible work arrangements have long been a feature of the Fair Work Act but the advent of covid and working from home, together with new legislation, has significantly changed the expectation of employees and obligations of employers. This session will examine the new amendments and recent cases and provide a guide to HR practitioners to manage employees seeking changes to their working arrangements, including:

- How have things changed for employers?
- When can an employee make a request for flexible work arrangements?
- Has working from home become a right?
- A detailed flow chart for dealing with requests
- When can a request be refused?
- Tips for drafting detailed written responses
- New powers for the Fair Work Commission to resolve disputes about flexible work requests
- Other options for resolution of disputes
- Establishing processes for assessing and responding to requests
- Cases and examples, including: *Phillips v Integrated Medical Solutions Group Pty Ltd* [2019] FWC 6225; *Natasha Fyfe v Ambulance Victoria* [2023] FWC 49; *Hardy v State of Queensland (Department of Environment and Science)* [2022] QIRC 480; *Jason Lubiejewski v Australian Federal Police* [2022] FWC 15

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

10.50 - 11.00am Panel Comments and Questions

11.00 - 11.25am Networking Break and Morning Tea

DAY 1: THURSDAY 14 MARCH 2024

11.25am - 12.10pm

Session 3: Taking a Risk Management Approach to Mental Health in the Workplace

Mental health issues not only impact the individual, but also their workplace, particularly where there is a claim that the mental health is a workplace injury. With a tripling of mental health compensation claims in the last 20 years, the challenge is for organisations to take a proactive and risk-based approach to minimising psycho/social hazards. This session will examine the lessons from the decision in *Kozarov v State of Victoria* [2022] HCA 12 and other cases, including:

- An analysis of the duty of care of employers and Codes of Practice
- The regulator's guidelines on mental health management in the workplace
- The treatment of mental health at the recruitment stage - what can employer's ask?
- Establishing and implementing policies, procedure and training
- Disability discrimination and the treatment of employees with a mental health condition
- How are "reasonable adjustments" assessed in the mental health space?
- Strategies for identifying and managing some of the perceived mental health triggers such as working hours, bullying, changed work conditions and rosters, public abuse, financial and personal stress

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

12.10 - 12.20pm Panel Comments and Questions

12.20 - 1.05pm

Session 4: Don't Ask Don't Tell: Do Employees have a Right to Privacy?

Organisations collect a lot of information about employees, some of it very personal, confidential and sensitive. The developments in technology have also impacted on this, with employee movement and activity able to be monitored through CCTV, access cards, phones and remote logging in. What information can employers legitimately collect and what rights do employees have in relation to their information? This session provides a deep dive into the laws of privacy in employment, including:

- The common law of privacy and the reach of the privacy legislation
- Current application of privacy laws to employees
- What information can employers collect about their employees?
- A discussion of access, use, disclosure and record-keeping obligations of employers
- Recommendations of the Government review of the Privacy Act and potential impact on employers
- To what extent is "workplace surveillance" and monitoring allowed? State legislation, cases and overseas developments
- Hacking and data breaches - obligations of and responses by organisations
- Issues in cybersecurity, IT policy and work from home

Speaker: Leah Mooney, Director, KPMG, Brisbane

1.05 - 1.15pm Panel Comments and Questions

1.15 - 2.15pm Luncheon

DAY 1: THURSDAY 14 MARCH 2024

AFTERNOON THEME: THE NEW INDUSTRIAL LANDSCAPE

2.15 - 3.00pm

Session 5: Closing Loopholes, Opening Pandora's Box: Navigating the Next Wave of Workplace Reforms

The Federal Government's next tranche of workplace reforms are here in the form of the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023. Described as some of the most radical changes to the workplace system in decades, it is vital that HR professionals and employment lawyers understand the key implications of these sweeping reforms. This session examines the key changes and what employers should be doing now to prepare, including:

- Same job, same pay reforms
 - Impact on employers relying on labour hire workers
 - Understanding the multi-factor test
- Casual reforms
 - Unpacking the new right to convert from casual to permanent
- Wage theft
 - New criminal penalties
 - Increased union rights

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

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3.55pm

Session 6: Respect@Work: What Does it Mean in Practice?

The implementation of the recommendations in the Respect@Work Report has significant implications for all workplaces, requiring, amongst other things, organisations to change their focus from reactive to proactive. This session will provide a nuts and bolts guide of what organisations need to do to be ready for the new enforcement regime, including:

- How did we get to this point? A look back at the landmark report and the national Inquiry into Sexual Harassment
- Commencement of legislation and transitional period
- Practical implications of the positive duty to eliminate sexual harassment
- Who does the duty apply to?
- How will "reasonable and proportionate measures" be assessed?
- Changes to what conduct constitutes harassment and lowering of thresholds and time limits
- What constitutes a "hostile workplace environment"?
- An assessment of the new investigative and enforcement powers of the Australian Human Rights Commission
- Consequences and penalties for breach
- Identifying and targeting culture and behaviour that allows sexual harassment to occur - a tool kit for employers to undertake a risk assessment of their workplace

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

3.55 - 4.05pm Panel Comments and Questions

4.05 - 4.25pm Networking Break and Afternoon Tea

DAY 1: THURSDAY 14 MARCH 2024

4.25 - 5.10pm

Session 7: No Bargains for Employers in the new Industrial Relations Reforms

The newly introduced changes to enterprise bargaining represent the most significant reforms to Australia's industrial relations framework for over a decade. Employers need to start planning and preparing for these reforms, which undoubtedly put them on the back foot. This session will provide a guide to the reforms and practical tips for managing enterprise bargaining, including:

- Key changes and their implications
- Planning and preparing for multi-employer arrangements
- New start powers for enterprise bargaining and other procedural changes
- Global assessment in enterprise agreement approvals
- Sunset periods and termination of agreements
- The powers of the Fair Work Commission to resolve enterprise bargaining disputes
- Steps employers need to be taking now

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

5.10 - 5.20pm Panel Comments and Questions

DAY 2: FRIDAY 15 MARCH 2024

**CHAIR DAY 2: ELIZABETH DEVINE,
PRINCIPAL, DEVINE LAW AT WORK,
SYDNEY, NSW**

MORNING THEME: MANAGING WORKPLACE RISKS

9.00 - 9.05am

Introduction and welcome

9.05 - 9.50am

Session 8: Guilty until Proven Innocent? Avoiding the Knee Jerk Reaction in Employment Investigations

It is unfortunate that in recent times allegations can be enough to impose a guilty finding on the alleged perpetrator, and the complainant is perceived as truthful and wronged. In the context of an employment complaint, employers need to take a step away from this mob mentality and ensure their investigations and actions accord with the law and good governance. This session will provide a tool kit for best practice handling of allegations in the workplace, including:

- Receiving a complaint and taking deep breaths
- Why knee-jerk reactions can lead to disaster - the perils of premature dismissal or sanctions
- Step by step guide to complaint management and investigation processes
- Treatment of the parties and avoiding claims of victimisation and pre-judgement
- Management of communications with parties, other employees and stakeholders
- The rules of procedural fairness and confidentiality
- Outcome, recommendations and dealing with any fallout when allegations are proven or not
- Policy checklist and review
- Cases and examples

Speaker: Mark Howard, Partner, HWL Ebsworth, Melbourne

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

Session 9: Compliance begins with a "See": Modern Awards in the Spotlight

Modern awards are an integral part of the employment relationship, and becoming more comprehensive and complex over time. Reading and understanding awards is not for the faint-hearted, but nor should they be relegated to the back of a desk drawer. This session will provide a guide to key elements of award compliance and how to avoid risking the attention the regulator, including:

- Award classifications and the challenges of putting the right peg into the right hole
- Where do the National Employment Standards fit in?
- Keeping on top of salary and payroll compliance
- The dire consequences of non-compliance - tales from the coal face
- Strategies for keeping up-to-date with amendments and changes to awards
- The value of audits and compliance checks
- Must you comply with an annualised wage provision in an award or can you rely on common law set off provisions?
- Focus of the Fair Work Ombudsman, cases and examples

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

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

DAY 2: FRIDAY 15 MARCH 2024

11.15 - 12.00pm

Session 10: In the Firing Line: The Risk of Accessorial Liability

The Fair Work Act contains an accessorial liability provision that can result in serious consequences for managers and professional advisers both within and outside the organisation, including HR professionals. This session will examine the risks for those acting in breach of workplace laws and proactive steps to take to minimise liability, including:

- Who is at risk of becoming an accessory?
- What does accessorial liability actually mean?
- Examples of accessorial liability and the role of the Fair Work Ombudsman in prosecution
- Cases and examples of accessorial liability including *United Worker's Union v Bervor Pty Ltd* [2022] FedCFamC2G 418; *Fair Work Ombudsman V Step Ahead Security Services Pty Ltd & Anor* [2016] FCCA 1482; *Fair Work Ombudsman v Blue Impression Pty Ltd & Ors* [2017] FCCA 810
- Lessons from the cases and penalties
- The importance of legal compliance, record keeping and reporting of breaches
- Strategies for avoiding accessorial liability and dealing with managers who won't listen

Speaker: Jennifer Wyborn, Partner, Clayton Utz, Canberra

12.00 - 12.10pm Panel Comments and Questions

12.10 - 1.10pm Lunch

AFTERNOON THEME: ALL GOOD THINGS MUST COME TO AN END

1.10 - 1.55pm

Session 11: Restructuring and Redundancies: Difficult Decisions Ahead

The fallout from the pandemic and the Great Resignation resulted in a mad scramble for employees, higher salaries and improved benefits for those in occupations experiencing shortages. In the face of an economic contraction, some businesses are now looking at downsizing and even shutting up shop. This session will provide a guide to HR professionals caught between the expectations of employees and their employer and how to prepare for the changes ahead, including:

- Checking contracts and awards for employment termination and redundancy processes
- The impact of restructuring on employees - when is a redundancy triggered?
- Tips and traps in selecting employees for redundancy
- Other options for negotiating with employees
- Delivering the bad news- consultation, communications strategy and stemming the tide of leavers
- Reviewing and updating standard form contracts and policies
- Lessons from recent cases

Speaker: Adrian Barwick, Director, WilliamsonBarwick, Sydney

1.55 - 2.05pm Panel Comments and Questions

DAY 2: FRIDAY 15 MARCH 2024

2.05 - 2.50pm

Session 12: Making Executive Decisions: Enquiring, Hiring and Firing

The employment of senior executives is a critical exercise for any organisation, and often involves lengthy and costly processes in searching, contract negotiation and integration into the business. In the process, important steps, protections and risks can be overlooked. This session will provide a detailed and critical guide to the key essentials of executive employment hiring (and firing), including:

- Due diligence and pre-empting nasty surprises - what does executive due diligence involve?
- Are background and reference checks enough? DPP v Lennie [2021] VCC 268 and other cases of fraud
- Values alignment between organisation and executive and how to manage it successfully: case study of the Essendon Football Club and Andrew Thorburn
- KPI's, remuneration and other devices for incentivising and achieving targets
- Drafting tips and traps for business protection including:
 - confidentiality
 - reputation and public comments
 - disclosure and conflicts of interest
 - restraint of trade
 - termination
- Strategies for managing complaints against senior executives
- Getting the firing process right and when to involve the board
- What can a Board do when executives don't walk the talk? Case study of Jack Truong and the James Hardie Board

Speaker: Emily Demster, Special Counsel, Moray & Agnew lawyers, Melbourne

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 (except WA): 11 CPD units (substantive law).

WA Lawyers: 6 CPD points (substantive law). WA practitioners can claim 6 CPD points for attending the conference (being the maximum allowable per event by the LPBWA).

CPD Certificate

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

The Conference Venue

Crown Towers Melbourne

8 Whiteman Street, Southbank

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).

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