

THE FOURTH ANNUAL INDUSTRIAL RELATIONS SYMPOSIUM

.....
A two-day conference organised by Television Education Network Pty Ltd
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Melbourne Marriott Hotel, Thursday 19 & Friday 20 September 2019
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Casual employment – the beginning of the end?

Big brother in the workplace

The future of labour hire

Managing protected industrial action

Dealing with industrial sabotage and other hand grenades

The road to making an enterprise agreement

Breaking up with your enterprise agreement

Wage theft – are you at risk?

Workplace investigations
.....

FEEDBACK FROM LAST YEAR'S SYMPOSIUM:

"Speakers were very qualified, articulate and spoke in plain English. Information was current and relevant."

"Very informative topics. Great presenters and content thoughtfully delivered."

"Excellent speakers - high level practical experience and sophisticated content. Also high level questions and discussion from attendees."



**Television
Education
Network**

The professional development specialists

DAY 1 - THURSDAY 19 SEPTEMBER 2019

**CHAIR - DAY 1: BRIAN LACY AO,
BARRISTER, VICTORIAN BAR,
MELBOURNE**

**MORNING THEME: THE CHANGING
EMPLOYMENT LANDSCAPE**

9.00 - 9.10am

Introduction and welcome

9.10 - 10.10am

Session 1: Casual Employment: The Beginning of the End?

The recent decision of WorkPac Pty Ltd v Skene highlighted the dangers of a casualised workforce. With employers on the hook for leave entitlements and underpayments, mistakes can be costly. This session examines the current landscape involving casuals, the future reforms on the horizon, and what employers should be doing now to minimise the risks. It covers:

- Unpacking WorkPac Pty Ltd v Skene
- Class action involving casuals - the new frontier in litigation?
- What does Skene mean for casual employees and employers
- Recent legislative amendments to protect employers
- Minimising risk: reviewing the casual cohort, checking classifications, and describing the casual loading purpose
- Future changes on the horizon

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

10.10 - 10.20am Panel Comments and Questions

10.20 - 10.25am

Short Break

10.25 - 11.25am

Session 2: Big Brother in the Workplace: Out of Hours Conduct in the Spotlight

Long gone are the days when work was work and whatever a person did after leaving their place of employment was private and personal. Increasingly, out of work behaviour is being scrutinised and where considered to be inappropriate, can lead to disciplinary action or termination of employment.

This session will look at the changes in the nature of the employment relationship and cases which have set the boundaries for employee behaviour, including:

- When does work end and private life begin? Finding and defining the tipping point
- Social media: Ranting, posting and tweeting: is it ever OK to criticise your boss?
- Out of hours social events and office romances
- What are the interests of the employer and how far do they extend?
- Remedies and case studies, including rugby player Israel Folau; Sydney University lecturer Dr Tim Anderson
- Proactive management: policies, codes of conduct, contracts and training

Speaker: Martin Alden, Partner, Cornwalls Law + More, Melbourne

11.25 - 11.35am Panel Comments and Questions

11.35am - 12.00pm Networking Break & Morning Tea

DAY 1 - THURSDAY 19 SEPTEMBER 2019

12.00 - 1.00pm

Session 3: Labour Hire: The Future of Temporary, Accessible Labour

The increasing use of labour hire as a form of employment has giving employers access to a large pool of temporary, accessible casual labour who are usually on lower pay and conditions than their permanent workforce. However, labour hire has come under increasing scrutiny, and the compliance risks for employers have never been greater. This session examines:

- Obligations owed to labour hire works
- Reviewing your labour hire model – when will an employer-employee relationship arise?
- Fair Work Ombudsman actions involving labour hire companies and accessorial liability
- The Victorian Inquiry into the Labour Hire Industry and Insecure Work – lessons for employers
- The Labour hire licensing schemes across the states:
 - Key features, obligation and penalties
 - How they impact employers working across state lines
- Labour hire and dealing with unions
- Assessing and minimising the risks for employers engaging in labour hire

Speaker: Philippa Noakes, Senior Associate, Seyfarth Shaw Australia, Sydney

1.00 - 1.10pm Panel Comments and Questions

1.10 - 2.10pm Luncheon

AFTERNOON THEME: MANAGING INDUSTRIAL ACTION

2.10 - 3.10pm

Session 4: Managing Protected Industrial Action: I've Got The Notice, What Now?

Protected industrial activity requires compliance with section 19 of the Fair Work Act and approval in accordance with relevant provisions of the Act. Sound simple? The Act provisions on what constitutes "industrial action" are complex, and recognising what activity falls into them can be difficult. This session provides guidance to employers on identifying and characterising industrial action and appropriate steps to manage and protect their business. In this session we will look at:

- Unpacking the definition: How to recognise the forms of industrial action
- Notices of intention and what they must contain
- Heading them off at the pass: orders and injunctions and other strategic moves
- The use of lock outs: timing and the effect on employee entitlements
- The ability to stand down employees and when it should be used
- The role of the Ombudsman and the Commission in making investigations and orders
- Relevant cases and how the courts have applied the statutory criteria
- Case study: the ongoing Port Kembla Coal dispute

Speaker: Stephen Woodbury, Partner, Ashurst, Sydney

3.10 - 3.20pm Panel Comments and Questions

3.20 - 3.40pm Networking Break and Afternoon Tea

3.40 - 4.40pm

Session 5: Unprotected Industrial Action: Dealing with Industrial Sabotage and other Hand Grenades

A situation can change from protected industrial action to unprotected industrial action very quickly. When it does, employers must know how to get on the front foot and manage the situation in a decisive manner. This session will explore:

- What constitutes unprotected industrial action, including the status of pickets
- Fair Work Act remedies – nature and scope of available orders
- Common law remedies – the nuclear option?
- Disciplinary action in response to unprotected industrial action – lessons from case law
- Practical tips for preparing to respond to unprotected industrial action

Speaker: Murray Procter, Principal, Franklin Athanasellis Cullen Lawyers, Brisbane

4.40 - 4.50pm Panel Comments and Questions

DAY 2 - FRIDAY 20 SEPTEMBER 2019

**CHAIR - DAY 2: CHARLES POWER,
PARTNER, HOLDING REDLICH,
MELBOURNE**

MORNING THEME: ENTERPRISE AGREEMENTS AND UNDERPAYMENTS

9.00 - 9.05am

Introduction and Welcome

9.05 - 10.05am

Session 6: Getting from A to Z: The Road to Making an Enterprise Agreement

The making of an enterprise agreement relies on successful adherence to the requirements and procedures set out in the Fair Work Act. While this may seem easy on the surface, many employers have found themselves overwhelmed by the strict requirement to comply with the legislation and the rigour applied by the Fair Work Commission during the approval process. This can result in considerable delays in agreement making and have significant cost and other consequences. This session will guide you through the most important aspects of making and concluding an agreement, together with illustrations from recent cases:

- Good faith bargaining: what does this really mean?
- "Genuine agreement": what does it mean? A look at *CFMEU v One Key Workforce Pty Ltd* [2017] FCA1266
- Applying the Better Off Overall Test: statutory declaration sign-off and consequences for HR professionals
- Undertakings: what are they and how to manage them
- Notices and voting: recent legislative reforms to deal with errors and the case of *Huntsman Chemical Company Australia Pty Limited t/a RMAX Rigid Cellular Plastics & Ors* [2019] FWCA 912
- The slow path through the Fair Work Commission: reviews, approvals, and current focus of the assessment team

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

10.05 - 10.15am Panel Comments and Questions

10.15 - 10.20am

Short break

10.20 - 11.20am

Session 7: It's Not You, It's Me: Breaking Up With Your Enterprise Agreement

The termination of expired enterprise agreements is the strategic new weapon being used to pressure unions at the bargaining table. There have been a number of significant cases in the last few years that have seen employers successfully use this option to resolve deadlocks and return to the award position. However, the process is not without its risks. This session examines how and when an enterprise agreement can be terminated and what this means for employers:

- Current mechanisms for terminating an enterprise agreement
- Meeting the requirements: the high bar set by the Act for terminating an expired agreement and the likelihood of success
- Eyes wide open: the impact of a termination decision on your organisation's industrial strategy and relationships
- The benefits and pitfalls of termination
- The bottom line: the application of awards, contracts of employment and undertakings following termination
- Case study: the use of protected industrial action to prevent termination - *Minister for Industrial Relations for the State of Victoria v Esso Australia Pty Ltd* [2019] FCAFC 26

Speaker: Adrian Barwick, Director, WilliamsonBarwick, Sydney

11.20 - 11.30am Panel Comments and Questions

11.30 - 11.50am Networking Break and Morning Tea

DAY 2 - FRIDAY 20 SEPTEMBER 2019

11.50am - 12.50pm

Session 8: Wage Theft and Underpayments: Are You at Risk?

A spate of recent high-profile examples involving wage underpayments have shown that no industry is immune. Not only is wage underpayment illegal, it is also a PR disaster. Whether instances of underpayment are deliberate or merely a misinterpretation of Australia's complex system of entitlement obligations, there is an increasing focus on ensuring compliance with employment standards and obligations. This session will examine:

- The increasing incidence of underpayment of wages – lessons for employers
- What are the obligations of employers for payment of wages?
- The role of the Fair Work Ombudsman in receiving and determining claims
- The impact of the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 on compliance
- Recent cases: FWO v Blue Impressions Pty Ltd & Ors [2017] FCCA 810; FWO v Transpetrol [2019] FCA 400
- Future reforms, including criminal sanctions
- Reviewing operations and implementing changes to ensure compliance

Speakers: Karli Evans, Partner and Christopher Charalambous, Senior Associate, Maddocks, Melbourne

12.50 – 1.00pm Panel Comments and Questions

1.00 - 1.55pm Lunch

AFTERNOON THEME: WORKPLACE INVESTIGATIONS

1.55 - 2.55pm

Session 9: Workplace Investigations: Dotting the "i's" and Crossing the "t's"

The importance of investigations in supplying thorough and credible evidence of wrong doing cannot be underestimated. Whether an investigation is into a complaint of misconduct, adverse action, harassment and bullying or some other workplace activity, having a sound, thorough and transparent process should be the ultimate aim. In this highly practical session, you will learn how to conduct or manage an investigation process and the key elements to achieving an outcome which can be relied on to support disciplinary or other action. Subject matter covered will include:

- Informal or formal? Assessing the response to a complaint and the nature of any investigation
- Appointing an investigator: when to go external?
- Setting the terms of reference and parameters: the role and responsibilities of the investigator and the subject of the investigation
- Keeping the complaint and investigation confidential
- Managing and protecting the complainant and/or witnesses, WHS and wellbeing issues
- Record keeping and evidence management
- Minimising risks of industrial action or adverse action
- Investigations and scope of legal professional privilege
- Compliance with relevant legislation and standards: privacy, whistleblowers, protected disclosure, award provisions, administrative law principles
- Reports, recommendations and outcomes
- Case study: Dealing with a reluctant complainant - what are your obligations?

Speaker: Samantha Betzien, Partner, MinterEllison, Brisbane

2.55 - 3.05pm Panel Comments and Questions

3.05pm 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.

Lawyers - CPD

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

WA Lawyers: 6 CPD points (substantive law)

Accredited employment law specialists: 12.5 CPD units (substantive law)

The Conference Venue

Melbourne Marriott Hotel

Corner Exhibition & Lonsdale Streets, Melbourne

Phone: (03) 9662 3900

Conference Rate at the Melbourne Marriott Hotel

Television Education Network has organised a discount rate with the Marriott for delegates of **10% discount** off the best rate available. **To access this rate please quote "LOKA" when making your booking.**

This rate is strictly subject to availability. **Delegates are advised to make their own accommodation arrangements directly with the Melbourne Marriott Hotel.**

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) 9670 2055 Enquiries Jenna Pickrell

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

Please register me for the **The Fourth Annual Industrial Relations Symposium** – a 2-day conference to be held in Melbourne on Thursday 19 & Friday 20 September 2019 [conf code: MIRSEP19]

Discount Registration – for registrations made on or before 6 September 2019 – **\$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)

Multiple registration discount? If you would like to send more than one person 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).

The papers from this conference will be available in electronic form only approximately 2 weeks 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: PMIRSEP19].

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