STRATEG-EYES:

Workplace Perspectives

ISSUE 16 AUGUST 2015

How to warm up cold employees: building engagement for disengaged team members

Myth-busters: debunking popular myths in labour and employment law

Enforcing restraints: at what cost?

Weighing in on the right to worker's compensation: the interaction between workers compensation laws and work health and safety laws

No shoes, no shirt, no service: managing employees appearance in the workplace

457 Sponsors: comply with your obligations or you may pay a high price

People+Culture Strategies

Labour & Employment Law

Sydney
Level 9, NAB House
255 George Street
Sydney NSW 2000
T +61 2 8094 3100

Melbourne
Level 9
136 Exhibition Street
Melbourne VIC 3000
T +61 3 8319 0500

Brisbane
Level 8
40 Creek Street
Brisbane QLD 4000
T +61 7 3046 0300

WELCOME: from the Managing Principal

It is with great pleasure that I welcome you to our first Strategy-Eyes for the new financial year. On behalf of our team I wish you and your organisations every success.

Our firm continues to execute on its growth strategy with our Brisbane office now established, giving us a full Eastern seaboard presence. Importantly, the addition of a migration capability to our service offering has already been well-received with our extremely competitive pricing coupled with our knowledge of our clients' organisations understandably of attraction. We are also expanding our international networks, having serviced clients referred to our firm by labour firms in Belgium, Italy and France in the last few months.

PCS already derives one-third of its revenue from clients who are on "retainer" through one of our Partnership Packages. I would encourage all of you to look closely at your spend across labour and employment law matters in the last twelve months (including any compliance training) and talk to us about how we can create additional value for you without increasing your real spend.

I also hope that all our Sydney clients (and anyone who is able to be in Sydney) have saved 12 November 2015 in their diaries as the date for our always popular Hypothetical event. This signature event is a considerable production and brings together leading minds on topical issues, which this year will be "Change Management".

Joydeep Hor
Managing Principal

A LOOK INSIDE:

NOTE: *In this edition, unless otherwise specified: the Act means the Fair Work Act 2009 (Cth); and FWC means the Fair Work Commission.*

HOW TO WARM UP COLD EMPLOYEES: building engagement for disengaged team members

ERIN LYNCH, SENIOR ASSOCIATE
DAVID WEILER, GRADUATE ASSOCIATE

Cold winter days often highlight one of the greatest threats facing positive, productive organisations all year round: disengagement amongst employees. This article addresses identifying disengagement in your workplace, understanding the costs it has on businesses, ways to prevent it from affecting your high-performing culture and the benefits that come from engagement.

ENGAGEMENT VS DISENGAGEMENT?

Engaged employees are easy for both managers and colleagues to spot in a workplace. They volunteer for new projects, actively seek out work, support colleagues, encourage a team approach and rarely raise criticisms or concerns without also providing a potential solution. Quite simply, they are passionate about their jobs, are committed to the organisation and display discretionary effort (above and beyond the bare minimum) throughout their work.

Disengaged employees can also be just as easy spot. They are often unenthusiastic about their work, shirk responsibility on projects, isolate themselves from team members, do not understand (or embrace) the company's direction and lack initiative while complaining about the work they are doing.

ENGAGED	DISENGAGED
Seeks out work	Unenthusiastic about their work
Looks for ways to improve	Shirks responsibility on projects
Embraces change	Lacks initiative
Team player	Complains about tasks
Goes beyond their job description	Brings down the team

When identifying disengagement it is important to distinguish between employee satisfaction and employee engagement. Employee satisfaction represents the extent to which employees are happy or content with their jobs and work environment. While this may be integral to engaging employees, it is not the same thing as engagement.

There are two primary features that, together, comprise employee engagement: engagement with the organisation and engagement with management.

Engagement with the organisation is an indication of how employees feel about senior leadership as well as the organisational levels of trust, fairness, respect and commitment to values. Engagement with management is a more specific measure of how valued employees feel, the quality of feedback and direction and generally the strength of the working relationship between an employee and their direct manager.

WHAT DOES DISENGAGEMENT COST ORGANISATIONS?

A 2013 Gallup study found that approximately 3 out of 4 Australians are not engaged with their work.[1] The cost of this disengagement to the domestic economy was estimated in the same research to be around $54.8 billion.

As disengagement spreads, retaining the top talent in an organisation becomes more and more difficult. The lost potential not only affects the bottom line of a company, it also hinders it from competing effectively in the marketplace. Engaged employees are more productive which inevitably has a positive impact on a company's income.

If good workers continually leave a business it becomes increasingly more difficult for employers to guarantee work will be done to the necessary standard and almost certainly will prevent the company from exceeding expectations. The pressure put on remaining talent becomes unsustainable as more and more people leave. This means that one instance of disengagement has the potential to spread exponentially, often catching employers off guard and unprepared to re-engage employees in time. That is why it is crucial for businesses to be equipped to identify the symptoms of disengagement and to understand how best to engage employees.

HOW TO ENGAGE EMPLOYEES

Just as disengagement can rapidly infect a culture, engagement too can be contagious. Like many topics concerning culture, the benefits are obvious but the real difficulty comes from trying to achieve it.

While some employers may consider the best way to motivate employees is through remuneration, leading organisations recognise that once an employee is paid around market value, a salary becomes largely ineffective at sparking passion in, and commitment to, one's work.

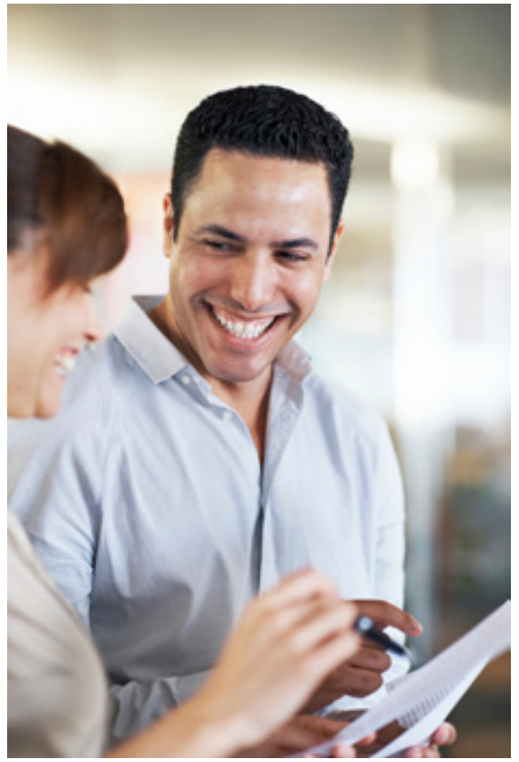
Instead, leading organisations use these managerial practices to engage employees:

- commendation for a job well done;
- regular feedback;
- opportunity for growth with new, challenging projects;
- mobility across the organisation;
- a clear direction for the company; and
- encouraging employees to work together.

Performance appraisals, if done properly and regularly, offer businesses an opportunity to use the above methods to engage or re-engage employees. In practice the most successful performance evaluations focus on the future (while also not ignoring the past) by approaching each appraisal as a meaningful part of an employee's career development. In fact, just recently Accenture announced that it was overhauling its entire performance review structure for nearly 330,000 employees.[2] The company is moving away from a rigid annual review schedule to one that is done on an ongoing basis relative to the completion of projects.

1 Gallup, State of the Global Workplace: Employee Engagement Insights for Business Leaders Worldwide, (2013).

2 Cunningham, Lillian, 'Goodbye rankings: Accenture gives annual performance reviews the flick', Sydney Morning Herald, 22 July 2015 <http://www.smh.com.au/business/workplace-relations/goodbye-rankings-accenture-gives-annual-performance-reviews-the-flick-20150722-gihn7y.html>



This change reflects an understanding that in order for evaluations to be effective, they must reflect the needs of both employees and managers.

It is important to note that you can have adequately performing employees who are disengaged as well as disengaged employees who may have once been high performing but have become detached from their role for reasons that are beyond the business' control. It is therefore useful to appreciate the difference between turnover and unwanted turnover. Facilitating the smooth exit of employees who have not responded to re-engagement strategies can be a positive step in addressing the spread of disengagement.

WARMED UP WORKPLACES

When engagement does spread through an organisation, employers will notice an improvement in:

- productivity;
- talent retention; and
- customer loyalty.

Engaged employees are more productive because they put greater focus into their work and their motivation extends further than just individual gain. Productivity is also improved through a decrease in absenteeism compared to that of disengaged employees.

When employees are committed to their jobs for reasons more than just a pay check they are also more likely to stay with that organisation. Encouraging engagement helps insulate employers against losing their best workers and the cycle of disengagement which can quickly follow.

Finally, an engaged workforce leads to stronger customer loyalty through positivity and excellence in service. Clients notice the discretionary effort that passionate and committed employees display and appreciate being the recipient of work done above and beyond what is required. Customers who have had a positive experience with an organisation are often the best marketing a company buy.

Although winter often makes engaging employees a difficult task, it is also an opportunity to re-evaluate how an organisation will address disengagement in the new financial year. As your company gets ready for spring, take stock of your workplace and look for two or three small ways you can make it easier for others to feel engaged with their job; the results will speak volumes.

Key Takeaways

1. Engagement is passion. Passion is contagious.
2. Cash is not always king.
3. Notice disengagement early; re-engage immediately.

MYTH-BUSTERS:
debunking popular myths in labour and employment law

SINA MOSTAFAVI, SENIOR ASSOCIATE

1 HIGH INCOME EARNERS ARE AUTOMATICALLY EXEMPT FROM PROTECTION AGAINST UNFAIR DISMISSAL

It is a common misconception that employees who receive an annual rate of earnings greater than the high income threshold (currently $136,700) are not able to maintain a claim for unfair dismissal.

In fact, an employee who is "covered" by a modern award or to which an enterprise agreement "applies" (that is, who falls within the definition/classifications set out in said instrument) will be able to maintain an unfair dismissal claim, provided that they meet the other eligibility criteria, including (but not limited to) that:

- they are a permanent employee, or a casual engaged on a "regular and systematic" basis;
- they have been employed for at least 6 months (for employers with 15 or more employees) or 12 months (for employers with less than 15 employees); and
- their employment has been terminated at the employer's initiative (as opposed to a resignation). A constructive dismissal in this context counts as termination at the "employer's initiative".

The above applies even if a modern award or enterprise agreement does not "apply" to a high income employee (such as through a guarantee of annual earnings), meaning that the terms of the relevant instrument do not have effect in relation to that employee. This is because the test in terms of unfair dismissal eligibility is award "coverage", not "application".

In summary:

- Where an employee is not covered by a modern award or there is no applicable enterprise agreement and they earn over the high income threshold, then they will not be able to maintain an unfair dismissal claim.
- Where an employee is covered by a modern award or there is an applicable enterprise agreement (and otherwise meets the criteria for bringing an unfair dismissal claim) then they can maintain an unfair dismissal claim regardless of the level of their income or the operation of a guarantee of annual earnings (for an employee covered by a modern award).

2 YOU NEED TO GIVE EMPLOYEES THREE WARNINGS

"I'm entitled to three warnings" is a common catch cry for employees who are being performance managed. This is almost always incorrect.

The only situation in which an employee may have an enforceable right to be provided with three warnings before their employment is terminated is where an express obligation to this effect is enshrined in an employment contract, industrial instrument or binding employer policy. This is an extremely uncommon scenario, yet many employers proceed on the basis that the provision of three warnings are a requirement.

The misconception about the "three warnings rule" arises in part from the unfair dismissal regime, in which the failure to provide appropriate warnings may render a dismissal unfair. In fact, each circumstance is different and must be considered on its own merits in relation to the timing and frequency of warnings. This means sometimes it is appropriate to give one or more warnings (even more than three, if appropriate), and in limited circumstances, a termination can be found to be fair despite the absence of any warnings being provided.

It is important to bear in mind that warnings are not a "silver bullet", and a termination may be held to be unfair despite three or more warnings having been provided,

if the Fair Work Commission finds that the termination was on balance still harsh, unjust or unreasonable.

A rule of thumb is that warnings/further warnings are generally more appropriate where the conduct in question:

- is sufficiently serious to warrant a formal sanction;
- has not been the subject of a previous warning (or warnings, where appropriate);
- can be rectified in a satisfactory timeframe; and
- has not led to an irretrievable loss of trust and confidence or amount to serious misconduct.

The key take away is that a determination should always be made on the particular facts, and without regard to an arbitrary (and generally mythical) "three warning rule".

3 EMPLOYEES MUST BE OFFERED A SUPPORT PERSON FOR "DIFFICULT MEETINGS"

During "difficult" employee meetings, most frequently where employees are provided with warning or dismissal letters, employees and employers are often conscious of the need to have a support person present for the former. This derives (in part) from sub-section 387(d) of the *Fair Work Act 2009* (Cth) (the "FW Act"), which states that the Fair Work Commission will consider "any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal" as a factor in determining "harshness" for the purposes of an unfair dismissal claim.

Looking at the FW Act provision more closely, it's important to highlight that it does not say that an employee is "entitled" to a support person being present, but rather that an employer should not "unreasonably refuse" to allow such a person to be present. As such, there is no legal obligation under the FW Act for an employer to advise the employee that they can invite a support person to a meeting.

The above notwithstanding, it is good practice (particularly in mitigating exposure to an unfair dismissal claim) to offer an employee the opportunity to bring a support person to disciplinary meetings, but in doing so you should be mindful of the following best practice guidelines:

- you should have regard to the purpose and agenda of the meeting in determining whether a support person is appropriate. A simple fact finding meeting, in which an employer has not reached any preliminary or final view as to a set of facts, but is simply providing the employee with an opportunity to provide their version of the facts, does not generally require the employee to be provided with the opportunity to have a support person present. On the other hand, in a "show cause" meeting, or a meeting where the employee is provided with a warning letter, it may be appropriate to provide the employee with this opportunity. It is important in this regard to notify an employee at the first available opportunity of the purpose of a meeting, so that they are also able to turn their mind to the question of whether a support person may be appropriate;
- when notifying employees of a meeting (and inviting them to bring a support person) you should advise that, in circumstances where they have been provided with reasonable notice of the meeting (24-48 hours is generally appropriate), that you are unlikely to postpone the meeting on the basis that their support person is unavailable;
- you should obtain the name and position of the support person, to ensure that there is no conflict in them being present in the meeting (such as if they are a potential witness to an investigation involving the employee);
- you should not be reticent about setting and enforcing clear guidelines about the role of a support person. While a support person can take notes and ask clarifying questions if appropriate, it is not appropriate for a support person to be an advocate, that is, speaking on the employee's behalf, asking new questions, or stopping the employee from answering particular questions. If this takes place it is appropriate to remind the support person of their role, and call a break in the meeting so that the support person can adjust their approach (and also have any discussion with the employee as required). If the behaviour then continues you can either seek to exclude the support person from the meeting, or offer to postpone it for a day or so to provide the employee with an opportunity to have another support person attend;
- where an employee has either utilised a support person (or declined an invitation to bring a support person) this should be duly recorded, and noted on a warning letter as appropriate; and
- whether or not an employee brings a support person (and particularly important where they are present) an employer should have an appropriate note-taker present in the meeting for the purposes of clarifying any factual disputes that may arise as to the matters discussed in the meeting. The same principles apply as to the support person, that is, the person should not take active or any substantive role in the meeting, beyond taking notes.

ENFORCING RESTRAINTS: at what cost?

KATHRYN DENT, DIRECTOR
ELIZABETH KENNY, GRADUATE ASSOCIATE

Restraints of trade are not uncommon features of contracts of employment, particularly those involving mid to senior level managers and executives, but to what extent should your organisation consider trying to enforce any breach or imminent breach and what factors will a court give weight to in its decision (usually whether or not to grant injunctive relief)?

Contractual obligations post-termination, known as "restraints of trade" or "restrictive covenants" are generally used to prevent employees from engaging in a range of activities after their employment comes to an end such as not dealing with or approaching clients, not soliciting clients or employees and not competing with their former employer. Despite the fundamental principle that post-employment restraints are void as against public policy, over the years the law, through the varying Australian jurisdictions, has developed such that restraint clauses may be valid and justified in the circumstances of a particular case provided that the employer can demonstrate how the restraint reasonably protects the legitimate business interests of the employer. Organisations therefore need to be able to articulate to a court, in pursuance of such relief, what the interest is that they are seeking to protect, how the ex-employee is able to cause damage to it and that the way the employer is proposing to prevent this damage is reasonable in all the circumstances.

PEOPLE MUST BE ABLE TO EARN A LIVING – YOU CAN'T NECESSARILY STOP YOUR COMPETITION

Non-compete clauses which operate to stop your ex-employees from working for a competitor tend to be the most difficult type of post-employment restraint to enforce. Courts are loathe to uphold these clauses where to do so would impose a significant and detrimental impact on a person's ability to earn a living and certainly where it is only on the basis of prohibiting employees from working with a rival organisation. The case of *Marlov Pty Ltd v Murat Col* [2009] NSWSC 501, established that to prevent the competition the employee has to have a legitimate interest in business connection or goodwill. It cannot be a "remote or tangential" likelihood of "genuine harm". There is no protection from mere competition.

On the other hand, a non-compete clause is "a legitimate means by which an employer can prevent an employee from taking unfair advantage of information the employee has gained during the course of his or her employment. It is a means of avoiding the difficulties associated with proving breaches of behavioural restraints -- such as an obligation to keep information confidential and not to use it or an obligation not to solicit the clients or customers of the employer for a period of time" (*Reed Business Information v Seymour* [2010] NSWSC 790).In the case of *Pearson v HRX Holdings Pty Ltd* [2012] FCAFC 111; the Full Court of the Federal Court upheld an earlier decision in which it was found that a contractual clause which prohibited a company's founder from working for two years after his resignation was reasonable in order to protect the business - the employee "accepted that he had been a key component" of his ex-employer's success.

CAN CLIENTS BE STOPPED FROM CHOOSING WHERE TO DIRECT THEIR CUSTOM?

The interest in preserving relationships with repeat or regular clients (as opposed to "one off" clients) has been recognised by the courts on a number of occasions. In *Wallis Nominees (Computing) Pty Ltd v Pickett* [2012] VSC 82 it was found that the employee was not in a "special category" that justified a restraint clause. The types of factors that were found worthy of a clause restraining an employee from dealing with clients were being a human face of a business, having control over a client's business or fostering a special relationship. However an injunction was granted in *Birdanco Nominees Pty Ltd v Money* [2012] VSCA 64 because it was directed at preventing the employee from working for a select set of clients (not all of those of his employer) and it also did not prevent him from practising in his profession as an accountant. An injunction was also granted in *OAMPS Gault Armstrong Pty Ltd & Anor v Glover & Anor* [2012] NSW SC 1175 to take into account the customer relationships and goodwill that two highly experienced marine insurance brokers would bring to the marine insurance area of any potential employer.

CONFIDENTIAL INFORMATION – IT IS LEGITIMATE BUT CAN YOU IDENTIFY IT?

The legitimacy of confidential information as an interest to be protected has long been recognised but recent cases have turned on whether an employer can actually identify what that confidential information is and whether the range of confidential information over which protection is sought is too wide.

In *Reed Business Information v Seymour* [2010] NSWSC 790; advertising rates, website statistics that were not publicly available and brand plans were considered to be confidential, but customer addresses and contact details were not. In coming to this decision the court held that the circumstances a court will consider regarding restraints on disclosure of information include:

"... (a) the extent to which the information is known outside the business; (b) the skill and effort expired to collect the information; (c) the extent to which the information is treated as confidential by the employer; (d) the value of the information to competitors; (e) the ease or difficulty with which the information can be duplicated by others; (f) whether it was made known to the employee that the information was confidential; and (g) whether the usages and practices in the industry support the confidentiality..."

The pivotal nature of being able to identify confidential information was well illustrated in *Kellyville Properties v Asovale* [2014] NSWSC 18 where one of the main reasons the claim for an interim injunction was refused was because the employer could not prove that the confidential information existed and if it did they couldn't prove why it was confidential. On the other hand, in *Wellard Rural Exports Pty Ltd v Robinson III* [2013] WASC 89, the employer was granted an injunction in a situation where the former employee denied that he had access to a large volume of confidential information and the information that he did have access to would be outdated by the time he left as the employer was able to pinpoint information which would cause the employer detriment. The employer produced sufficient evidence to show that the employee had access to particular financial data, shipping schedules and price calculating tools that, if used against it, would damage the employer "probably permanently".

THE FACTORS A COURT WILL HAVE REGARD TO IN DETERMINING WHAT IS "REASONABLE"

The reasonableness of a restraint is usually judged at the time the contract is made and primarily relates to the length of the restraint, the geographical area in which the restraint operates and the restrictions that are imposed on the employee. All these should be no wider than necessary to protect the employer who must be able to demonstrate that it has an interest worth protecting including the damage which may be sustained if the restraint was not enforced.

In *Properties Northside Pty Ltd (t/as Raine & Horne Manly/Freshwater) v Pickering* [2015] NSWSC 310, it was held that it was not open for the employee to challenge a restraint on the ground of unreasonableness when the restraint was the result of a "genuine compromise" between the parties. The original restraint in the former employee's employment contract had been altered in a deed of settlement when the ex-employee had left the employer and began soliciting clients of the plaintiff through his own real estate agency in breach of the restraint in the deed.

NO DAMAGES WITHOUT DAMAGE

Since restraints are contractual in nature, an employer must show that they have suffered damage as a result of the breach of a restraint of trade clause. Damages will not be awarded if the breach results in no loss to the employer.

In *De Poi Consulting Pty Ltd v Dutton (No 2)* [2015], the employee resigned from her employment and began work with a direct competitor the next day. The court read down the non-compete and non-solicitation clauses to two rather than six months (on the basis that they went further than necessary to protect the legitimate business interests) and six months if limited to South Australia as opposed to within 20km of any premises from which it operated. Further, the court rejected the employer's claim for $185,000 for the loss of 37 files citing that the evidence did not suggest that the employee had undertaken an active managerial or consulting role where she was capable of soliciting clients and the surge in the competitor's client base was found to be coincidental. Therefore, it was not proven that De Poi was entitled to any measurable loss of damage on account of the breached employment restraint.

CASCADING CLAUSES

A cascading clause will not necessarily be unreasonable or uncertain because it contains a considerable amount of covenants with respect to alternative periods and geographical areas. In the case of *Bulk Frozen Foods Pty Ltd v Excell* [2014] TASSC 58, an employee's contract stopped him for acting in any of seven specified capacities across fifteen different businesses or activities. Other covenants were also included in this case. Each of the covenants had been stipulated and the court found that there had been a "genuine attempt to define the covenantee's need for protection" therefore the clause could not be void for uncertainty.

Often cascading clauses are useful in jurisdictions where the courts do not have a discretion (such as in New South Wales) to read down the restraint to make it enforceable.

REASONABLE TIME TO RESTRAIN AND THE EFFECT OF UNDERTAKINGS

Employers must approach any breach or threatened breach with urgency. A delay in acting may be evidence to the court that damages are an adequate alternative (a key factor in an injunction being granted is that damages are not adequate as well as there being a prima facie case and who the balance of the convenience favours). What will be of utility in getting a court's attention is whether the employee has ignored requests for undertakings regarding the breaches from the former employer prior to the court application.

In the case of *Workplace Access and Safety Pty Ltd v Mackie* [2014] WASC 62, the employee commenced work in 2012 and was issued with an employment contract which contained a restraint clause and a confidential information clause. One of the reasons cited for rejecting the interlocutory application for injunctive relief was that the employee was prepared to give certain undertakings in addition to sworn evidence regarding his activities after leaving his employment with the employer.

Key Takeaways

1. "Non compete" restraints are the most difficult to enforce and should generally only be used when it can be established that it is what is reasonably necessary to protect a legitimate interest in business connection, goodwill or confidential information.
2. Treating each employee as an individual in the negotiation of the contract will assist proving that due consideration was given to the legitimate interests that required protection.
3. The scope of "confidential information" in a clause should not be too wide and should not go beyond protecting the employer's legitimate business interests and an employer should be able to identify confidential information.
4. Employers should be able to outline their expectations from employees in relation to restraints at the time they enter a contract.
5. Carefully drafted cascading clauses should be used to enhance the enforceability of a restraint outside New South Wales.
6. A lack of damage to an employer or a delay in invoking the restraints will adversely impact an employer's prospects of success in restraint litigation.

WEIGHING IN ON THE RIGHT TO WORKERS' COMPENSATION:

the interaction between workers compensation laws and work health and safety laws

NED OVEREND, SENIOR ASSOCIATE

In the recent case of *BHP Coal Pty Ltd v Simon Blackwood* (Workers' Compensation Regulator) [2015] QIRC 113 a worker at BHP Pty Ltd ("BHP") had his workers' compensation claim denied, after his employment was terminated because his weight posed a safety risk to himself and other employees.

THE FACTS

Mr Bray commenced employment with BHP as a shift worker in 1994. In 2008 he was promoted to the position of Shift Supervisor and was responsible for supervising up to 30 operators. As part of his role, Mr Bray was required to cover between 25-30 kilometres of the pit. He was also required to, amongst other things, hitch up lighting plants and climb equipment.

For two years prior to the termination of his employment, Mr Bray was absent from work on paid sick leave due to a non work related stress issue. Mr Bray faced a number of barriers as part of his return to work, including:

- mobility issues due to his weight (he was 176 centimetres tall and weighed 160 kilograms);
- alcohol and other dependency issues; and
- anger management and behavioural issues.

To assist Mr Bray with his return to work BHP paid up to $40,000 for Mr Bray to meet with a number of medical practitioners.

In a report dated 9 March 2013, psychologist Dr Sarkar noted that Mr Bray had challenges associated with physical weight gain and mobility and referred him to Dr McCartney, an occupational physician, to determine his suitability to undertake his supervisory duties. Mr Bray saw Dr McCartney over a period of nine months during which Dr McCartney provided various reports to BHP in respect of Mr Bray's fitness for work and ability to undertake the physical aspects of his role (including kneeling and squatting, walking on uneven ground, climbing up ladders and entering machinery and other vehicles).

Dr McCartney's final report, dated 17 November 2013, stated that although there had been improvement in terms of Mr Bray's prior knee and psychological injuries there were on-going concerns about Mr Brays' ability to perform specific tasks safely, namely:

- "tasks that require Mr Bray to undertake repeated kneeling, squatting or climbing ladders pose a significant and foreseeable risk of the aggravation of the underlying degenerative condition affecting his knee;
- his frame is likely to have considerable difficulty fitting into a light vehicle without significant and foreseeable impact on safely controlling the vehicle;
- Mr Bray's obesity places him at a significant and foreseeable risk of slips, trips and falls; and
- should Mr Bray become incapacitated, he is likely to significantly impact the safety of his colleagues should they attempt to move him".

Following this, BHP met with Mr Bray on 29 January 2014 and offered him two choices:

1. he enter into a performance plan in respect of his weight loss (given there had been little improvement over an extended period of time); or
2. BHP and him agree to a mutual separation. Mr Bray rejected the separation offer and requested to return to work.

BHP had a number of concerns associated with Mr Bray's return to work. In particular Mr Bray's supervisor, Mr Iliffe, expressed concerns that Mr Bray's return to

work could possibly contravene BHP's obligations under the *Coal Mining Safety and Health Act 1999* (Qld) which contains obligations for workers to ensure they are not exposing themselves or others to risk.

Mr Iliffe discussed these concerns about Mr Bray's return to work with Mr Milful, the Senior Site Executive, including concerns about Mr Bray's ability to:

- walk on uneven ground;
- walk a reasonable distance;
- get on a machine; and
- act and assist in an emergency situation.

After considering all of the facts, Mr Iliffe and Mr Milful determined that Mr Bray presented an "unacceptable risk to himself and other employees on the site" and as a consequence, a decision was made to terminate his employment.

On 12 February 2014 Mr Iliffe met with Mr Bray and communicated the decision to terminate his employment. On 24 February 2014 Mr Bray lodged an application for compensation with BHP for a psychiatric/psychological injury.

THE PRIMARY DECISION

On 20 May 2014, BHP (who is a self insured) rejected the worker's compensation application made by Mr Bray on the basis that his psychological issue arouse out of reasonable management action taken by BHP and therefore he did not suffer a compensable "injury" under section 32 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) ('**Act**').

Mr Bray sought a review of the decision by the Workers' Compensation Regulator who set aside the rejection of the claim on the grounds that it objected to the way BHP terminated Mr Bray's employment by not giving Mr Bray prior notice that they were considering termination of his employment.

BHP appealed this decision to the Queensland Industrial Relations Commission.

THE APPEAL

The key issue for determination was not whether Mr Bray suffered a workplace injury but whether that psychiatric/psychological injury was a compensable injury.

Section 32(5) of the Act provides:

"5) Despite subsections (1) and (3), injury does not include a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances—

(a) reasonable management action taken in a reasonable way by the employer in connection with the worker's employment;

(b) the worker's expectation or perception of reasonable management action being taken against the worker;

(c) action by the, Regulator or an insurer in connection with the workers application for compensation" ***(Our emphasis added).***

THE DECISION

Commissioner Knight found that Mr Bray's psychological injuries were a result of reasonable workplace management action.

The Commissioner held that BHP had provided support to Mr Bray to improve his health over a long period of time and in making the decision to terminate his employment, considered the safety risk to Mr Bray and his colleagues of his return to work.

The Commissioner further stated that the "reality of the situation was that Mr Iliffe was faced with the prospect of returning Mr Bray to work while there remained significant risk factors involved with doing this. Mr Iliffe had been unable to see any progression in Mr Bray's attempts to improve his health and mostly his weight over a long period of time".

While the Commissioner acknowledged that there might have been a better way for BHP to give Mr Bray an indication that termination of his employment was a possibility, it was not unreasonable to effect the dismissal when considering the "long history of the matter and prior conversations that had been held in respect of the termination of Mr Bray's employment".

WHAT DOES THIS MEAN FOR EMPLOYERS?

1. **A decision to terminate an employee's employment can be based on legitimate OH&S concerns:** given the obligations of employers under WH&S legislation, employers can, in the right circumstances, defend against claims brought in relation to termination of employment (eg. workers' compensation, unfair dismissal, adverse action etc.) where it can be established that the reason for the decision was due to safety concerns and their corresponding obligations under WH&S legislation.
2. **Employers should act quickly:** given the significant financial costs associated with workers' compensation claims, if employers are concerned as to the legitimacy of a workers' compensation claim they should act quickly to challenge and/or input into the investigation of a claim before an insurer makes a determination to accept the claim.
3. **Keep detailed notes and evidence:** in this case Mr Ilife's notes and that of the medical advisors supported the reasonableness of the decision to terminate Mr Bray's employment and ultimately influenced the Commission in its findings.

Key Takeaways

1. A decision to terminate an employee's employment can in the right circumstance be defended on legitimate WH&S concerns.
2. Employers should act quickly if they are concerned as to the legitimacy of a workers' compensation claim.
3. Keep detailed notes and evidence: in this case Mr Ilife's notes and that of the medical advisors supported the reasonableness of the decision to terminate Mr Bray's employment and ultimately influenced the Commission in its findings.

NO SHOES, NO SHIRT, NO SERVICE: managing employees' appearance in the workplace

ALISON SPIVEY, ASSOCIATE DIRECTOR
MICHAEL STARKEY, GRADUATE ASSOCIATE

Employees are the human face of any organisation and the way in which employees present themselves can be perceived as a reflection of an organisation's culture. As such, it is natural that employers be concerned with how their employees look in the workplace. But when it comes to managing employee appearance – what is it, and what is it not, okay for employers to do?

Two recent high profile cases - *James Felton v BHP Billiton Pty Ltd* [2015] FWC 1838 ("**Felton**") and *Kuyken v Chief Commissioner of Police* [2015] VSC 204 ("**Kuyken**") - have drawn attention to the often sensitive issue of managing employee appearance in the workplace, and the importance of employers developing and implementing appropriate policies to deal with it.

The facts and circumstances in Felton and Kuyken are extracted in more detail below. In summary:

- Felton considered the termination of the employment of an underground mine worker after he refused to comply with a requirement under a work health and safety ("**WHS**") policy that he be clean-shaven; and
- Kuyken involved a discrimination claim by a Victorian police officer in respect of a grooming policy that banned male police officers from having long hair or a beard.

In both cases, the employer's policy on workplace appearance and the measures it took to enforce that policy were upheld as lawful. However, the significance of the decisions in Felton and Kuyken is that they show that the particular factual and legal circumstances are vital when it comes to determining the cans and cant's of managing employee appearance in the workplace.

This article examines the types of issues that your organisation should consider if it wishes to develop and implement an effective workplace appearance policy.

ISSUES TO CONSIDER

A workplace appearance policy, and the manner in which it is intended to be enforced, must be appropriate for the nature of the work that is performed by the organisation and in light of the regulatory context in which it will operate.

By considering the following, employers can devise policies on workplace appearance in a way that minimises legal risk while maximising their ability to ensure the way their workforce looks reflects organisational values.

ANTI-DISCRIMINATION LEGISLATION

In developing and implementing policies such as those applying to an employee's appearance, employers must consider whether the aspect of employee appearance they are trying to regulate might relate to a particular characteristic an employee possesses that is protected under anti-discrimination legislation, for example, their sex, race or religion. Policies which appear to apply to workers equally may nevertheless result in "indirect" discrimination. For example, a policy that employees must have short hair, even if applied to all employees, may "indirectly" discriminate against employees of certain ethnic groups.

It is vital for this purpose that employers are aware of what characteristics are protected under anti-discrimination legislation in their jurisdiction. For example, in Victoria, both religion and physical appearance are protected characteristics, while in New South Wales, neither is protected.

Employers should also always consider whether there is a "less discriminatory" way of achieving a desired outcome. For example, in the interests of food safety, employees in fast food establishments may be required to wear hairnets rather than cut their hair short if this does not otherwise impact the employer's WHS obligations.

THE EMPLOYMENT CONTRACT

Another highly significant consideration will be how an organisation's contracts of employment treat workplace policies and whether those contracts allow disciplinary action to be taken for breaches of workplace policies, or for employee conduct which threatens the organisation's reputation.

Contracts of employment should make clear that employees are to be aware of and abide by all workplace policies and that disciplinary action may be taken against them if they fail to do so. They should also oblige employees to not conduct themselves in a manner which may harm the reputation of the organisation. Such provisions need to be combined with clear disciplinary procedures which give employees the chance to alter their behaviour before their employment is terminated.

By combining such contractual provisions with a clear vision of the image they want their organisation to embody, employers may gain leverage in the management of employee appearance. For example, in *Liza Gaye Fairburn v Star City Casino* [2003] AIRC 479, Star City's decision to dismiss an employee who refused to remove her tongue stud was upheld because it was accepted that Star City had a "5 star image" to uphold.

YOUR INDUSTRY

As the decision in Felton demonstrates, it will always be more reasonable for employers to attempt to regulate employee appearance if they have a sound legal reason for doing so. Policies on workplace appearance which aim to ensure the health and safety of workers are unlikely to be seen as unreasonable.

In determining what level of regulation is appropriate in their organisation, employers should consider the nature of the work being performed by their employees and ask questions like whether the work is dangerous, or whether it requires a high degree of interaction with customers. For example, it may be more reasonable for organisations to impose strict dress regulations on front-line customer service representatives than backroom administrative employees.

The importance of any workplace appearance policy being tailored to your organisation is best demonstrated by considering what the outcome of the decisions in Felton and Kuyken may have been if the facts were altered slightly. Imagine the following scenarios:

1. Mr Felton is a retail employee of Company X, which operates a chain of clothing stores. Company X directs Mr Felton to shave his beard to comply with its newly introduced clean-shaven policy. In such circumstances, Mr Felton's refusal to do so would be unlikely to give rise to the same WHS concerns as in the actual circumstances of the case. Those concerns removed, the FWC may be more likely to hold that Mr Felton's dismissal was unreasonable and therefore unfair for the purpose of his claim.
2. Victoria Police tightens its grooming standard, but the changes are never enshrined in legislation. In such circumstances, the provision under the EO Act that acts permitted by other legislation are not discriminatory would no longer apply and Victoria Police would be forced to defend the policy on other grounds.

CASE SUMMARIES

A Ban on Beards: James Felton v BHP Billiton Pty Ltd [2015] FWC 1838 ("Felton")

The Fair Work Commission ("**FWC**") upheld BHP's decision to dismiss Mr Felton, an underground mine worker who refused to comply with a clean-shaven requirement in BHP's Respiratory Protection Policy ("**RPP**"), which forms part of BHP's WHS framework.

Facts

- The RPP relevantly required all mine workers to be clean shaven daily to ensure that the respirators they were required to wear sealed properly.
- Following the roll out of the RPP, Mr Felton twice failed to attend a scheduled "fit test" clean-shaven. After advising BHP in a formal meeting that he would continue to refuse to shave, Mr Felton was stood down on full pay.
- At a second formal meeting, Mr Felton offered to purchase his own air helmet instead of shaving, but was advised that this was not in accordance with the RPP. After again attending for work unshaven, Mr Felton was advised that his employment was at risk of being terminated if he continued to refuse to comply with the RPP.
- After being asked to show cause as to why his employment should not be terminated, Mr Felton wrote to BHP advising that he would not shave his beard, writing: "My facial hair is my personal attribute, it is who I am and my liberty of right".
- Three days later, Mr Felton's employment was terminated. Mr Felton made an unfair dismissal application to the FWC in respect of the termination of his employment.

Decision

- In considering whether Mr Felton's dismissal was "unfair" – that is, whether it was "harsh, unjust or unreasonable" - the FWC had regard to:

(a) BHP's contention that its direction that Mr Felton comply with the RPP was a lawful and reasonable direction;

(b) BHP's WHS obligations;

(c) Mr Felton's "individual rights and preferences" with respect to wearing a beard; and

(d) Mr Felton's offer to purchase his own air helmet.

- In upholding BHP's decision to dismiss Mr Felton, the FWC held that:

(a) BHP's WHS obligations to ensure the safety of its mine workers outweighed Mr Felton's preference as to his personal appearance;

(b) BHP's efforts to enforce the RPP, designed as it was to ensure BHP complied with its WHS obligations, were lawful and reasonable, particularly given the number of opportunities Mr Felton was afforded to comply with the RPP; and

(c) allowing employees to provide their own personal protective equipment was not a workable solution, given the size and complexity of BHP's operation and the potential for this to "undermine the integrity of the policy".

An Employee in Uniform: Kuyken v Chief Commissioner of Police [2015] VSC 204 ("Kuyken")

In Kuyken, the Supreme Court of Victoria ("**Court**") held that the grooming policy of Victoria Police, which banned male officers from having long hair and beards, was not discriminatory.

Facts

- In January 2012, Victoria Police changed its grooming standard to ban male officers from having long hair and beards.
- In July 2012, the new grooming standard was enshrined in changes to the Police Regulation Act 1958 (Vic) ("**PR Act**").
- In August 2012, Victoria Police informed Mr Kuyken, who had a goatee, that he was to comply with the grooming standard, lodge a complaint with the Victorian Civil and Administrative Tribunal ("**VCAT**") or face disciplinary action.
- Mr Kuyken lodged a complaint with VCAT alleging that he had been discriminated against on the basis of his physical features contrary to the Equal Opportunity Act 2010 (Vic) ("**EO Act**").

Decision

- The Court upheld VCAT's decision to dismiss Mr Kuyken's claim.
- Although it was accepted that facial hair constituted a physical feature under the EO Act, that the grooming standard entailed differential treatment based on that physical feature, and that the threat of disciplinary action constituted less favourable treatment against Mr Kuyken, the grooming standard was not unlawfully discriminatory because it was permitted by the PR Act.
- The Court held that the PR Act granted the Chief Commissioner of Victoria Police an "explicit statutory power to superintend and control matters affecting the appearance of members of the police force" and that that power was "plain and unambiguous".

Key Takeaways

1. Know the legal and factual context: In crafting policies on workplace appearance, employers must be aware of their obligations under anti-discrimination legislation and the *Fair Work Act 2009* (Cth), as well as their obligations under WHS legislation.
2. Combine culture and contract: By making employees aware of their obligations with respect to organisational reputation and developing policies which promulgate a well-defined vision of organisational culture, employers can give themselves room to move in regulating employee appearance.
3. Maintain fairness in disciplinary procedures: Employees must be given a chance to change conduct which violates policies on workplace appearance lest any ultimate termination of their employment be held unfair.

457 SPONSORS: comply with your obligations or you may pay a high price

ADRIANA BEDON, SENIOR ASSOCIATE

The recent and unprecedented decision of the Federal Court in Minister for Immigration and Border Protection v Choong Enterprises Pty Ltd (No 2) [2015] FCA 553 ("Choong") serves as a timely reminder of the risks employers face in sponsoring employees under visa programs and failing to comply with their obligations as a sponsor.

The *Migration Regulations 1994* (Cth) (the "**Regulations**") impose stringent sponsorship obligations on employers who register in the 457 visa program and sponsor ex-pat employees. The sponsorship obligations are ongoing for the period an approved sponsor employs a 457 visa holder. However, implementing and maintaining appropriate employment practices that assist in complying with these obligations can be tedious and, as a result, is often neglected by sponsors.

In Choong (the facts of which are set out below), the Department of Immigration and Border Protection ("**DIBP**") prosecuted the employer for failure to comply with several of its sponsorship obligations under the *Migration Regulations 1994* ("Migration Regulations"), resulting in a $175,000 civil penalty being imposed on the employer, and the employer being required to reimburse the affected employees for migration fees that the employer had attempted to claw back by way of deductions from their pay. The employer was also ordered to pay the costs of the proceedings.

The decision in Choong demonstrates the potentially significant legal, financial and reputational consequences for employers for failing to ensure that their employment practices are sufficiently robust to ensure compliance with their sponsorship obligations.

This article examines the legislative framework of the 457 visa program, the impact of the decision in Choong and what steps employers who sponsor ex pat employees under the 457 visa program can take in order avoid a similar outcome.

FAILING TO COMPLY WITH SPONSORSHIP OBLIGATIONS: HOW HIGH ARE THE STAKES?

The *Migration Act 1975* (Cth) ("**Migration Act**") currently provides that any person who fails to satisfy the prescribed sponsorship obligations, such as those set out in the Regulations, will be subject to a maximum penalty of 60 penalty units (currently $10,200) for each contravention of those obligations.

Further, where a sponsor has committed a contravention that is founded on the same facts of another contravention, or forms part of a contravention with a 'similar character', the Migration Act provides than an eligible court may order one penalty for the related contraventions. In these circumstances, the overall penalty cannot be greater than the sum of the individual penalties if the contraventions had been pursued separately.

THE DECISION IN CHOONG

Choong Enterprises Pty Ltd ("**Choong Enterprises**") operated a number of restaurants and cafes in Darwin. A large proportion of its employees were 457 visa holders.

On review of Choong Enterprises' employment records it was found that it had failed to comply with a number of its sponsorships obligations, as follows:

- **Sponsor to ensure terms of 457 visa holder's employment are equivalent to that offered to comparable Australian employees:** Regulation 2.79 of the Regulations requires that a sponsor ensure a 457 visa holding employee is subject to equivalent terms and conditions of employment that an Australian citizen or permanent resident employee would received in their nominated role.

  The review revealed that sponsored employees employed by Choong Enterprises were being paid below that of their Australian counterparts. The remuneration was in fact below what the sponsored employees were eligible to receive under an applicable modern award and even the legislated minimum wage. Additionally, the sponsored employees were not paid over-time allowances, personal leave entitlements or superannuation payments.
- **Record keeping obligations with respect to wages:** Regulation 2.78 of the Regulations requires that a sponsor keep 'independently verifiable' records of wages paid to sponsored employees. In this matter, Choong Enterprises failed to keep any records and paid its employees by way of cash in envelopes with relevant annotations.
- **457 employees to perform nominated roles:** Regulation 2.68 of the Regulations requires that sponsored employees perform work that is relevant to their nominated occupations. Choong Enterprises, however, was found to have nominated their sponsored employees for roles that were more substantial and attracted higher pay than the roles being performed. The sponsored employees were recruited as chefs and café managers when, in fact, they were found to be performing the work of fast food takeaway restaurant cooks and assistants. As a result, Choong Enterprises obtained a monetary benefit and underpaid the sponsored employees.
- **Prohibition from recovering migration agent fees from sponsored employees:** Regulation 2.87 of the Regulations prohibits sponsors from taking any action to claw back or recover costs associated with obtaining sponsorship registration. The examination of Choong Enterprises' records revealed that it was making deductions from the sponsored employees' wages to reimburse migration agent costs.

Based on these findings, the Court imposed a total penalty of $175,000, and ordered that Choong Enterprises reimburse the sponsored employee(s) for their migration agent fees in the amount of $6,400.

The Court also ordered that Choong Enterprises pay the costs of the proceedings.

WHY IS THIS DECISION SIGNIFICANT?

The Choong decision has taken the 457 sponsorship and migration agent community by surprise, not only because of the extent of the penalty imposed, but also because it is unprecedented for the DIBP to seek penalties in the Federal Court for non-compliance with sponsorship obligations.

With respect to this decision, Senator Michaelia Cash, Assistant Minister for Immigration and Border Protection, has stated:

"This is the first civil penalty application my Department has undertaken in the Federal Court, and is the largest civil penalty any court has imposed for a breach of sponsor obligations".

The decision has also been handed down amidst an influx of negative publicity surrounding the 457 visa program. This is possibly due to numerous allegations about the exploitation of foreign workers working in Australia under such visa programs that are commonly at the forefront of our daily media-feed. The working visa system has also been the subject of further scrutiny by virtue of the Independent Review of Integrity of the 457 Visa program that commenced in March this year, and this too may have contributed to the negative perception of the 457 visa program.

What is clear is that this decision was intended to provide a warning to employers about the aggressiveness with which Australian government officials are now willing to pursue 457 sponsorship violations. This is confirmed by the Assistant Minister's further statements:

"The stiff penalty this company has received should

send a warning to other sponsors: if you fail to meet your requirements, my Department may impose administrative sanctions, issue an infringement notice, execute an enforceable undertaking, or apply to the federal court for a civil penalty order".

One further item to note in considering the significance of the Choong decision is that the penalty regime applied in Choong is different to that outlined above, to the extent that when the contraventions in Choong occurred corporations were exposed to a maximum penalty of 300 penalty units for breaches of their sponsorship obligations, and individuals to a maximum of 60 penalty units. The distinction between legal persons has since been removed so that the maximum penalty of 60 penalty units applies to sponsor corporations and individuals alike.

While this may reduce the potential maximum penalties to which employers can be exposed for failing to comply with their sponsorship obligations, it does not reduce the extent of their obligations or the risk that they will be prosecuted for those failures.

WHAT CAN EMPLOYERS DO TO AVOID A SIMILAR OUTCOME?

The Choong decision means that it is now too risky for employers to not be fully across their sponsorship obligations and resources should be devoted to ensure that employment frameworks are sufficiently robust to ensure ongoing compliance with those obligations.

As part of that process, sponsors should be sure to consult with their migration and employment lawyers in respect of the following:

- when drafting an employment agreement for a non-resident employee, namely a 457 visa holder or applicant and with respect to claw-back provisions;
- when amending employment conditions pertaining to a 457 visa holding employee; and
- in undertaking a precautionary audit of their migration records to ensure they have a well established process, in case, amongst other things, they receive a monitoring request.

Key Takeaways

1. Sponsoring employees under the 457 visa program imposes significant ongoing obligations on employers, which may change from time to time. Failure to comply with sponsorship obligations can be costly for an employer from a legal, financial and reputational perspective.
2. There is now increased risk for employers in the compliance space with the regulators seemingly more willing to take action in respect of any failures to comply with their sponsorship obligations.
3. Employers must take steps to ensure that they are aware of their sponsorship obligations at all times, and that their employment frameworks are sufficiently robust to guarantee compliance with those obligations.

MIGRATION LAW CAPABILITY

PCS is pleased to offer our clients full assistance with all their migration law needs.

This includes:

- day to day assistance with migration and global mobility related queries as a part of our partnership packages;
- corporate visa assistance for start-up business, existing businesses and offshore businesses;
- advisory services with respect to sponsorship obligations compliance and assistance with requests for monitoring by the Department of Immigration and Border Protection (i.e. migration audits);
- corporate visa application and consulting assistance for employers with respect to all mobility needs including temporary and permanent migration requirements for existing and prospective employees;
- assistance with migration issues arising from corporate transactions, including due-diligence reports and management of migration implications arising as a result of corporate restructures; and
- visa assistance for individuals including skilled migration, significant investor based migration and assistance for individuals partaking in family migration.

Our migration law practice is headed up by Adriana Bedon who has a wealth of experience in this area, including at Fragomen and other international firms.

Partnership Package clients will be able to utilise their existing allocation of work hours for immigration related queries and day-to-day advice. Fees for processing of visa applications are set out below:

MIGRATION FEES

Our migration services are based on a fixed fee for each application. The below figures do not include any Government fees or surcharges.

APPLICATION SUBCLASS	RATE (EXCL GST)
Sponsorship Applications	$4,000
Temporary (Work) Skilled (Includes nomination and Visa)	$2,250
Temporary Work (Short Stay Activity)	$1,200
Employer Sponsored Migration for Permanent Residence	$4,000
Working Holiday Visa/Work and Holiday Visa	$500
Partner Visa	$4,000
Prospective Marriage Visa	$4,000

RECENT Events

Celebrating 5 Years of PCS at the iconic Quay Restaurant in Sydney

PCS Key Breakfast Briefing Sydney and Melbourne (Sydney shown)

UPCOMING Events

www.peopleculture.com.au/events

WEBINAR PROGRAM

All webinars are facilitated by members of PCS's Senior Legal Team using our interactive webinar software. This cutting edge software allows you to see the presenter and their presentation simultaneously while giving you ability to ask the presenter questions and engaging in discussion with the group.

WEDNESDAY, 9 SEPTEMBER 2015

Webinar

Ramming Through Change: Best Practice Change Management

WEDNESDAY, 14 OCTOBER 2015

Webinar

Mental Health Month Special: The Impacts of Bullying on Mental Health

WEDNESDAY, 11 NOVEMBER 2015

Webinar

2015 Wrap Up and the Year Ahead

PCS SIGNATURE EVENTS

These are our invitation only events. Our hugely successful Hypothetical series returns for a fourth year in November 2015.

THURSDAY, 19 NOVEMBER 2015

Signature Events

2015 Hypothetical: The Times They-Are-A-Changing
Sydney

ADVANCED STRATEGIC PEOPLE MANAGEMENT

A Two Day Program for Senior HR Professionals facilitated by Joydeep Hor BA LLB (Hons) LLM FAHRI CFCIPD, Managing Principal People + Culture Strategies

Perth 16-17 November 2015

Sydney 19-20 November 2015

Melbourne 23-24 November 2015

Brisbane 25-26 November 2015

This intensive program (personally facilitated by Joydeep Hor) has been designed to address the more complex and challenging people management issues faced by Australian employers involving matters of law, strategy, psychology and sociology. The program will be a highly interactive one with a significant number of case studies used to facilitate discussion amongst participants.

Each program will be limited to around 15 attendees so as to ensure enough opportunities for participants to understand issues affecting their own organisations and also to develop networks with fellow participants. Ideally, participants will either head up their organisation's HR function (or a division thereof) or likely to perform such a role in the next two years.

Some of the subjects to be addressed in the program include:

- effective performance management strategies for organisations seeking to introduce a high performance culture;
- best practice in workplace investigations;
- talent retention strategies and remuneration modelling;
- translating corporate vision and values into appropriate role modelling behaviours;
- identifying legal "black spots" in your organisation;
- workplace negotiation strategies.

Participants will be expected to complete pre-readings for the program and also participate actively in discussions throughout the program.

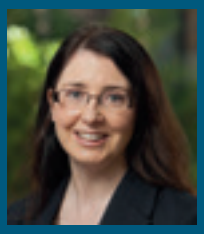
The program cost is $2750 per person (includes materials, morning and afternoon tea and lunch) or $2250 for PCS clients.

To register visit www.peopleculture.com.au/events/ or contact events@peopleculture.com.au

CONTACT US:
The PCS Legal Team

JOYDEEP HOR
Managing Principal

KATHRYN DENT
Director



MICHELLE COOPER
Director

CHRIS OLIVER
Director

SIOBHAN MULCAHY
Director

DEIVINA PEETHAMPARAM
Director

ALISON SPIVEY
Associate Director

THERESE MACDERMOTT
Consultant

ERIN LYNCH
Senior Associate

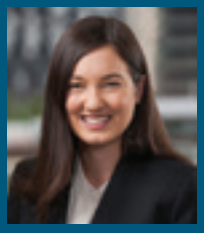
SINA MOSTAFAVI
Senior Associate

NED OVEREND
Senior Associate

JAMES ZENG
Senior Associate

ADRIANA BEDON
Senior Associate

BEVERLEY TRIEGAARDT
Associate



ALEXIS AGOSTINO
Graduate Associate

LIZ KENNY
Graduate Associate

DAVID WEILER
Graduate Associate

MICHAEL STARKEY
Graduate Associate

People+Culture Strategies
Labour & Employment Law

People + Culture Strategies

Sydney
Level 9, NAB House,
255 George Street,
Sydney NSW, 2000
T +61 2 8094 3100

Melbourne
Level 9
136 Exhibition Street,
Melbourne VIC, 3000
T +61 3 8319 0500

Brisbane
Level 8
40 Creek Street
Brisbane QLD, 4000
T +61 7 3046 0300

E info@peopleculture.com.au
www.peopleculture.com.au

150211