STRATEG-EYES:

Workplace Perspectives

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Forecasting 2016: hot topics and trends for the year ahead

Navigating the minefield: contracts of employment vs. independent contracts

Stop! Investigate and listen: an up-to-date guide on workplace investigations

The Fair Work Act in a global setting: the low down on employing foreign nationals in Australia

Diversity in the workplace: facing up to challenges

Innovation in the workplace under the Fair Work Act

In the spotlight: alternative dispute resolution

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WELCOME: from the Managing Principal

Welcome to the first edition of Strateg-Eyes for 2016, our firm's flagship publication (now in its sixth year).

2016 will be a significant year for labour and employment law in Australia with industrial relations likely to be a prominent topic in the lead-up to the Federal election. Many of our clients have sought our strategic input as to the appetite of both major political parties to modify the landscape. We will be putting out a range of articles and blog posts over upcoming months to ensure you are kept abreast of all relevant issues for your organisations.

PCS starts this year with the exciting news of having joined Innangard, a global alliance of employment law firms. As the first non-European firm to be invited to join the alliance, we intend to play a key role in developing the presence of the alliance in the Asia-Pacific region and allowing our clients to derive maximum benefit from our firm's participation in this venture.

Of note, we are looking to introduce the clients of our fellow alliance partners to the breadth of subjects we will be covering as part of our 2016 Schedule of Events. If you have counterparts or colleagues overseas who may benefit from being added to our database please let us know.

On behalf of the team, we wish you every success in 2016 and look forward to being your trusted partners and advisers in people 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.*

FORECASTING 2016: hot topics and trends for the year ahead

ERIN LYNCH, SENIOR ASSOCIATE

As we all return from what has hopefully been a refreshing and relaxing break, the team at PCS are excited about what 2016 has to offer and are making our predictions for the year ahead.

Here is a list of the hot topics for labour and employment law in 2016:

1. the death of the yearly performance appraisal;
2. diversity in the workplace;
3. the Final Report of the Productivity Commission; and
4. the debate over penalty rates.

PERFORMANCE APPRAISALS

Employers are increasingly recognising that, in some instances, a once a year, "tick-a-box" performance appraisal is an arbitrary method of assessing an employee's performance and an ineffective means of building employee engagement.

Rather, a trend is emerging towards more organic and fluid styles of performance appraisal that seek to align the goals of the organisation and the employee. This new style of performance appraisal involves:

1. **A focus on career development** – while assessing previous performance is important, employees will respond better if a performance appraisal looks at their future and how they can develop and progress through the organisation.

2. **Setting clear and measurable goals** – it's easy to use language that is ambiguous and set unrealistic goals, or goals that the employee is not aligned to. The employee should have "buy-in", the goals should be achievable and there should be a clear path on how they will be achieved.

3. **Customising your method** – if the same appraisal method or goals are used across your organisation you run the risk of failing to recognise the individual skills and talents of your employees.

4. **Engaging regularly** – it's common in a once-a-year performance appraisal for an employee to be surprised by any negative feedback that is being raised. That's usually because it is only discussed with the employee at this juncture. If employees receive regular performance feedback, quarterly, or even monthly, there is less room for surprises, employees are more likely to achieve their goals and there is a greater alignment of expectations.

DIVERSITY IN THE WORKPLACE

PCS has seen a surge in clients looking for ways to properly include employees from diverse backgrounds (for example, transgender employees) within their policies, and the importance of this topic is highlighted by the fact that a whole article is dedicated to it in this issue of Strateg-Eyes.

This area of law remains a developing one, and as such there are a number of questions that are yet to be answered about how far the protections afforded by the law extend and how they are applied in practice, including in the workplace. For example, while it is clear that, from a discrimination perspective, transgender employees must not be prevented from using toilets and change rooms and other facilities designated to the gender with which they identify should they choose to do so, it is less clear what employers are required to do in a number of administrative matters relating to the employment of transgender employees, such as whether a transgender employee who is not a "recognised transgender person" can insist that their employment records reflect their preferred gender.

FINAL REPORT OF THE PRODUCTIVITY COMMISSION

On 21 December 2015 the Productivity Commission released its final report on its assessment of Australia's workplace relations framework. The purpose of the inquiry was to examine the current operation of the Fair Work laws and identify future options to improve the laws, bearing in mind the need to ensure workers are protected and the need for business to be able to grow, prosper and employ.[1]

Of particular interest in the final report were recommendations that the Government should:

1. amend the *Fair Work Act 2009* (Cth) ("**FW Act**") to create a new employment instrument, the enterprise contract, that would allow businesses the flexibility to vary an award or awards for a class of employees (as nominated by the employer) to suit their business operations;[2]

2. give the Fair Work Commission more discretion to order that an employment arrangement (such as an enterprise agreement) of an old employer does not transfer to a new employer, where that improves the prospects of employees gaining employment with the new employer;[3]

3. remove the emphasis on reinstatement as the primary goal of the unfair dismissal provisions in the FW Act;[4] and

4. create a statutorily independent Workplace Standards Commission with responsibility for reviewing and varying the national minimum wage and modern awards (including the making of equal remuneration orders).[5]

It will be interesting to see if these recommendations play out in changes to legislation or government policy.

DEBATE OVER PENALTY RATES

One of the hottest topics in 2016 will be penalty rates and their role in the modern workplace relations system. How this plays out may be dependent on the outcome of this year's Federal election.

The Australian Government is under increasing pressure from stakeholders in affected industries (including retail, hospitality and entertainment) to make changes to the current penalty rates system, particularly with respect to new public holidays and Sunday penalty rates.

Defenders of the penalty rates regime argue that it is necessary to compensate employees working "unsocial" hours and that the increase in revenue for businesses that attaches to public holidays largely offsets any increase in wages.

While the Labor Party is attempting to persuade voters that Prime Minister Turnbull is in favour of slashing penalty rates, Employment Minister Michaelia Cash has said that, while the idea was something the Fair Work Commission may adopt, the Turnbull Government currently has no plans to change the penalty rates regime.[6]

1 Productivity *Commission, Productivity Commission Inquiry Report Volume 1* (30 November 2015), v.

2 Productivity *Commission, Productivity Commission Inquiry Report Volume 1* (30 November 2015), 63.

3 Productivity *Commission, Productivity Commission Inquiry Report Volume 1* (30 November 2015), 65.

4 Productivity *Commission, Productivity Commission Inquiry Report Volume 1* (30 November 2015), 56.

5 Productivity *Commission, Productivity Commission Inquiry Report Volume 1* (30 November 2015), 49.

6 Gareth Hutchens, *Coalition voters reject cut in Sunday penalty rates,* Sydney Morning Herald (27 December 2015).

NAVIGATING THE MINEFIELD: contracts of employment vs. independent contracts

MICHAEL STARKEY, GRADUATE ASSOCIATE

Most employers are familiar with the distinction between an employee and an independent contractor in terms of the "end-game": while employees are entitled to certain benefits of employment (such as paid annual and personal leave), independent contractors are not. For many employers, this distinction makes engaging certain workers as contractors an attractive proposition. While doing so can be a legitimate business strategy, certain assertions can set alarm bells ringing for lawyers: *"she's definitely a contractor"; "he's on a contract"; "we've contracted them".*

The substantive distinction between whether a work arrangement is a contract of employment or a contract to provide services can be difficult to establish. Whether a worker is ultimately found to be engaged as an employee or a contractor is something that will be decided by a court or tribunal, rather than the label given to the worker by an employer.

To help navigate the minefield, this article takes a look at the factors that will be considered in determining whether a worker is an employee or a contractor, the consequences of getting it wrong, and strategies you can adopt to avoid the pitfalls.

SPOT THE DIFFERENCE: EMPLOYEES (ROOSTERS) AND CONTRACTORS (DUCKS)

A common misapprehension is that the way in which a work relationship is thought of by the parties or described by the contract will be determinative of how that relationship is actually characterised. While the understanding of the parties and the title used are relevant (particularly when a worker is more highly skilled or has a reasonable level of bargaining power), they are not decisive.

> ***"The parties cannot create something which has every feature of a rooster, but call it a duck and insist that everybody else recognise it as a duck."*** [7]

Whether a worker is an employee or contractor will depend on how the total relationship between the parties can be characterised and involves a number of considerations, including those **below.**

Control

A relationship is more likely to be regarded as one of employment where the putative employer exercises (or has the legal right to exercise) control over the work of the other party, including what work is performed, as well as when and where. A high degree of control need not be manifested in actual direct supervision – rather, the question is which party has the ultimate authority over the performance of work.

Investment and reward

A worker who brings his or her own tools of trade or highly specialised skills to a role is more likely to be characterised as an independent contractor than an employee.

Another question is who stands to reap the rewards of the worker's work. A worker whose efforts benefit the other party – for example, by generating revenue or goodwill – and whose rights to any intellectual property created in the course of the work relationship are limited is more likely to be an employee.

Exclusivity of service

A strong indicator of employment is that the worker in question is not entitled to perform work for others. This may extend to the worker having restrictions on

7 *Re Porter* [1989] FCA 226, at [13].

his or her ability to compete with a former employer after the employment relationship has come to an end. While certain types of restraint on a contractor may be warranted in particular circumstances (for example, if the contractor has access to highly confidential information), such restraints are less common than those imposed on employees.

A contractor is usually free to provide services to a number of parties at any one time and, additionally, has the capacity to subcontract work to others.

Whether a worker is permitted to advertise his or her own services independently of his or her putative employer may also be relevant.

Presentation of the business

The way in which a worker is presented to the world at large is a central consideration. For example, the identity of a worker's employer may be ascertained, for example, from the uniform that worker is required to wear, or the use of business cards identifying the worker with the employer.

Method of payment

While an employee tends to be paid a regular wage or salary, a contractor is more likely to invoice a party for his or her services. Further, an employee's salary is not usually linked to the completion of particular tasks, while a contractor's fee for services may be.

GETTING IT WRONG: SOME OF THE CONSEQUENCES

Sham arrangements

The "sham arrangements" provisions of the *Fair Work Act 2009* (Cth)[8] (the **"FW Act"**) have recently been in the spotlight, with the High Court holding in December that Quest South Perth Holdings Pty Ltd (**"Quest"**) breached the provisions by making certain representations to two employees about the nature of their engagement.[9]

The two employees in question were cleaners, originally employed by Quest, whom Quest had purported to "convert" to independent contractors through a triangular arrangement with Contracting Solutions Pty Ltd (**"Contracting Solutions"**). It was held that this "conversion" was never effected, and Quest was found liable for representing to the employees that they were contractors of Contracting Solutions engaged to perform work for Quest, rather than employees employed by Quest itself.

The High Court overturned the Full Federal Court's ruling[10] that Quest had not breached the sham arrangements provisions because the representations it made were not about the relationship between Quest and the employees, but the purported relationship between Contracting Solutions and the employees. The decision reinforced the intention of the sham arrangements provisions to *"protect an individual… from being misled by his or her employer about his or her employment status"*.[11]

8 *Fair Work Act 2009* (Cth), ss 357-359.

9 *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd* [2015] HCA 45 (**"FWO v Quest"**).

10 *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd* [2015] FCAFC 37.

11 FWO v Quest, [16].

The significance of the High Court's decision is that an organisation will be liable for a misrepresentation about the working relationship between a worker who is in truth an employee of that organisation, no matter the "counterparty" about which the representation is made. This risk reinforces the need for organisations to ensure any triangular contracting arrangements entered into are genuine and properly constructed (discussed **below**).

Liability for entitlements

If a worker purportedly engaged as an independent contractor is actually an employee, he or she will accrue employee entitlements for the entire period of their engagement. Employers may therefore find themselves "retrospectively liable" for those entitlements.

For example, in *Fair Work Ombudsman v Crystal Carwash Cafe Pty Ltd (No 2)* [2014] FCA 827 (**"Crystal Carwash"**), the employing entity and two of its senior managers were held liable for underpayment of wages to 359 employees, totalling almost $180,000 over a 10 month period. The workers were purportedly engaged as contractors by ten sham labour hire companies, but were ultimately found to be employees.

Additionally, $90,000 worth of penalties were imposed after the employer admitted the sham arrangement.

Organisations should be aware, however, that liability for entitlements will accrue even when the mischaracterisation of the employment relationship in question is not deliberate (although an "innocent" employer may not be exposed to the same penalty consequences as in Crystal Carwash).

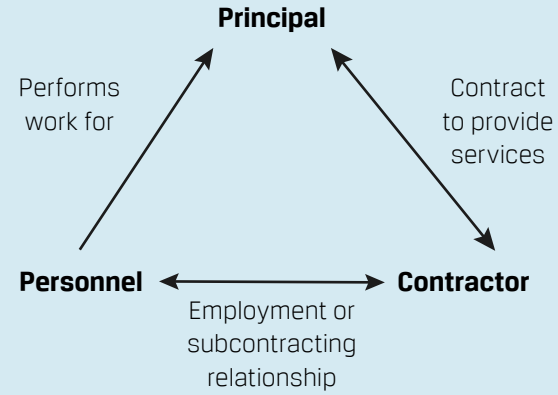
STRUCTURING ARRANGEMENTS PROPERLY: TRIANGULAR CONTRACTING AGREEMENTS

If an organisation reaches the conclusion that a contracting arrangement is appropriate in the circumstances (for example, because the job to be done is of limited duration, is highly specialised or lies outside the organisation's usual functions), a "triangular", or "tripartite" contracting agreement is one way of structuring the relationship between the parties so as to limit an organisation's exposure to claims that the worker engaged is actually an employee.

Triangular contracting arrangements are so named because they involve three parties:

- the Principal (your organisation);
- the Contractor (a second corporate entity); and
- the Personnel (the individual who is to perform the work).

The relationship between the parties is as follows:



Triangular contracting arrangements which introduce a corporate party (the Contractor) to stand between your organisation (the Principal) and the individual performing work for it (the Personnel) are likely to reduce the chances of that worker being deemed an employee of your organisation, but:

- only if the arrangement is constructed properly; and
- the true relationship between the parties reflects both what is contained in the agreement and the nature of the work undertaken (in contrast to the situation in the Quest case discussed **above**).

A triangular contracting arrangement will not be effective if it is an attempt to disguise what is really an employment relationship.

KEY TAKEAWAYS

- **Choose the right arrangement for the job:** while independent contracting may be appropriate in certain situations, a square peg will never fit a round hole.
- **Be aware of the difference between an employee and an independent contractor:** the courts consider the actual nature of the relationship between the parties. Simply calling someone an independent contractor and paying them according to an invoice will be insufficient if other factors suggest the relationship is really that of employer and employee.
- **Utilise strategies like triangular contracting arrangements:** if you determine that independent contracting is right in the circumstances, record the arrangement in a well constructed agreement in consultation with your legal advisors.
- **Know your obligations:** an organisation that is aware of its statutory obligations to all workers, be they employees or independent contractors, will be better placed to limit its exposure to liability.

STOP! INVESTIGATE AND LISTEN:
an up-to-date guide on workplace investigations

DAVID WEILER, ASSOCIATE

The legal, commercial and reputational risks arising from actions that include general protections (adverse action) and unfair dismissal claims, to applications for anti-bullying orders and a renewed focus on substantial compensation in sexual harassment complaints are leaving employers searching for robust, defensible, swift and effective workplace investigations techniques.

Conducting these workplace investigations requires considering a number of factors which we will explore in this article. Employers should feel comfortable relying on the findings of investigations, whether undertaken in-house or outsourced to professional firms.

STEP 1: TO INVESTIGATE OR NOT?

In order to implement best practice investigations, the first question always needs to be whether or not to investigate. Answering this question in the affirmative requires there to be material allegations in existence that, if true, would lead to a legitimate dispute or complaint. The objective of an effective investigation should be to determine the nature of the complaint, what has been observed and the seriousness of substantiated allegations. For example, if the allegations are substantiated would the conduct result in a breach of the law or company policy? If so, the decision must be made whether to carry out the investigation in-house, or commission an independent third party such as a workplace investigation company or lawyer.

It is important to remember that by having an external lawyer investigate the complaint, an employer has a greater chance of relying on legal privilege should the matter lead to litigation.

However, engaging an external investigator does not absolve an employer from the requirement of establishing that there was a valid reason for dismissal. In a recent case, the Fair Work Commission ("**Commission**") determined that an employee should be reinstated after being unfairly dismissed despite an external investigation finding that he had made a false complaint against another employee in relation to inappropriate touching of a patient. The flaws in the investigation and inferences made from it were grave enough for Deputy President Bull to rule that the conclusions relied upon to dismiss the employee were *"simply not available to St Vincent's on any reasonable and impartial evaluation of the evidence."*[12] This case exemplifies the importance of a well done investigation.

STEP 2: PLANNING THE INVESTIGATION

Upon receipt of a complaint, an employer should prepare an investigation plan. The plan should detail the relevant witnesses identified and include a

12 *Osmond v St Vincent's Hospital Sydney Limited T/A St Vincent's Hospital* [2015] FWC 7677 at [131].

proposed timeline. The investigator should be familiar with the relevant company policies regarding ethics, misconduct, grievance and discipline and applicable legislation or industrial instruments.

Once material facts in dispute have been established and the employer decides to carry out the investigation themselves, the mechanics need to be planned including:

- location of interviews;
- note taking and interview summaries;
- compliance with company policies and guidelines; and
- drafting a rough investigation timeline/mind map.

In the planning phase, an employer needs to be careful not to automatically stand down the respondent – procedural fairness must be ensured. Employers should consider alternatives such as moving employees into different work spaces or, if possible, allowing either the complainant or respondent to work from home.

When planning an investigation, there are three important roles that need to be filled:

Contact person – this position is relevant for the complainant, the respondent, any witnesses and the decision maker. The contact person's duty is to assist in any questions raised by any persons relevant to the investigation while remaining impartial.

Investigator – this position requires the most care and attention as it is the investigator who completes the fact finding process.

Decision maker – once a report has been provided by the investigator, the decision maker is required

to assess all the material evidenced and make a final determination (such as counselling, warnings, termination of employment or training and monitoring).

STEP 3: INFORMATION GATHERING

Complainant

Once an investigation plan has been decided and roles established, contact should be made with the complainant and the nature of the investigation and the investigator's role should be fully explained. A date and time must be set to attend an interview. Interviews should be conducted on a face-to-face basis where possible with a contemporaneous statement. It is important to advise the complainant of their right to a support person (or representation) at the interview.

Respondent

The respondent must also be contacted to provide an opportunity to respond to the allegations either orally at the interview or in writing. Remember to advise the respondent of their right to a support person (or representation) at the interview.

Procedural fairness is one of the main areas that investigators often get tripped up on in the investigation process. It is imperative that the respondent is afforded procedural fairness at each turn to avoid allegations being unfairly substantiated. The investigator should also follow any policies, maintain confidentiality at all times and investigate the matter fairly and without bias while maintaining objectivity and independence.

Witnesses

All relevant witnesses need to be interviewed to establish who can give the best information about specific factual allegations. The same process for convening a witness interview as taken with the complainant and the respondent should be utilised. Where possible a contemporaneous statement should be taken.

Another important area where investigators fail is that they ignore discrepancies in the evidence. If necessary, re-interview parties to fill in the gaps. While everyone wants the process wrapped up quickly, it is more important to do it right.

In *White v Asciano Services Pty Ltd t/as Pacific National* [2015] FWC 7466, a train driver was dismissed after an investigation found that he had purposefully (or negligently) left a co-worker on the side of the tracks when she went to use the bathroom. In the investigation report, a witness was quoted as saying *"I'm going to the toilet. Don't leave without me"*. This was used to establish the finding that the driver knew his co-worker was not using the on-board toilet. However, following the legal proceedings, the Commission came to the conclusion that the witness never actually said this. The reliance on inaccurate evidence in the investigation led to the reinstatement of the dismissed driver. Employers cannot try to make the facts fit the findings; instead the findings *must* fit the facts.

STEP 4: FINDINGS

Once the investigation is complete and all evidence has been obtained, the investigator must make his or her findings. This includes findings on the factual allegations of the specific incident or incidents to establish whether there has been a breach of contract or company policy.

Investigations are not criminal prosecutions and therefore the standard of proof that should be applied is the balance of probabilities. While it is necessary to be conscious of the gravity of the allegations and the consequences flowing from a particular finding, a recent Full Bench decision stated in no uncertain terms that *"in a common sense way, if serious misconduct is evident from the investigation, an employer cannot be expected to have no leanings or inclinations as to the likely sanction against the employee."*[13]

EFFECTIVE INVESTIGATIONS

Organisations know that turning a blind eye to complaints raised by employees is an ineffective strategy in the modern workplace. What is essential is having investigative capabilities, whether internal or external, to operate in today's legal environment. However, no matter how sophisticated a business becomes in this area, it must also feel able to call on professionals to take control of the process. The costs associated with a proper, independent investigation pale in comparison to the price of a legal claim.

KEY TAKEAWAYS

- Investing in investigations up front will save time and money down the track.
- Findings must be supported by facts (on the balance of probabilities), not feelings.
- Employers should develop internal investigative capacities but know when the situation calls for an external investigation.

13 *BHP Coal Pty Ltd T/A BMA v Jason Schmidt* [2016] FWCFB 72, at [35].

THE FAIR WORK ACT IN A GLOBAL SETTING:

the low down on employing foreign nationals in Australia

ADRIANA BEDON, SENIOR ASSOCIATE

It is becoming a well-worn cliché that expats living in Australia are happier and living a greater quality of life than their counterparts at home. This perception resonates throughout the annual survey rankings of the world's cities that offer the highest quality of life. 2015 was no exception, ranking both Sydney and Melbourne in the top 5. [14]

This promotion has served not only to attract skilled talent for recruitment purposes, but provides international employers with a powerful engagement and retention tool, should they wish to offer transfers and secondments to their respective Australian offices.

14 Monocle, *The Monocle Quality of Life Survey 2015* ‹http://monocle.com/film/affairs/the-monocle-quality-of-life-survey-2015/›

Given the above, Australia has become one of the most popular ex-pat hubs and as a result, HR departments globally are facing a growing need to become well acquainted with Australian labour laws and the skilled migration programs that work in tandem with these laws.

We set out a useful guide to this maze of overlapping laws and requirements below.

MIGRATION CHECK-IN: REQUIREMENTS TO BE ADDRESSED FROM THE OUTSET

It is all too often the case that migration requirements are not considered until the last stage of a global mobility plan's execution. For such a plan to move forward, all migration requirements need to be fully met before any transfers or secondments can commence, irrespective of the seniority of the visa applicant, or the urgency of their arrival.

In order to be able to sponsor foreign nationals for employment under the commonly known Subclass 457 Visa scheme (**"Visa"**), employers must become registered as "Business Sponsors" for Visa purposes.

(i) Employers with an established Australian office

International employers with an Australian office that has been in operation for 12 months or more are required to apply for a Standard Business Sponsorship (**"SBS"**).

Generally speaking, employers are required to demonstrate that they have lawful and financially viable Australian operations in place and are further required to meet training benchmark requirements.

Training benchmark requirements are met by providing evidence that the business has spent more than 1%

of annual payroll on training related activities for the benefit of their Australian employees in the 12 months prior to making the application. Alternatively, employers with no Australian employees may make a donation in the amount of 2% of their annual payroll to an industry relevant training fund to meet this requirement.

(ii) Overseas employers with no Australian office

International employers that do not have an Australian presence but need an employee to carry out business in Australia on their behalf, or establish their Australian operations, may apply for an Overseas Business Sponsorship (**"OBS"**).

This application is essentially the same as that involved for an SBS, without the requirement of meeting the training benchmark. Instead, OBS applicants are required to provide supporting documentation to evidence the business requirement their foreign national employee will be addressing, or a business plan to evidence their intention of establishing Australian operations.

(iii) New entrants to the Australian market

Australian start-ups (less than 12 months in operation) may also be eligible to sponsor foreign nationals for a Visa. Start-up businesses do not need to meet training benchmark requirements but must provide an auditable training plan to demonstrate how they will meet such training benchmarks once they reach the 12 month mark.

NOMINATING AN EMPLOYEE

Once an employer is registered as an Australian business sponsor they may proceed to nominate a foreign national provided there is a genuine need for the nominated role to be filled.

Further, the nominee must be coming in to take a role that is able to be sponsored, fits within the nature and scope of the business and, in some instances, employers will also be required to meet labour market testing requirements.

There are also requirements that apply with respect to a nominee's salary. In this regard, a nominee's Guaranteed Annual Earnings (**"GAE"**) must comply with two basic standards: in the first instance the GAE must at the least be equal to or above the Temporary Skilled Migration Income Threshold (**"TSMIT"**) and, more importantly, this amount must comply with Australian market rates for the nominated role.

In addition to the above, the GAE and other benefits must comply with rates imposed by any Modern Award or Enterprise Agreement, where applicable.

Finally, the nominee must have the requisite skill level for their nominated occupation and meet a series of other thresholds to obtain the corresponding Visa. This includes mainly health, character and English language requirements.

ARE EMPLOYERS REQUIRED TO ISSUE A WRITTEN EMPLOYMENT CONTRACT TO NEW RECRUITS COMMENCING IN THEIR AUSTRALIAN OFFICES?

There is no statutory requirement to issue a written employment contract to a new recruit in Australia.

However, we strongly advise that our clients issue contracts or transfer agreements that have been drafted to cater for their intentions on entering into the employment relationship so as to pre-emptively position the resolution of a dispute in their favour.

In particular, we recommend that Australian employment contracts issued to foreign nationals be drafted to include clauses that make the employment relationship contingent on the foreign national's ability to ascertain and maintain a valid visa with working rights. This will facilitate an employer's ability to terminate an employee should they breach visa conditions or otherwise compromise their visa status.

Australian HR teams should therefore execute contracts of employment with foreign nationals on engagement, as opposed to offering a simple letter confirming the basic terms and conditions. If an Australian employment contract is not executed, this may indicate that the law of the respective Australian state of the employment will govern future disputes. In such scenarios, the governing law of the contract in place may still govern remedies for breach of contract (i.e. post-termination restraints).

Further, a failure to issue a written employment contract may leave an employer open to disputes based on implied terms. In Australia, a range of terms may be implied into an employment agreement such as duties relating to work health and safety, or to the provision of reasonable notice on termination of employment.

WHICH LAWS APPLY TO FOREIGN NATIONALS ONCE THEY COMMENCE THEIR ROLES IN AUSTRALIA?

Once a foreign national commences their role in Australia they will be subject to Australia's statutory

employment law as per the *Fair Work Act 2009* (Cth) ("**FW Act**"), regardless of the governing law of their employment contract, with some minor exceptions.

Irrespective of any written employment contract or lack thereof, employees working in Australia will be entitled to:

- the standards set out in the ten National Employment Standards (**"NES"**); and
- the minimum terms of employment set out in any Modern Award or Enterprise Agreement, if one applies to the foreign national's role.

NEGOTIATION CONSIDERATIONS: HOLIDAY ENTITLEMENTS

The NES provide that Australian employees are entitled to 4 weeks of paid annual leave, calculated on a pro-rata basis. This is an accrued entitlement (which means it becomes available for use as it accrues).

Foreign nationals may find this to be a pleasant or not so pleasant surprise, depending on what they receive in their home-jurisdiction. On the one hand, this may be used as a point of negotiation when offering transfers to foreign nationals that are not accustomed to receiving this much leave. On the other hand, foreign nationals that are accustomed to 5.6 weeks of paid holiday leave (like our lucky UK counterparts) may need to be compensated with other benefits to address this shortfall.

Further, it is important to note that, unlike our UK counterparts, Australian employees retain all unused annual leave, meaning that it carries over from previous years when not used.

For this reason, Australian employers will often have annual leave policies that require employees to take annual leave during mandatory shut down periods (for example, Christmas), or when it remains unused for a lengthy period of time, to avoid large pay-outs in the future.

WHAT LAWS WILL GOVERN DISPUTES RELATING TO VISA HOLDERS IN AUSTRALIA WHO REQUIRE INTERMITTENT TRAVEL TO THEIR HOME OFFICE?

In today's globalised work culture, employees are often travelling into different jurisdictions as part of their daily roles.

Whilst the nature of circumstances surrounding a dispute will determine the governing laws, in some circumstances, the FW Act's provisions (such as the NES) or the conditions of a modern award extend to employees whilst overseas.

ACCRUED ENTITLEMENTS

In the same vein, it is important to note that the FW Act provides that employees will accrue the following entitlements on the basis of their length of service:

i. annual leave;

ii. personal/carer's leave;

iii. additional entitlements to notice periods on termination;

iv. redundancy pay;

v. parental leave; and

vi. long service leave.

Long service leave (**"LSL"**) in particular can cause issues for employers who have globe-trotting employees. At present there is no definitive standpoint on whether LSL is available to employees in Australia for periods spent working overseas for the same employer. However, the current authority on this matter notes that an entitlement to LSL may arise if an employee is

terminated while they are in the same state of Australia in which they were engaged, and their service during the relevant time period is seen as "substantially connected" to that state.

Given the above, we recommend that HR teams carefully monitor accrued entitlements for all foreign nationals, namely those initially engaged in Australia.

TERMINATING A VISA HOLDER

The threshold for what is considered to be a "harsh, unjust or unreasonable" termination is generally lower when it comes to Visa holders, given that their lawful stay in Australia is dependent on their ongoing employment.

Once terminated, Visa holders have 90 days to arrange for another visa or their departure from Australia. Given the gravity of the consequences for a Visa holder, a number of decisions have provided access to remedies under the FW Act, even in instances where the termination was for a valid reason.

HR teams need to ensure that procedural fairness is both offered and recorded to mitigate the "difficult circumstances" a Visa holder can be placed in on termination. It is also recommended that the services of a Registered Migration Agent be arranged to facilitate the Visa holder's ability to remain in the country, if this is their preference.

On termination, HR teams should also be mindful of their sponsorship obligations, including communicating the termination to the Department of Immigration and Border Protection within a 28 day period and maintaining records.

HR teams should also be aware that they will have an obligation to cover reasonable return travel air fares (i.e. economy class) for recently terminated Visa holders who request this in writing.

KEY TAKEAWAYS

- address migration requirements from the outset;
- have robust Australian employment contracts and/or secondment agreements for prospective foreign national employees;
- ensure foreign nationals are across their entitlements on engagement;
- monitor accrued entitlements; and
- carefully execute termination of Visa holders.

DIVERSITY IN THE WORKPLACE: facing up to challenges

ELIZABETH KENNY, ASSOCIATE

A new year brings new challenges and opportunities for employers, particularly in dealing with a diverse cross section of employees in the workplace. This article aims to explore some cultural issues in the workplace that have attracted attention in recent times and provide useful strategies for organisations to minimise legal exposure and develop an inclusive culture.

The role employers can play in supporting victims of domestic violence has been an important public policy question and employers may wish to consider taking a proactive role in developing strategies to support not only victims of domestic violence but also those who are supporting victims of domestic violence. This conversation is likely to consider the impact of domestic violence on the workplace and the ways in which employers can provide support to those affected by domestic violence through policies, employee support systems and workplace initiatives.

Another matter increasingly requiring the careful consideration by employers involves managing the transition or integration of transgender employees in the workplace. Many will remember 2015 as a defining year for transgender members of society with various celebrities and public figures publically announcing their support for transgender persons or sharing their own experiences as a transgender person. Employers may wish to consider how they can accommodate transgender employees in their organisation given that traditional workplaces pose particular challenges for transgender employees.

RESPONDING TO DOMESTIC VIOLENCE

The Australian Bureau of Statistics estimates that 17% of women aged 18 years and over and 5.3% of all men aged 18 years and over had experienced violence by a partner during the year 2012.[15] This tragic and staggering number inevitably touches all aspects of life, including the workplace. While Australia has developed domestic violence services and corresponding legal protections, until recently, these measures have primarily been criminal in nature. Recent law and policy measures have sought to address the broader range of harms associated with domestic violence and corresponding protections. Importantly, the financial security for victims of domestic violence has increasingly been recognised as critical to the safety of the victim and the victim's ability to escape a violent relationship. However, the difficulty for employers lies with many victims being reluctant to disclose their status and receive the support needed. It is in light of this that many companies have taken a proactive stance in relation to domestic violence, with companies such as NAB and Telstra implementing large scale initiatives to support victims of domestic violence including the allowance of extra days off and consideration of flexible working arrangements to accommodate the victim to continue to work despite their personal circumstances.

Victims of domestic violence and employees supporting a member of their immediate family who is experiencing domestic violence have a statutory entitlement to request a flexible work arrangement. While this entitlement does not automatically grant the employee a flexible work arrangement, it recognises the importance of supporting victims and making sure that victims stay in paid work. Paid leave associated with domestic violence is also becoming increasingly common in enterprise agreements as discretionary leave, however, the right to domestic violence leave may become a legal entitlement for employees covered by modern awards, with the Australian Council of Trade Unions recently applying to the Fair Work Commission in relation to their modern award review process to vary all awards to include 10 days' paid domestic violence leave.

In addition, employers may also consider implementing safety measures designed to protect victims, including

15 The Australian Bureau of Statistics Personal Safety Survey 2012, Experience of Partner Violence, http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/27A479CFBC2EA6CCCA257C3D000D84D6?opendocument

increased physical and cyber security where it is known that an employee is subject to domestic violence and measures that alert security if the perpetrator wants to contact or visit the employee and help ensure that any abusive contact is restricted by managing emails and phone calls.

TRANSGENDER EMPLOYEES

Transgender discrimination in the workplace is deemed to be unlawful under various pieces of anti-discrimination legislation, including the *Sex Discrimination Act 1984* (Cth). Employers therefore have a legal responsibility to take all reasonable steps to prevent discrimination and harassment in the workplace, or they may be found to be vicariously liable for any workplace discrimination or harassment engaged in by their employees.

Employers must be aware that there is an important distinction between the legal rights in the workplace of those who identify as transgender and those who are legally a "recognised transgender person" (that is, recognised at law as their identified gender rather than their birth gender). For example, if a transgender person who was born as a male but identifies as a female applies for a role that is open to females only, the employer cannot be required to give the role to the transgender person as they are not considered to be female in a legal sense.

Practical Challenges

It is important that employers consider how they can best manage hostile reactions and ensure their workplace behaviour policies reflect the organisation's stance on having an inclusive environment and train employees on their obligations under anti-discrimination law. For example, some employees may express their discomfort or openly oppose transgender employees using facilities that are appropriate for their affirmed gender. Transgender employees should be able to use toilets, change rooms and other facilities that are appropriate to their affirmed gender when they commence transition. Employers may also consider working with individual transgender employees to develop transition plans specific to the individual employee which can include strategies on how the employee wishes to be addressed, how the matter will be addressed with colleagues in the workplace and any other matters relevant to each individual case.

Issues for Consideration

There are a number of issues that we recommend an employer consider in determining how best to manage transgender employees in the workplace, not only for the transgender employee, but all employees who may be impacted by the transition of existing transgender

employees, or integration of new transgender employees.

1. Do any administrative changes need to be made to reflect the transgender employee's preferred gender such as email accounts, mailing lists, or other documentation?
2. Does your organisation need to engage in any communications or education with internal and/or external stakeholders to manage the transition or integration of the transgender employee into the workplace and to raise awareness of relevant issues?
3. Does the transgender employee wish to use toilets or other facilities that are designated to the gender with which they identify? What reasonable accommodations may be made to facilitate use of those facilities by the transgender employee?
4. What additional support or assistance could or should your organisation provide for the transgender employee or other employees to assist with the transition or integration?

Responding to domestic violence, particularly the impact of domestic violence on an employee and the workplace, and the management of the integration or transition of transgender employees are sensitive

issues that require careful consideration by an organisation. Employers must acknowledge that there is no "one size fits all" approach to matters that involve an employee's personal circumstances and the organisation must ensure it has a clear process and structure on dealing with sensitive matters in a supportive and inclusive manner. In managing and supporting employees during difficult times or times of change, an organisation will also benefit through retention of key staff and the development of an inclusive and diverse culture.

KEY TAKEAWAYS

- Managing diversity in the workplace is not just a legal issue, but about developing inclusive and rich workplace cultures.
- Victims of domestic violence, or those supporting victims of domestic violence, may benefit from additional leave entitlements or recognising the employee's need for a flexible work arrangement.
- Transgender employees should be supported not just in the physical aspects of the workplace, but also through policies and procedures that educate other employees in relation to the transition and integration of transgender employees.

INNOVATION IN THE WORKPLACE UNDER THE *FAIR WORK ACT*

JAMES ZENG, SENIOR ASSOCIATE

Innovation in the workplace has been linked to increased productivity, profitability and improved workplace outcomes. Innovative workplaces are workplaces that are flexible and successfully adapt to change. Organisations are reminded time and time again that the failure to innovate will result in a decline in productivity and ultimately their demise in a competitive global market due to a failure to adapt and change to meet emerging challenges.

The *Fair Work Act 2009* (Cth) (**"FW Act"**) has been criticised by many for inhibiting innovation and at times described as an impediment to increased productivity.[16] However, employers should aware be that there are a number of opportunities for organisations to take advantage of the existing legislative framework and recent amendments to drive innovation in the workplace. This article examines some of the areas of employment law that businesses can explore when looking at driving innovation in the workplace in 2016.

INNOVATION IN ENTERPRISE BARGAINING

During enterprise bargaining cycles, many organisations merely update their existing enterprise agreement to bring remuneration in line with, or slightly above rates under the applicable modern award. Rather, enterprise bargaining should be seen as an opportunity to insert provisions that help drive innovation in the workplace. Organisations often bargain with unions and employees based on information and statistics on past performance and at times fail to take into consideration the potential for innovation driven productivity improvements.

The FW Act permits enterprise agreements to contain a number of terms pertaining to the relationship between employer and employee including terms relating to wages and allowances, hours of work and shift patterns, as well as clauses that help drive innovation in the workplace. Accordingly, organisations should not limit the contents of their enterprise agreements to the matters contained in the modern award that would have otherwise applied to their workforce but should consider introducing innovative clauses that help promote increased productivity and flexibility.

For example, an organisation might include a clause mandating the multi-skilling of the workforce and thereby improving flexibility and reducing or eliminating the strict demarcation of roles. Organisations can, during bargaining, also take the opportunity to tie additional payments, sometimes referred to as productivity allowances, or pay rises higher than those sought by unions, to productivity achievements by the workforce during the life of the enterprise agreement.

IMPROVING WORKFORCE SKILLS

Past research[17] has shown that improvements in innovation can occur if organisations improve the skills and knowledge of their workforce. An employee who considers that they have a future in their organisation is more likely to be engaged and drive innovation than a disengaged employee. Whilst very few modern awards provide for study leave, training or study assistance, an organisation can offer skills training for its workforce as part of its suite of employee benefits and in the place of other direct monetary benefits. Organisations have recognised in the past that offering skills training and study assistance are key retention tools and assist in career advancement within the organisation. However, this should not be limited to any particular industry or to one part of an organisation's workforce (such as professionals) but offered to the whole workforce.

16 *Towards more productive and equitable workplaces, An evaluation of the Fair Work Legislation* [9-27], [72].

Further, skills training is an additional benefit that might be provided to employees during enterprise bargaining and considered by the Fair Work Commission when it is undertaking the better-off-overall test and deciding whether to approve an enterprise agreement.

INCENTIVISING INNOVATION

Organisations should look at ways of incentivising innovation in the workplace. Whilst tying bonus payments and other additional remuneration to innovation will certainly do this, there are ways to incentivise innovation on a long term basis including through issuing of shares linked to the performance of the organisation. As a result of changes to legislation implemented by the Federal Government in June 2015, incentivising innovation is not limited to merely payment of bonuses, productivity allowances, or providing share interests for employees of listed companies. Now, all types of organisations can adopt share plans as a way of incentivising innovation.

Those changes reversed a number of unpopular provisions in respect of taxation on employee share interests that have been acquired at a discount. The amendment to the existing legislation introduced additional generous tax concessions on employee share interests, where previously employees were subject to complex rules and adverse tax consequences. Favourable tax treatment has made employee share arrangements and plans more attractive as a means of recruiting and retaining key team members and rewarding hard working employees who help drive innovation in the workplace. Start up companies and small and medium business enterprises should be aware and take advantage of additional tax concessions for employees with employee share interests in their organisations.

ENCOURAGING DIVERSITY IN THE WORKPLACE

Innovation in the workplace has been shown to be driven by employees approaching challenges from different angles, and finding more varied solutions. Organisations should look towards recruiting and retaining employees with values that align with the vision of the business but who come from different backgrounds and experiences. Organisations should introduce policies and procedures that encourage diversity and help retain employees from diverse walks of life. This goes beyond merely implementing policies that deal with unlawful discrimination and paid parental leave and extends to implementing policies that deal with gay, lesbian and transgender employees, recruitment policies that avoid discrimination based on "pedigree" (such as university education) and policies that provide flexibility for employees who may need to work from home for a variety of reasons.

HIGH-INCOME GUARANTEE AND ANNUALISED SALARIES

Finally, organisations that pay employees above the high-income threshold (currently $136,700 per annum, until at least 1 July 2016) should take advantage of the high income threshold guarantee to allow greater workplace flexibility and avoid certain limitations under the modern awards. A high-income employee who is provided a written guarantee of annual earnings is not covered by a modern award. This allows employers to implement innovative and flexible arrangements including the ability for the employee to determine their own hours of work. Organisations should also take advantage of annualised salary provisions in modern awards for salaried employees where possible.

KEY TAKEAWAYS

- Organisations should take the opportunity to include clauses that drive innovation in the workplace in their enterprise agreement and bargain with a forward thinking outlook.
- Organisations should consider implementing policies and procedures that attract and retain employees from a diverse range of backgrounds.
- Organisations should take advantage of the high-income guarantee under the FW Act and annualised salary provisions in modern awards, where possible, to drive innovation in the workplace.

17 *Workforce Skills and Innovation: An Overview of Major Themes in Literature, OECD* [7-9], [30-33].

IN THE SPOTLIGHT: alternative dispute resolution

LYNDALL HUMPHRIES, SENIOR ASSOCIATE

Alternative dispute resolution ("ADR") is now a familiar part of the workplace relations landscape, both before and after the commencement of litigation. There are a lot of cases in which ADR is not only appropriate but a much better way of reaching an outcome than by way of legal proceedings.

WHAT IS ADR?

ADR encompasses a wide range of processes designed to resolve disputes without judicial determination. ADR most commonly involves an independent person helping people in dispute resolve the issues between them. The flexibility of ADR means that it can be used for almost any kind of dispute and is particularly well suited to workplace grievances including where there is an ongoing employment relationship.

In some cases it is a voluntary process engaged in with the agreement of all parties and in other cases legislation or an industrial instrument may require parties to participate in a particular form of ADR. The name ADR suggests that it is an alternative to litigation. However, these days, it is often incorporated into the litigation process or used alongside legal proceedings.

TYPES OF ADR

There are many different types of ADR processes that can be used to manage a dispute. This article focuses on mediation due to its suitability for workplace disputes. However, we also draw your attention to other types of ADR commonly used in the workplace:

Negotiations

When a workplace dispute has arisen, negotiation is the most simple and flexible form of ADR. This process is suitable if the parties can discuss matters directly and want some control over the outcome. Settlement negotiations can be conducted by telephone, in correspondence or face-to-face. If there has been a breakdown in the employment relationship, it may assist to have another person, such as a lawyer, helping with the negotiations.

Employment lawyers are experienced at resolving workplace grievances and negotiating outcomes for clients. Either party to legal proceedings may serve an offer of settlement or compromise on the opposing party. Offers to settle may also be made by way of a *Calderbank* offer. Consideration needs to be given to the potential cost consequences of making or rejecting offers of settlement in the context of negotiation and litigation.

Conciliation

Conciliation is a similar process to mediation. A conciliator will assist the parties to identify the

disputed issues, develop and explore possible options and ultimately reach an agreement. The conciliator may take an advisory role and usually has specialist knowledge. Conciliation can be helpful when parties want an expert view or where self-represented litigants would like to reach an agreement on technical legal issues. Conciliation may be voluntary, court ordered or required as part of a contract or industrial instrument.

Arbitration

Arbitration involves the parties to a dispute presenting arguments and evidence to an arbitrator for determination. The arbitrator's decision is binding and enforceable. The arbitrator may be a lawyer and usually has specialist knowledge. Arbitration is the most similar process to legal proceedings and parties are often legally represented. Arbitration may be useful when the parties want a decision made for them other than imposed by legal proceedings.

The flexibility of ADR means that hybrid models of the above processes are sometimes used. In addition, online ADR is becoming increasingly more prevalent as ADR is taking place via email, Skype and video conferencing.

INTERACTION WITH LEGISLATION

The emphasis on settling disputes by means of ADR processes is sometimes set out in legislation. For example, the *Fair Work Act 2009* (**"FW Act"**) requires that all modern awards include a term which sets out a procedure for resolving disputes between employers and employees about any matter arising under the modern award and the National Employment Standards. In addition, when making an enterprise agreement, the FW Act requires the parties to include a dispute resolution clause. Enterprise agreements lodged without such a clause will not be approved. The FW Act also requires that parties to a contested unfair dismissal or general protections dismissal application attend a conciliation conference.

FOCUS ON MEDIATION

Mediation is the process of assisted negotiation guided by an independent and impartial professional who helps to clarify the issues in dispute, identify options, consider alternatives and jointly agree the details of any settlement. The mediator generally does not give opinions or advice.

Parties are not restricted to discussing matters that would be the subject of legal proceedings and parties can generally bring any issues to the table. It is interest-based in that parties are free to reach settlements that are based on interests rather than legal entitlements.

Mediation is confidential and this is essential to encourage the parties to engage in open dialogue. Anything that is said during discussions cannot later be used as evidence in litigation, much like without prejudice negotiations.

Decisions on settlement are made by the parties themselves and, as there is no imposed outcome, mediations do not always conclude with resolution of the dispute.

It is important that those attending the mediation have the necessary authority, or delegated authority, to settle a legal claim. This enables the mediation to end with clarity about whether the dispute has settled, in full or in part, and if so what the terms of settlement are.

CHOOSING A MEDIATOR

Mediators do not have to be lawyers, but they often are. Parties attending a mediation on a workplace dispute are likely to engage a mediator who is a workplace relations specialist. In addition to expertise, personal style and approach will impact on the mediation's success.

REPRESENTATION AT MEDIATION

Mediation is about establishing a dialogue between the parties and who is best placed to do this will depend on the particular case. Whether it is a lawyer or the parties themselves who speak will depend on status, confidence and impact. Regardless of who speaks, a lawyer may assist by framing realistic expectations with regard to legal rights or by drawing up the settlement agreement.

THE MEDIATION PROCESS

Mediation is not as informal as one might think. It uses a structured approach to identify the issues in dispute, discuss desired outcomes and explore possible solutions whilst encouraging the parties to be realistic in their expectations.

Generally, the first phase is a joint meeting and the second phase is separate private sessions with the mediator shuttling between the parties. The final stage of the mediation process may be the settlement agreement and closure. The mediator will ensure that the parties are clear about what has been agreed in writing at the time.

ADVANTAGES AND DISADVANTAGES

A summary of the perceived advantages and disadvantages of ADR are set out **below**.

ADVANTAGES OF ADR

- Increased settlement
- Improved satisfaction with the process and outcome
- Reduced time in dispute
- Reduced costs
- Control over the process
- Increased compliance with agreed solutions
- Reduced uncertainty around the outcome of judgment in Courts
- Confidentiality

FURTHER ADVANTAGES OF MEDIATION

- Greater focus on realistic and practical outcomes
- Ability to agree creative and flexible outcomes
- Potential to mend strained employment relationships
- Parties empowered by achieving a satisfactory outcome

DISADVANTAGES OF ADR

- Failed expectations of reduced time or costs
- Unsustainable or unenforceable outcome or agreement
- Narrowed resolution options following a specialist opinion or non-binding determination
- Prolonged dispute due to use of delaying tactics
- Unsuitable for multiple parties

FURTHER DISADVANTAGES OF MEDIATION

- Parties may withhold information or not negotiate in good faith
- Unsuitable for cases requiring urgent interim relief
- Confidentiality (in limited cases, for example where an employee has been treated unfairly or unlawfully)
- Power imbalance between the parties
- Past conduct not adequately addressed

KEY TAKEAWAYS

- Use of ADR processes can be considered both before or throughout any legal proceedings.
- There are a range of ADR processes that are suitable for resolving workplace disputes including negotiation, conciliation, arbitration and mediation.
- Effective use of ADR may offer benefits over litigation including reduced time and costs and increased settlement, certainty and control over the outcome.

UPCOMING EVENTS

2016 Events Schedule

www.peopleculture.com.au/events

PCS has a proud history of thought-leadership in labour and employment law. 2016 will be the fifth year that our firm will deliver a comprehensive range of webinars, education and training sessions and key briefings designed to span the areas that our clients consider to be the most relevant.

If you are a PCS client, many of our events are offered to you on a complementary basis or at reduced costs.

WEBINAR PROGRAM

All webinars are facilitated by members of the PCS 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 the ability to ask the presenter questions and engage in group discussion.

WEDNESDAY, 16 MARCH 2016

Webinar

Today's Workplace: Part 1

WEDNESDAY, 20 APRIL 2016

Webinar

Today's Workplace: Part 2

WEDNESDAY, 18 MAY 2016

Webinar

Under surveillance: Auditing and assessing your workplace surveillance and privacy policies and processes

WEDNESDAY, 15 JUNE 2016

Webinar

A fresh look at productivity

WEDNESDAY, 20 JULY 2016

Webinar

Sign on the dotted line: What your employment contacts should look like

WEDNESDAY, 17 AUGUST 2016

Webinar

Fit v unfit for work: When is an employee unfit for work?

WEDNESDAY, 14 SEPTEMBER 2016

Webinar

10 things you didn't know about labour law

WEDNESDAY, 19 OCTOBER 2016

Webinar

Managing redundancies in today's environment

WEDNESDAY, 16 NOVEMBER 2016

Webinar

2016 wrap up and the year ahead

LEGAL BASICS FOR EMERGING HR PROFESSIONALS

This four-part program is ideal for junior HR professionals and line managers. The series includes core legal principles across all facets of employment law.

	Session 1	Session 2	Session 3	Session 4
Sydney	Tuesday 26 April	Tuesday 10 May	Tuesday 24 May	Tuesday 7 June
Melbourne	Wednesday 27 April	Wednesday 11 May	Wednesday 25 May	Wednesday 8 June
Brisbane	Thursday 28 April	Thursday 12 May	Thursday 26 May	Thursday 9 June

PCS SIGNATURE EVENTS

These are our twice-yearly invitation only events. Our June Key Breakfast Briefing will explore our 2016 White Paper and our hugely successful Hypothetical series returns for its fifth year in November 2016.

KEY BREAKFAST BRIEFINGS

Sydney: Tuesday 21 June 2016
Melbourne: Wednesday 22 June 2016
Brisbane: Thursday 23 June 2016

THURSDAY, 10 NOVEMBER 2016

Signature Events

2016 Hypothetical

Sydney

RECENT EVENTS

PCS HYPOTHETICAL EVENT 2015

OAKS DAY

PCS CHRISTMAS

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