STRATEGEYES:

Workplace Perspectives

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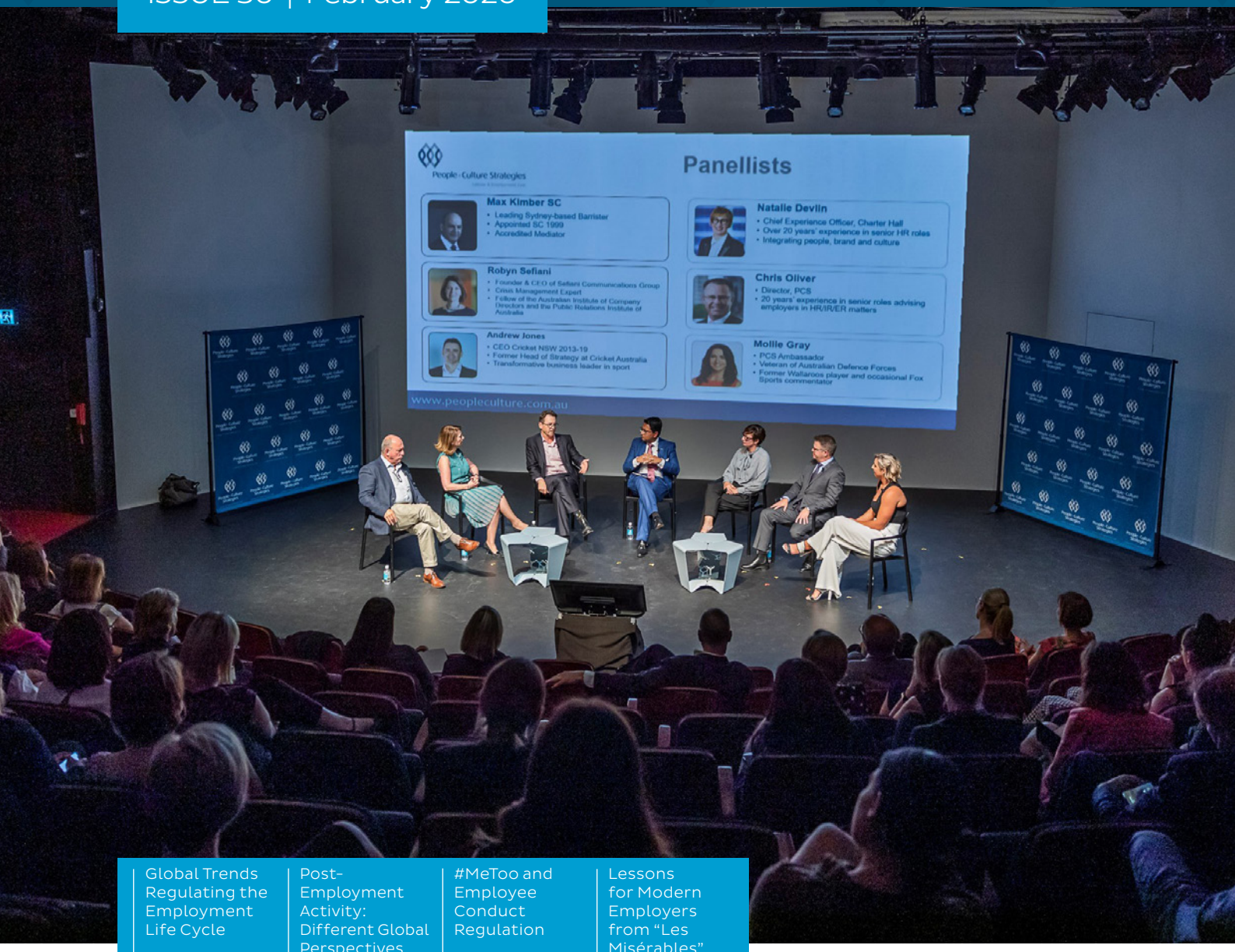

People+Culture Strategies
Labour & Employment Law

A look inside:

Message

from the Founder and Managing Principal

The calendar year got off to a busy and exciting start for the PCS team with us hosting the first Innangard Global Employment Law conference at the Amora Jamison Hotel on 22 January 2020.

It was a pleasure to host representatives from our fellow Innangard member firms from the UK, Ireland, Spain, Italy, Germany, Netherlands and France. PCS has been the Australian member firm for this wonderful alliance for several years and the conference we hosted showcased the truly global footprint that the firm has and is able to deliver to its clients. I know that our Innangard colleagues and clients alike appreciated the opportunity to understand more about each other as is one of the great benefits of these initiatives.

We have dedicated this edition of Strategy-Eyes to the three conference sessions, all of which were entertaining and informative. Numerous attendees were overheard to say something to the effect of: "There's a lot of similarities around the world in employment law but also just enough differences to make each country unique!"

Outside of our global alliance, this year is going to be another bumper year for PCS, not least of which because we celebrate our 10th birthday on 1 July. A befitting celebration will take place on that day and we look forward to sharing that celebration with our valued clients and business partners.

Separately, the firm has embarked on two partnerships, this time as Official People Partner of Sport NSW and Netball NSW. Sport NSW is an independent member-based peak body representing New South Wales sport and the active recreation sector. With its pre-existing status as Official People Partner of both Cricket NSW and NSW Rugby (and the Waratahs), PCS looks forward to being able to share its expertise across people management matters to all employers in the sporting sector in this state. It is tremendous that we now have been able to add netball to our suite of pre-eminent sports.

Finally, in 2020 the Firm will be hosting a record number of education and thought leadership events across its PClasseS series, the monthly webinars as well as the standalone programs. We encourage all clients to take advantage of the breadth and depth of our service offering in this space.

On behalf of the team, I hope 2020 is a great year for you and your organisations.

Joydeep Hor
FOUNDER AND MANAGING PRINCIPAL

Global Trends Regulating the Employment Life Cycle

By Roxanne Fisch, EXECUTIVE COUNSEL & Andrew Jose, ASSOCIATE

People + Culture Strategies recently hosted the Innangard Global Employment Law Conference in Sydney, during which we were privileged to hear from members of the Innangard International Employment Law Alliance including representatives from Ireland, France, Germany, Spain, Italy, the Netherlands and the United Kingdom. In the first session, we heard from a selection of legal expert panelists from across the globe on key employment law issues that arise in the employment lifecycle. Some of the global trends emerging provided the audience with key insights into how Australian employment and industrial regulation may soon evolve.

Discrimination

Discrimination can arise at any stage of the employment lifecycle, but it is particularly important to be cognisant of its potential occurrence during the recruitment phase.

In Australia, while the grounds of unlawful discrimination do differ between Federal and State jurisdictions, they cover fairly well-settled protected characteristics such as age, gender, sexual preference, pregnancy status, race and disability. Some European countries have taken a step further in protecting certain characteristics or attributes that Australians may not think of when it comes to discrimination in the employment context. For example, in the United Kingdom, a recent finding confirmed that a person who is an "ethical vegan" is protected from discrimination on the grounds of "philosophical belief" under the *Equality Act* 2010 (UK). In Ireland, those who suffer from alcoholism, which is classed as a medical illness, cannot be discriminated against in the employment context.

Further protections from discrimination come in the form of prohibited questions asked during the recruitment stage. In Spain and Italy, employers

are generally prohibited from asking prospective employees whether they have a criminal record. In the Australian context, while there is no such prohibition, the recent introduction of the *Australian Human Rights Commission Regulations 2019* has amended the criminal record ground, to now make it unlawful to discriminate against prospective employees if they have an *irrelevant* criminal record. In the Netherlands, for certain jobs, employers can request that a "Certificate of Good Behaviour" (which would usually disclose whether a person has a criminal record) is provided for the prospective employee, the absence of which can be a legitimate reason not to hire that person. In Germany, while many of the same protections apply, special rules exist for employers associated with the various churches that occupy a special status under the German Constitution. These employers are subject to specific exemptions which can allow them to discriminate on protected grounds such as marital status, however we understand this law is currently under review.

A common ground for protection against discrimination is that of pregnancy, with each country represented by the panelists having protections against discrimination on the ground of pregnancy, with some countries also expressly prohibiting questions about a prospective employee's marital status. Italy has gone a step further by prohibiting employers from dismissing a female employee for marriage, covering the period from the date of publication of marriage "banns" (which is a publication that notifies the public of the couple's intention to marry) to the first anniversary of the wedding date.

Dishonesty

It would be fair to say that some employees do "stretch" the truth when it comes to certain aspects of their employment, particularly in pre-employment screening questions. From an Australian employment law perspective, this kind of deliberate dishonesty would generally be viewed as misconduct and may constitute grounds for dismissal. Not so in France, with the French Supreme Court having ruled that employees can lie to a certain degree on their curriculum vitae, for example, by lengthening the periods of internships they have undertaken. This "special French relationship with the truth" as one of the panelists described it even extended to France's government, notably in the case of a senior minister who was allowed to stay in her job despite lying about having completed a Masters degree!

Whistleblowing

Employers in Australia would likely be aware of the new whistleblower protections in the *Corporations Act 2001* (Cth) and the taxation legislation, which require certain employers to enact whistleblower policies. This area of law is comparatively more established in Europe, where there appear to be stronger protections and more onerous remedies for breaches of the protections owed to whistleblowers. In France for example, it is mandatory for employers with over 50 employees to enact a whistleblower policy. In Ireland, the penalties for dismissing an employee for whistleblowing can amount to five years' worth of salary as compensation, and in the United Kingdom, restraining injunctions can be ordered against employers.

Privacy and Data Protection

A significant legislative development that European jurisdictions have been dealing with in recent years has been the data and privacy protections under the European Union's General Data Protection Regulation (EU) 2016/679 ("GDPR"). Australian businesses with EU operations will likely be familiar with the GDPR.

Under the GDPR, employers are restricted in the types of personal data that they can collect and the circumstances in which they are collected and the GDPR contains enhanced rights for individuals in respect of their data, such as the "right to be forgotten'' and the "right to object'' to the processing of their personal data. One of the grounds on which an employer can collect data is if they have a "legitimate interest", however this must not affect the fundamental rights and freedoms of the employee.

In Ireland, employees have the right to request any data that is collected about them at any stage during the recruitment process, which includes any recorded comments made during that process and can extend to data collected by recruitment agencies. Such requests must be responded to within 30 days, and all such data is discoverable, with heavy financial sanctions on employers who do not comply. In France, protections and concerns over employee privacy have persisted even before the introduction of the GDPR, which has resulted in much longer employment agreements compared to twenty years ago. Part of those protections include how employers deal with data that is stored by employees on their devices, whether or not they are personal or provided by the employer.

In France, as there is no concept of discovery, employers have to be clear that data which is stored on employer-provided devices is employer data which they can access.

While privacy laws are well-established in Australia, this continues to be a developing area, which will likely be influenced by emerging cybersecurity threats and will no doubt become a more prevalent issue as employers respond to growing concerns over privacy and data security.

Regulation of Employment Agreements

Although unions in Australia can represent employees in the realm of enterprise bargaining and modern awards, the Australian employment landscape appears to exist in stark contrast to the high level of collectivisation and apparent worker influence prevalent in European systems. A common theme amongst all the panelists, was the existence of collective bargaining agreements which are usually industry-based and works councils, particularly in Spain and Germany. It is unclear, however, which approach lends itself towards enhanced benefits for employees.

The terms and conditions of collective bargaining agreements that apply in these European countries cover employee entitlements such as pay, annual leave and hours of work, whereas terms relating to non-compete, confidentiality and privacy are up to individual employers to negotiate with employees. In Ireland, there is an added layer of complexity due to the rights enshrined in the Irish Constitution, which permeate through to the level of control that employers can have. For example, the Irish Constitution contains protections over "bodily integrity" which prevent most cases of employer mandated drug and alcohol testing. There are also enshrined protections over privacy, fair procedures and the right to form associations and unions, all of which have an impact on employee rights and the corresponding rights of employers to manage their employees.

In contrast, as Australia does not have any comparable constitutional rights other than those few implied rights evinced through the common law, such as the implied right to freedom of political communication (which the common law has established as not being a personal right but rather a limit on legislative power), the regulation of the employment relationship primarily occurs through legislation (most notably the *Fair Work Act 2009* (Cth)) and the common law.

From listening to the panelists, it also appears that as collective agreements are more established, there is a more-streamlined approach in collective bargaining, compared to the more defined and comprehensive collective bargaining approach required in Australia, which is evident in the high levels of collective agreements and corresponding obligations placed upon employers. Statistics show that approximately 60% of employees in Europe are covered by collective agreements, in comparison to Australia where approximately 38% of employees are covered by enterprise agreements.

Legal Rights in Cases of Termination

While the general grounds of termination are more or less consistent across the various European jurisdictions represented at the conference, there are a few notable differences in certain aspects of the termination process and the legal rights of employees and employers.

In France for example, employees can be terminated for misconduct or performance reasons, much the same as in Australia. However, when it comes to terminations for economic reasons, employers are only able to terminate employment on the basis of the business having "financial shortcomings" or competitive difficulties, which is limited to "safeguarding competitiveness" rather than simply the employer wanting to achieve more profit. By contrast, while Germany does allow for redundancies, as the panelist explained, employers usually have to be "creative" in order to mitigate against the risk of legal challenges. The Netherlands has a similar system to Germany, however it has the added "preventative review" requirement, where employers must obtain prior approval from either the court or the relevant authority before they can terminate a person's employment. Additionally, it is a requirement that employees receive severance pay even where the dismissal is due to misconduct, unless it is very serious.

The Netherlands has also recently introduced a new ground of termination for "accumulation" which allows an employer to essentially terminate an employee's employment for more than one ground. In Ireland, there is also an apparent "catch-all" ground allowing employers to terminate an employee's employment where there are "other substantial reasons", such as bringing the company into disrepute or the

employee being involved in an altercation. In contrast, Italian employers can only dismiss employees for gross misconduct, economic reasons, or "non-fulfilment of the obligations of their employment" which makes it very difficult to terminate an employee's employment for poor performance or non-fulfilment of their obligations. Italian employers are also more exposed as reinstatement is the primary remedy, or for those hired after March 2015, the risk of being ordered to pay up to 36 months' salary.

Potential Impact on Australian Employers

For Australian employers with operations in these European countries, they should already be well aware of the laws regulating the employment relationship. For others, the panelists provided a thought-provoking flavour of how their country's laws impact on the employment lifecycle. As a common law jurisdiction, where our courts often look to these other jurisdictions for precedent, it is possible that our legislators may be influenced by these constantly evolving laws and trends in the years to come, especially as the world becomes increasingly globalised.

Post-Employment Activity: Different Global Perspectives

By Ariane McGing, SENIOR ASSOCIATE & Rocio Jamardo Paradela, GRADUATE ASSOCIATE

The second session of the Innangard Global Employment Law Conference looked at global perspectives on post-employment activity, in particular restrictive covenants on employees. Panelists from Australia, England, Ireland, Italy and Germany discussed the similarities and differences between their jurisdictions about trends and enforcement of post-employment restraints.

The need for Post-Employment Restraints

It was agreed by the panelists that the law of their respective jurisdictions require employees to owe their employers a general obligation of loyalty, confidentiality and non-competition during the employment relationship. However, as there is no general rule in relation to these matters that applies by implication after termination, restrictive covenants should be included in the employment contract relating to non-competition, exclusivity, confidentiality and non-solicitation.

All panelists agreed that these restraints are more common for senior executives, or those working in research and development. This is largely by virtue of their importance to their organisations and the confidential information to which they have access.

The panelists agreed that the preferable option was to have post-employment restraints contained in the employment contract to provide certainty for both parties on rights and obligations. In all jurisdictions negotiation and entry into a deed containing post-employment restraints or (less commonly) injunctive relief from the Courts in the event of termination of employment by either party are common practice.

Validity of Post-Employment Restraints

All jurisdictions covered by the panel maintain the general principle that restraints placed on employees following termination of employment are generally void as against public policy. All jurisdictions only allow restraints to be enforceable to the extent they are reasonable and necessary to protect the employer's legitimate business interests. Legitimate interests of the employer which are capable of protection include the employer's trade secrets, confidential information and goodwill of the business.

In all jurisdictions, where a restraint attempts to stop an employee from working for someone else, it must only be for a reasonable period of time, in a limited geographic area and for restricted activities (for example, working for a direct competitor). This is due to the recognition of the law that a person must be free to earn a living, which exists in tension with the wish of the employer to protect its interests. In Ireland in particular, there is a specific constitutional right to earn a living which must be considered when determining the reasonableness of a restraint.

The panelists all agreed that courts are less likely to enforce non-compete clauses than non-solicitation clauses given their ability to restrict someone's earning capacity, with non-solicitation clauses often deemed sufficient to protect the interests of the employer against the leaving employee.

Another option discussed and used relatively commonly in the UK, Ireland and Australia, is to place an employee on a period of gardening leave, during which the employer will continue to pay the employee their salary but direct them not to attend work for some or all of the period. While this does not amount to a restraint of trade it may have the same effect because the employee is restricted from working for a competitor.

While the UK, Ireland and Australia rely on case law and examination of the facts and circumstances of each case to determine what is reasonable, the civil law countries of Germany and Italy have more codified rules about how long a restraint is able to be enforced following termination of employment.

In Germany, a non-compete clause will only be enforceable as long as it protects a legitimate business interest of the employer and the restriction cannot exceed two years after the termination of the employment relationship.

In Italy, the duration of a non-competition covenant is restricted to a limit of five years for executives and three years for all other employees, and the courts will automatically reduce the duration if the covenant exceeds these limits.

Requirement for Consideration

Interestingly, the common law jurisdictions of Australia, England and Ireland do not require specific consideration to be paid to an employee in order to make a reasonable restraint enforceable. Where the restraints are contained in the employment contract, the salary paid to the employee is deemed to be sufficient consideration. However, sometimes the employer and employee may agree for the employer to pay the employee an additional amount in consideration for further post-employment restraints that were not set out in the employment contract.

This contrasts with the civil law jurisdictions of Italy and Germany, where specific consideration is required to make restraints enforceable.

In Germany, the employer is obliged to pay compensation to the employee, amounting to at least 50% of the employee's total annual remuneration, including bonuses and commissions for the period of the restraint.

In Italy, for non-competition restraints to be valid, compensation is normally between 15% and 30% of annual salary paid for the period of the restraint.

Remedies

The most common remedy sought by employers dealing with a breach of a restraint clause is to seek an injunction (usually on an interlocutory basis) to restrain the former employee from acting in a way that breaches the restraint of trade clause. After the interlocutory injunction, if the case has not been settled, it proceeds to a more formal hearing. Normally, new employers are part of these proceedings, and frequently the funders of the litigation.

Springboard injunctions are the most common way of enforcing restrictive covenants in the UK, as they help mitigate the unfair headstart which the employee obtains over competitors by using the employer's confidential information. Temporary injunctions can also be granted to prevent breaches while the case is in progress. While it is almost impossible to stop an employee from working for someone else, this remedy effectively does what a confidentiality clause

in a contract would do: it stops the employee from using confidential information once the employee has left the organisation.

All panelists agreed that these matters are generally settled by injunction and/or a Deed or undertakings, as formal hearings are expensive and uncertain for all involved.

In Germany employers are permitted to include a penalty clause in the employment contract, so that if there is a breach of a restraint, the employee must pay the penalty to the employer.

In Italy the employee must return the money that was paid to them as consideration for the restraint to the employer, and if there is also a penalty clause in the employment contract, they must pay the penalty as well. When the future employer is a party to the proceedings (as is usually the case), it will usually pay the penalty on behalf of the employee, as they are frequently the party obtaining the greatest advantage in the new employee joining their business.

Gathering Evidence

In terms of evidence gathering, in the UK and Ireland it is possible under the terms and conditions of an employment contract to monitor the employee's devices to see whether they are acting in breach of a restraint or misusing confidential information of the employer while they are still employed, but care needs to be taken not to infringe the employee's privacy.

In Italy there are very clear restrictions in relation to the employer accessing employees' data on their devices. Therefore, it is important to have in place a policy that allows the employer to process and monitor the employee's electronic devices, always making sure the employee is informed about this. In the absence of this policy and communication, the employer will not be able to access any devices assigned to the employee.

Top Tips Globally

- Careful drafting is required to protect employer interests
- Have in place the right policies that will allow you to immediately respond by placing the employee on gardening leave, cutting off access to confidential information, and allowing the employer to trawl for evidence from the employee's devices.
- Update restraints where there are significant changes to the business or the role of the employee, both of which can have an impact on the nature of the employee's relationships with contractors and suppliers and the access to confidential information the employee has.
- Draft and implement policies in relation to confidentiality and employee monitoring.
- If permitted in your jurisdiction, penalty clauses are an effective deterrent for employees breaching restraints and misusing confidential information.

#MeToo and Employee Conduct Regulation

By Rohan Burn, ASSOCIATE & Daniel Anstey, GRADUATE ASSOCIATE

The third and final session of our recent Innangard Global Employment Law Conference was a discussion on the global impacts of the #MeToo movement in the employment law sphere. The session was hosted by PCS Director Kathryn Dent, with contributions from Mathilde Houet-Weil from France, Juan Jose Hita Fernandez from Spain, Martijn van Hall from the Netherlands and Ulf Goeke from Germany.

#MeToo Origins

Sadly, there have always been issues of sexual harassment in workplaces across the globe. The scale of the problem has been revealed in recent years through the work of the #MeToo movement. The #MeToo movement famously began when Hollywood actress Alyssa Milano tweeted:

> *"If all the women who have ever been sexually harassed or assaulted wrote 'Me too,' as a status, we might give people a sense of the magnitude of the problem."*

This movement has prompted women from around the world to come forward by posting the hashtag, raising awareness on the scale and impact of sexual harassment and creating a global dialogue around the issue. Indeed, it could be said that sexual harassment is currently the most significant employment law issue around the globe.

How Do Employers Address the Issue – Policies and Procedures

All employment lawyers would agree that having well-written policies and effective procedures targeting sexual harassment is an effective way for an organisation to create a safe and respectful workplace. Ensuring that employees receiving training on these matters and senior employees model appropriate behaviours (including "whistleblowing") will enliven these written documents and further protect employees from harm and employers from liability.

Notwithstanding the general agreement around the functional role policies can play to combat sexual harassment in the workplace, the practices and legal landscape of each country represented on the panel varied significantly. For example, in Australia, the Netherlands and Germany there is

no strict legal obligation on companies to have such policies or procedures in place, but they are mandatory in France for companies with more than 50 employees and in most sectors in Spain.

The processes for dealing with complaints also vary across international jurisdictions. In Australia, France, Germany and Spain, there is no mandated process for investigating and managing complaints about sexual harassment and employers tend to tailor their processes to the specific requirements of the organisation. Employers may utilise internal or external persons to conduct investigations and ultimately the employer determines the sanction (if any) that will be imposed. Employers who are careless in creating and implementing these processes may be exposed to significant legal and reputational risks.

In comparison, there is more uniformity in the approaches that organisations in the Netherlands take to manage complaints about sexual harassment. In general:

(1) A written complaint will be made to a confidential advisor.

(2) An independent *complaint committee* of three people will be established to handle the complaint and make recommendations to the employer. The committee is required to have both male and female members and at least one (preferably all three) of the members must not be an employee of the relevant organisation.

(3) After conducting hearings and investigating the complaint, the committee will provide the employer with a reasoned written opinion about the plausibility of the complaint and recommendations for any measures to be taken.

(4) If the employer deviates from the advice of committee, it must provide reasons.

Liability of Employers

In all countries represented on the panel, employers owe a duty of care towards employees to protect them from sexual harassment in the workplace. In general, if an employer can demonstrate that it has taken all reasonable steps to prevent sexual harassment, then liability may only be attributed to the individual perpetrator.

Employers and employees should also be cognisant of the possibility of the matter being characterised and prosecuted as a criminal matter. In addition, particularly in Australia, employers should be mindful of the possibility of defamation claims being brought with respect to individuals who allege they have been falsely accused of sexual harassment. The recent Geoffrey Rush litigation is a reminder of how this risk can materialise in circumstances where the allegations are in the public domain and have affected the career and reputation of the accused.

Consequences of Sexual Harassment

In general, the severity of the disciplinary action taken (if any) must be proportionate to the seriousness of the proven misconduct. Disciplinary action may include written warnings, suspension, relocation and the termination of employment. Noting this publication's earlier article about the termination of employment, it is relevant to note that a proven allegation of sexual harassment will often constitute serious misconduct and lead to summary dismissal. For example, in Spain the employer has an automatic right to terminate the perpetrator's employment and if the matter goes before a Court and the allegations are substantiated, the judge is prohibited from considering and ordering less severe forms of disciplinary action.

In addition, in the Netherlands it is possible to impose a financial penalty on the perpetrator and deduct that amount from the employee's salary. In other jurisdictions such as Australia and France, an employer cannot lawfully enforce a pecuniary punishment against an employee. However, in France it is more common for an employer to reach a similar outcome by directing a perpetrator to take a period of leave without pay.

Managing Welcome Conduct and Consensual Office Relationships

Of course, from time to time consensual sexual activity and office relationships are a reality of working life. These situations can be very sensitive and difficult for employers to manage, especially if office relationships go sour. This can be particularly difficult when there are imbalances of power between the two involved in the relationship or where conflicts of interest arise between a relationship and the duties owed to the employer.

Again, very different attitudes were found across the various countries. In Australia we had a recent case where a CEO of a large insurance company lost a significant amount of his bonus by failing to disclose his relationship with his secretary to the company's board. However, this is very different to the case in Germany and

France where the right to a privacy is protected, meaning an employer cannot require employees to self-disclose personal relationships.

Having a policy in place around how to manage and when and how to disclose office relationships was considered as best practices in jurisdictions where such policies are lawful.

Conclusion

While the responses to the #MeToo movement vary internationally, it is universally acknowledged that employers have a role in combatting sexual harassment.

Lessons for Modern Employers from "Les Misérables"

Les Misérables, February 2020

By Joydeep Hor, FOUNDER & MANAGING PRINCIPAL

I decided a few years ago to approach the founder of Sydney-based pro-am musical theatre company Packemin Productions, Neil Gooding to see whether he would be interested in my firm, People + Culture Strategies becoming Packemin's sponsor. One enthusiastic meeting later, this partnership came to fruition and since that time PCS has sponsored Packemin across six separate shows being *Miss Saigon, Shrek, Legally Blonde, Jesus Christ Superstar, Mamma Mia* and currently *Les Misérables*. We consider Packemin a part of our firm's family and I know we are a part of theirs.

Les Mis has always been hard to beat when it comes to my all-time favourite musicals. Apart from the blockbuster songs in it such as "Stars", "One Day More", "I Dreamed a Dream", "Bring Him Home", "On My Own" and many others, it is the clever interplay between the four-five parallel plots and themes that makes it captivating viewing. Our friends at Packemin have thoroughly deserved the rave reviews the show has received and I have had the pleasure of seeing the show three times in 8 days!

Having had the intensity of exposure to the show, it struck me that there are some very apposite learnings and lessons for modern employers from this musical masterpiece. If you have not ever seen the show, this piece contains a number of spoiler alerts – it is written for those who have seen the show … at least once.

1. "I commend you for your duty"

The paroled protagonist Jean Valjean steals some silverware from a Bishop who took him in to provide him interim lodgings. However, Valjean's plans are thwarted by the police officers who apprehend him very close to the Bishop's church.

The diligent police officers take Valjean to the Bishop only to find the Bishop communicate to them that they were wrong to disbelieve Valjean and the items were in fact gifted to him by the Bishop.

What does an employee do when a client or customer is not accepting guidance or advice that you know they should accept. In fact, the employee may have worked very hard to present them with that information and advice. Are adages such as "the customer knows best" still relevant? More importantly, what do you do when a key stakeholder in (or for) your organisation may not be telling the truth?

Organisations need to have vision/values-clarity: what kind of organisation do we want to be and what kind of values do we want to promulgate through the organisation and how will this apply in the context of third parties?

2. "Lucky to be in a job … and in a bed"

The famous "At the End of the Day" song is sung by factory-workers after the show's prologue as a confronting depiction of a desperately unhappy hand-to-mouth workforce. The workforce has no choice but to accept the terms and conditions of employment imposed on them: they come across as exploited, hard-done-by and would make anxious even the most understanding of engagement survey companies.

It is interesting that shortly after this song, Valjean as owner of the factory and employer of these "hundreds of workers" considers as part of a life-changing disclosure he is considering making what impact that disclosure might have on the lives of those factory workers who "all look to (him)".

In many organisations there is a pronounced disconnect between the care and responsibility that a leader (or more relevantly, a business owner) has for their people as against what is often a callous disregard for things that are usually taken for granted.

How does an organisation break through this tension? Surely the leader who tries to make a big deal about this will find themselves the subject of ridicule. In my experience, however, open dialogue between those who own businesses and those they employ around why the owners do what they do is something that does not happen enough.

3. #moiaussi: "Take a look at his trousers … you'll see where he stands"

One of the early catalytic episodes in the show involves the Foreman (a mid-level manager some might say) who runs Valjean's Factory. The all-female factory workers talk openly about how the Foreman is "fuming" on that particular day because one of the female employees, Fantine won't "give him his way" and how he is "always on heat".

Employers will often hear about alleged propensities of members of their workforce (be that sexual or otherwise). Numerous clients of mine over the years have asked me in similar situations whether they have an obligation to investigate these kinds of matters. The answer of course depends on a range of factors including the seriousness of the assertions, the credibility of those making them and the consequences of allowing it to go unaddressed.

4. "Be as patient as you can"

The just Valjean asks the Foreman to get to the bottom of the fracas that takes place between Fantine and another female co-worker but in doing so asks him to be "as patient as (he) can". Unfortunately, the balance of the workers goad the Foreman into thinking he is a cuckold by suggesting that Fantine is promiscuous outside of the Factory, offering her sexual services to men other than the Foreman (to pay for her child) and that she is "laughing" at the Foreman while "having her men".

The Foreman has no hesitation in terminating Fantine's employment. No employer is well-advised to be allowing someone who has such a vested interest in the outcome of an investigation to be conducting the investigation themselves.

5. "Right my girl, on your way"

Something that is seen to happen all too often is the move to a hasty termination of employment after a botched or ill-considered investigation.

Perhaps if there were tribunals such as the Fair Work Commission in Australia at the time of Victor Hugo's masterpiece, more caution may have been shown prior to such a heat-of-the-moment dismissal.

6. *"My duty's to the law"*

Inspector Javert, Valjean's nemesis and a man who's mission in life as told by the show is to hunt down Valjean having broken his parole. Javert is a man singularly-focused on executing on his objective. His commitment to upholding what is at least his understanding of the law is unwavering.

Organisations are often confronted by over-intense professionals and leaders within their organisations.

Addressing the need for balance and perspective amongst leaders is never an easy thing to do and often comes at the risk of demoralising the individual in question.

7. *"Rooking their guests and cooking their books"*

The comic relief in the show is provided by the Innkeeper and his wife, the Thenardiers. Monsieur Thenardier boasts of his shameless exploitation and robbery of guests at his inn. One can only imagine what those working at this establishment would have seen on a daily basis!

Corrupt and unethical behaviours can certainly happen in organisations from time to time and employers in Australia need to become familiar with whistleblowing laws and the infrastructure that needs to be created to ensure that those observing these practices have a vehicle for escalating concerns appropriately.

8. *"Do I follow where she goes?"*

Marius Pomercy finds himself in love with Valjean's adopted daughter, Cosette. He is torn between pursuing his relationship with her or fighting alongside his colleagues.

Many employees find themselves grappling with how they reconcile their interests inside and outside of work. There are never any easy answers for employers and employees in arriving at a happy work-life reconciliation. However, the more each party seeks to understand as well as be understood many difficulties can be removed.

As with so many great stories through history, there are many lessons we can learn of life as well as people management and cultural reform in organisations in this amazing show.

PCS EVENT HIGHLIGHTS

PCS End of Year Function I November 2019

Our annual end-of-year panel discussion and client function was once again a great success. We were delighted to have assembled a stellar panel including Max Kimber SC, Andrew Jones, Robyn Sefiani, Natalie Devlin, Mollie Gray (PCS Ambassador) and our own Chris Oliver. Thanks to our partner Darlinghurst Theatre Company for hosting us so well at the Eternity Playhouse.






PCS EVENT HIGHLIGHTS

Innangard International Conference I January 2020

We were pleased to host the first Innangard meeting in the southern hemisphere in January 2020. As part of this event we were able to share the experiences of our esteemed colleagues from our fellow Innangard member firms at the Global Employment Law Conference.

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