EDUCATION AND THOUGHT LEADERSHIP PROGRAM

2020 Whitepaper

COVID-19 Pandemic: Impact on Australian Employment Practices

People+Culture Strategies

Labour & Employment Law

Contents

Introduction

It is with great pleasure that I present our firm's 2020 Whitepaper **"COVID-19 Pandemic: Impact on Australian Employment Practices"**.

This whitepaper represents the third whitepaper in our firm's 11 year history, with previous whitepapers addressing the subjects of termination of employment and workplace investigations. The extraordinary challenges for our clients throughout this year brought about by the coronavirus pandemic both here and around the world warranted a whitepaper being developed.

Many of you reading this publication have generously contributed your time in completing the survey we formulated several months ago. The results of the survey have formed the informational basis for this whitepaper and I am sure you will find the survey results and our analysis of them to be relevant and useful as you assess your options into the future.

As Australia's leading specialist solutions provider in people management issues, the PCS team has always drawn not just on the skills and expertise of its team (led by our most excellent team of Directors) but also the experience(s) of our clients on things that work as well as things that do not. Nowhere was this more pronounced than as we assisted clients to navigate issues such as JobKeeper, working from home, managing performance virtually and other things.

My particular thanks go to Chris Oliver who oversaw the preparation of this Whitepaper, ably supported by our COO Tracey Pace who ensured we were able to integrate the survey information into our whitepaper seamlessly.

I look forward to your feedback on this whitepaper and how we can continue to add value to your organisations.

Joydeep Hor

Founder and Managing Principal

The Impetus for our Whitepaper

While in hindsight the warning signs of a global pandemic became evident in the final days of 2019, few businesses could genuinely claim to have anticipated, let alone begun planning, for the challenges that 2020 would unleash.

Since March 2020, businesses have been confronted with a rapidly changing global environment of health and government regulation. Despite unprecedented government financial assistance, almost all Australian businesses have been forced to adapt, while many have sought to innovate.

Anecdotally, businesses have initially responded to the pandemic in a way which has favoured short-term adaptation to maintain the status-quo, and have thereby delayed the inevitable need for restructuring which we are now beginning to see. Whether that will prove to have been the right approach is something that time will judge.

While many business have focused their attention on survival, strategic thinking and high-performance organisations have looked to the pandemic as an opportunity to innovate, take employees on a journey which demonstrates the mutual benefits of less rigid working arrangements and to start a conversation about longer term change.

As individual businesses, we can often feel alone in facing the challenges we are all addressing together. While on one level that may be correct, it's important that in times of challenge we look to leverage the expertise of those who often sit in the middle – your trusted advisor. Within this environment, People+Culture Strategies' holistic workplace advice and expertise uniquely places us in a position to deliver high value thought leadership. As a further value add, we identified an opportunity to provide our highly valued clients with an opportunity to anonymously share their experiences, and to learn from the experiences of those who are facing the same challenges across a diversity of industries, business size and geographic footprint.

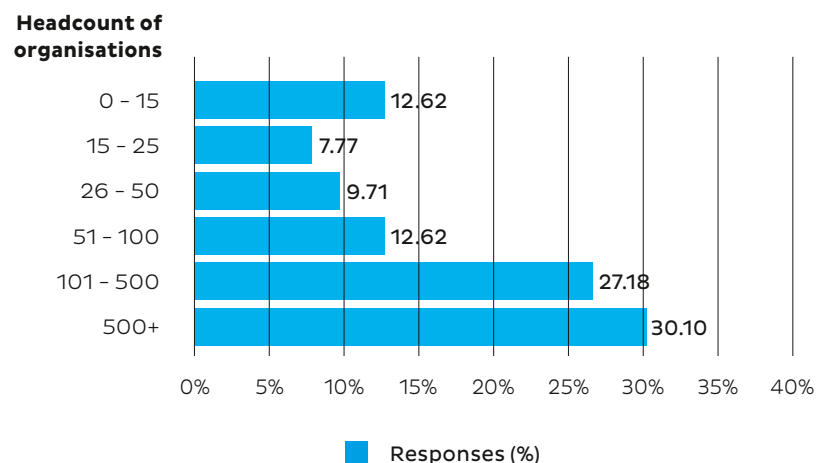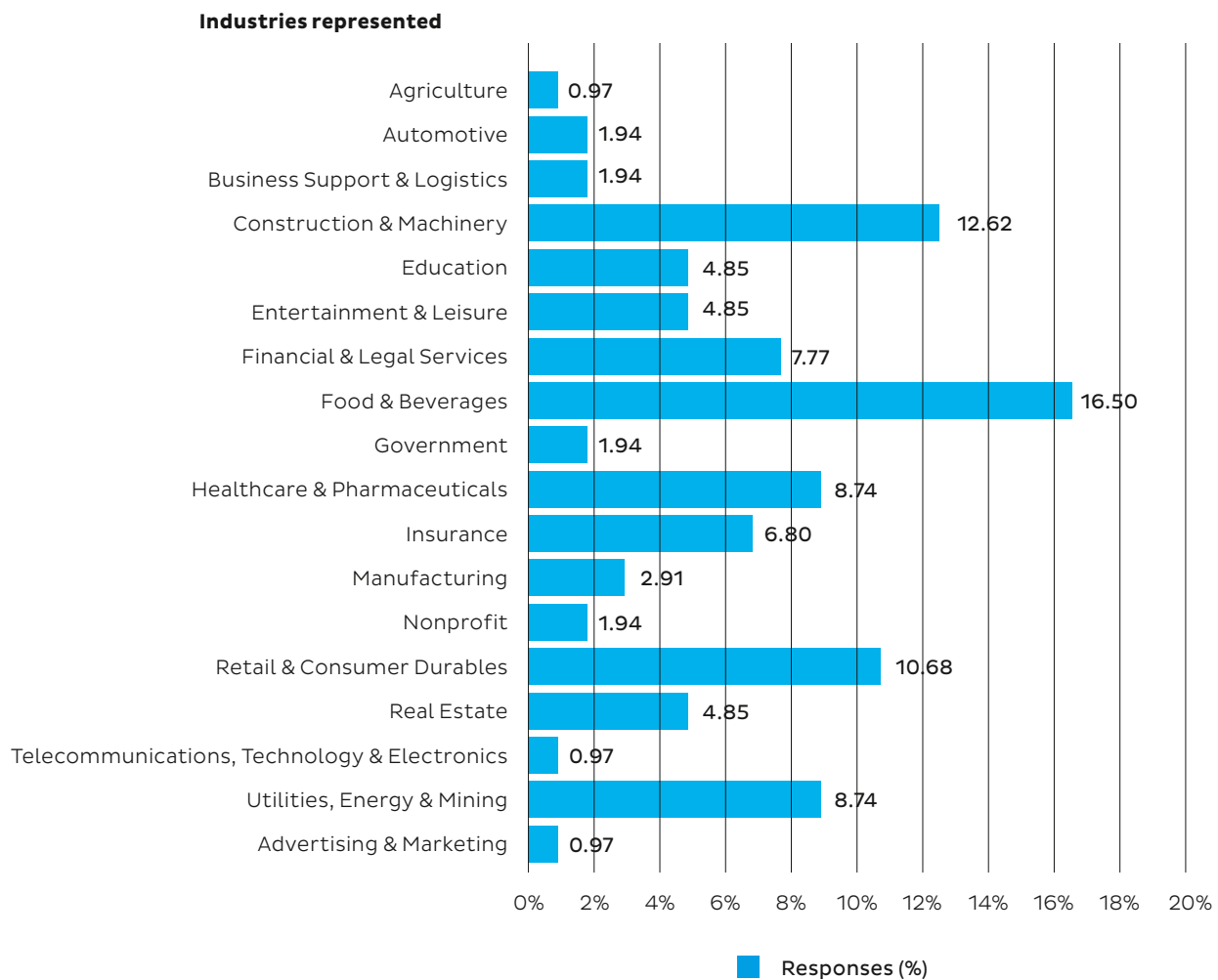**Chart 1: Employee headcount**

Headcount of organisations

0 – 15	12.62
15 – 25	7.77
26 – 50	9.71
51 – 100	12.62
101 – 500	27.18
500+	30.10

0% 5% 10% 15% 20% 25% 30% 35% 40%

■ Responses (%)

Chart 2: Principal industry of surveyed organisation

Industries represented

Industry	Responses (%)
Agriculture	0.97
Automotive	1.94
Business Support & Logistics	1.94
Construction & Machinery	12.62
Education	4.85
Entertainment & Leisure	4.85
Financial & Legal Services	7.77
Food & Beverages	16.50
Government	1.94
Healthcare & Pharmaceuticals	8.74
Insurance	6.80
Manufacturing	2.91
Nonprofit	1.94
Retail & Consumer Durables	10.68
Real Estate	4.85
Telecommunications, Technology & Electronics	0.97
Utilities, Energy & Mining	8.74
Advertising & Marketing	0.97

■ Responses (%)

The Workplace and the Move to Working from Home

Summary of responses

- The majority of surveyed organisations reported continuing to work from home.
- While around 95% of surveyed organisations reported having implemented a COVID-19 Safety Plan, only around 20% anticipate a complete return to the office before the end of the year.
- While most organisations are taking steps to maintain employee engagement and connectivity to the broader workplace, over 30% of surveyed organisations reported staff disconnection and almost 25% 'do not know' whether the pandemic has impacted employee engagement or not.
- While most organisations have sought to rely on existing policies and systems to manage work, health and safety obligations for those employees who are working remotely, around 20% of surveyed organisations do not have, or do not know whether they have, fit-for-purpose policies and systems in place.

Analysis

While most employers have become relatively comfortable with working from home arrangements over recent years, working from home has typically been the domain of a 'special arrangement' to accommodate employee driven conversations around flexible work, carer's responsibilities or as negotiated contractual arrangements. The almost universal move to remote working is arguably one of the impacts of COVID-19 which is likely to have long-term implications for employment relationships, including across recruitment, onboarding, the performance of work, managing conduct and protecting business information. The COVID-19 pandemic and related government restrictions around social distancing has forced employers to reconsider whether office-based work is genuinely required and to rethink their remote working systems and policies. Although Australia continues to see a progressive loosening of lockdown-styled restrictions (including throughout Victoria), many employers continue to demonstrate an apparent reluctance to return to office-based work arrangements, at least in the medium term.

The continuation of working from home

Anecdotally there appears to be a range of reasons for employers' reluctance to return to office based-work. While employees can be directed to return to work (as long as that direction is lawful and reasonable), many employers perceive uncertainty and obstacles such as:

- The fairly blunt language of government directions which establish remote working as a default – for example the NSW Public Health Order (No 2) directs that, "an employer must allow an employee to work at the person's place of residence where it is reasonably practicable to do so."

- The potential for future 'waves' and the disruption that would be caused by a return to the office, followed by a future return to home working.
- The logistics and cost of implementing COVID-safe measures to protect employees and customers at the workplace.
- To avoid (rather than to manage and mitigate) the risk of an outbreak at the organisation's premises.
- To capitalise on any current 'benefits' of home working, including the self reported value employees perceive, removal of commuting times and any existing productivity gains.

Table 1: Staff working from home feel less connected with our organisation

Answer Choices	Responses
Strongly agree	4.58%
Agree	27.48%
Neither agree nor disagree	24.43%
Disagree	38.93%
Strongly disagree	4.58%

Table 2: We expect a return to the office by the end of 2020

Answer Choices	Responses
Strongly agree	10.69%
Agree	11.45%
Neither agree nor disagree	27.48%
Disagree	35.11%
Strongly disagree	15.27%

Impact of remote working on productivity

The impact of remote working on productivity is a complex question and each organisation will have its own challenges. The reality is that most jobs require a degree of collaboration and online meetings are not as optimal as in-person meetings. The impact on employees after six months of largely working from home is now beginning to be felt by some businesses. Some companies have reported a decrease in productivity. It is also unsurprising that many employees are beginning to feel less connected to their organisation, particularly in respect of those colleagues who may not be within an employee's immediate sphere of collaboration, but with whom relationships are built through opportunistic interactions around the broader office environment.

While online meetings are likely to continue to improve in functionality and reliability with the advancement of platforms and bandwidth, inevitable challenges will continue with the associated risks to employer data and cybersecurity attacks. Anecdotally, there also appears to be an increasing number of employees reporting allegations of bullying, harassment and discrimination as workplaces endeavour to establish new-norms and expectations around an 'always-on' culture and the vulnerabilities some employees feel with the new level of intimacy which results from 'virtually' bringing their managers and colleagues into their home working space.

The negative impacts of excessive screen time are well-documented and many employers are yet to establish a formalised healthy and productive work-from-home culture to minimise the risk of "Zoom gloom" or meeting fatigue which can arise from filling an employee's day with back-to-back online meetings. Experts have advised that virtual interactions can be more stressful and taxing to a person's mental wellbeing than a face-to-face meeting. As social beings, we focus on the words of our colleagues but we also derive significant meaning and nuance from the non-verbal cues. Communication becomes hard work when we cannot see the other person fully, when video quality is poor, pixelated or out of sync with audio, and when sometimes we cannot hear clearly.

On the face of it, employees have more time to work without their commute but many will admit that distractions at home can be problematic. The move en-masse to remote working in March/April 2020 was important in the fight against COVID-19, however for many employers a permanent shift to remote working would not be sustainable. There is also well-founded concern that over the long-term remote working will impact on an organisation's level of innovation, culture and employee engagement.

Policies, plans and contracts

While some work must be performed on site, the pandemic has resulted in a shift in long-held perceptions of both employers and employees about remote work. As businesses transition back to an office work environment, employers are likely to experience a rise in requests for flexible working arrangements. Armed with empirical data points, both employees and employers are likely to be better equipped in assessing the workability of requested arrangements.

Organisations who have allowed employees to work remotely on a frequent basis need to review and, where necessary, update their employment contracts and policies, and ensure their non-delegable Work Health and Safety obligations are being appropriately managed. Training will also be crucial.

There is an increasing recognition that employers need to support workplace wellbeing. Sustained remote working may lead to a decline in communication and employees feeling disconnected and excluded. Many remote workers have experienced the blurring of their work and personal lives which sometimes leads to excessive work hours. Employers will need to ensure their contracts and policies remain fit for purpose in this new virtual world, and that they are well placed to manage employee work hours. In the absence of careful management and documented work arrangements, many employers face the risk of future allegations of underpayment arising from allegations of additional hours or work outside the ordinary spread of hours permitted by applicable industrial instruments.

The Commonwealth Attorney-General's Department has drafted a COVID-19 Model Code of Practice, which aims to provide practical guidance to businesses on how to mitigate the risks of COVID-19 in the workplace. Although compliance with Codes of Practice is not mandatory, approved Codes of Practice which have also been approved and adopted by the relevant State Minister can be used by courts to determine whether or not a "person conducting a business or undertaking" has complied with their duty or obligations under the relevant WHS Act. Businesses should ensure they have appropriate regard for any applicable Codes of Practice as part of their documented "COVID-19 Return to Work Protocols."

Strategic considerations/key takeaways

- It seems increasingly likely that Australian employers will need to find a way of living productively alongside COVID-19 for years to come (and even beyond a vaccination being found). Accordingly, employers will inevitably need to plan and manage their longer-term working arrangements.

- Unless an organisation moves to a 'remote work first' model, employers will undoubtedly need to plan and manage a return to the office within a circulating COVID-19 environment.

- It's likely that a delay to the implementation of a return to office strategy will increase the likelihood of employee resistance to a return to the workplace. As some opposition will be inevitable, we recommend employers have in place a well-considered strategy and return to work strategy in place before consulting with employees about a return to the workplace.

- It is critical that employers plan for the recovery post-pandemic. In a new world where more employers will offer flexible work options, organisations will undoubtedly feel pressure to offer increased flexible work arrangements in order to attract and retain talent.

- If an employee has demonstrated their ability to work effectively away from the office, does this mean a refusal for flexible working arrangements would be unreasonable? It is important that organisations have a clear strategy for dealing with these requests.

- While there is anecdotal evidence of achieving a better work-life balance when working from home, sustained remote working may also lead to feelings of isolation, anxiety and in severe cases, depression. How is your organisation supporting those working remotely?

Performance Culture

Summary of responses

- Unsurprisingly, almost all surveyed organisations aspire to have a high-performance culture.

- Almost all businesses reported their ability to maintain a high-performance culture has been challenged by COVID-19 and that the disruption has adversely affected their focus.

- While a thin majority of surveyed organisations reported taking some steps towards adapting KPIs and other performance measures during the pandemic, many have not and a majority believe that they have not yet done enough.

- A majority of surveyed organisations reported a continued practice of disciplinary action and performance management, although acknowledging distraction and a reduced focus. Concerningly, over 10% of surveyed organisations reported a material reduction or step backwards in managing performing and conduct issues.

- While the surveyed organisations continued to receive workplace complaints during the pandemic, a majority did not report seeing a material increase as at the date of survey.

- Most surveyed organisations have taken proactive steps to maintain employee engagement.

Analysis

The pandemic has impacted the economy and the way organisations work. The survey responses confirm that it's not business as usual and, in order to sustain a high-performance culture, organisations need to adapt their approach to their work force. What can organisations do differently to thrive during this pandemic period and beyond? COVID-19 presents an opportunity for business leaders and people and culture managers to reshape the culture of their organisation to drive performance.

Organisational values

An organisation's values are at the epicentre of decision-making. In the current environment with the additional pressure on business leaders, an organisation's values ought to take on even more prominence and provide a framework for consistent decision making. The real test of an organisation's performance and culture is whether, during the tough times, they are making decisions aligned with their values.

In high performance environments, leaders build an infrastructure around the credibility of the organisation's value system so that it becomes embedded in the organisation.

Accountability and transparency

In a high-performance environment, every employee feels a strong sense of accountability. However, during this period of pandemic, it is important that managers also make certain allowances for those employees who face particular challenges. In pandemic times, the goal posts are not static. If there are any deviations from the usual rules or expectations, managers must be clear on the reasons for the departure. High performance organisations are transparent about what the external data points are that will influence their decision making. Honesty and communication are critical for employee buy-in.

Keeping employees engaged

Conceptually, no single employee ought to be organisationally more important or indispensable than another employee. Individuals should put the organisation above themselves whilst knowing that they are indispensable to the organisation's success. In the pandemic environment, some employees may be feeling disconnected from their organisation and are struggling with their sense of identity and purpose. In a high-performance culture, the value system is strong and the narrative clear and frequent. The goal should be to get employees to understand that the organisation's needs sit above them while they remain indispensable and critical to the success.

Poor performers in pandemic times

Performance management is difficult under ordinary circumstances so consideration needs to be given as to how performance is measured and managed in a new working environment where most employees may be working remotely.

Poor performance can be easily identified if the organisation can clearly identify "what good looks like." This must be adjusted for pandemic times, but the pursuit of high performance should still be relentless. This means that organisations must continue to invest in defining and articulating what is required from their teams. Crucially, poor performance must be called out and genuine and thoughtful PIPs implemented. The relevant data points that organisations use to assess themselves against will be modified in these uncertain times, but managers must continue to respond to under-performance. If employees understand their role, they will be better placed to understand the impact their sub-optimal performance will have on the organisation's high-performance culture.

Table 3: We have adapted our approach to measuring employee performance

Answer Choices	Responses
Strongly agree	7.20%
Agree	46.40%
Neither agree nor disagree	27.20%
Disagree	16.00%
Strongly disagree	3.20%

Table 4: Managers continue to implement performance improvement plans

Answer Choices	Responses
Strongly agree	19.20%
Agree	49.60%
Neither agree nor disagree	19.20%
Disagree	8.00%
Strongly disagree	4.00%

Workplace complaints

In the current climate, good managers should be empathetic to the changes experienced by the employees they manage, and to work proactively keep those employees engaged. High performance cultures are committed to investing in and training managers to be "people managers" first and foremost. The Fair Work Commission has reported a sharp increase in workplace disputes over recent months. It is important that managers are supported while they attempt to maintain high performance from their team in challenging times. Policies should be reviewed to ensure they are fit for purpose to allow for grievances to be lodged in circumstances where employees genuinely feel they are being bullied or harassed.

Strategic considerations/key takeaways

- Leaders should maintain a continuous and ongoing discussion with employees as to how their organisation's values are being implemented in decision-making and the role and contribution each individual is tasked to make.
- Organisations who sacrifice or trade down their values during times of challenge are likely to find employees cease engaging with those values beyond the pandemic.
- In a high-performance environment, there is visibility and transparency around organisational goals and outcomes, whether good or bad, are critical to the success of a high-performance culture. If organisational goals or systems are to be modified to adapt to challenges created by the pandemic, managers should clearly articulate those changes and the reasons for them. Managers should also actively assist employee to realign their individual contributions to the new organisational direction.
- Keeping employees engaged is critical, particularly in uncertain times. Managers should reinforce that the organisation's goals are paramount and the employee's role is key to the organisation's success.
- Managers must be empathetic during these pandemic times but the response to poor performance must continue to be embedded in the organisation's culture. Where appropriate, constructive PIPs should be implemented and, if ultimately necessary, disciplinary action should be taken.
- Organisations should eliminate any barriers to high performance which includes bullying, unhealthy relationships and practices. It is important to respond to complaints in a timely manner and not let the current environment provide an excuse to delay.

JobKeeper

Summary of responses

- Approximately 42% of surveyed organisations qualified for, and are participating in the JobKeeper Scheme.
- 82% of surveyed organisations participating in the JobKeeper Scheme issued JobKeeper Enabling Directions to their workforce.
- Almost all surveyed organisations that issued JobKeeper directions considered those directions to be valid.
- Of those receiving the JobKeeper wage subsidy, it appears that upwards of 10% do not have a plan in place for when the JobKeeper Scheme ceases, and a further 50% 'do not know'.
- Almost half (46%) of surveyed organisations have relied on seeking employee agreement to adjust work arrangements (including changes to days or times of work or the taking of annual leave at half pay).

Analysis

It's apparent from the data that an overwhelming majority of surveyed organisations (almost 90%) have been impacted by the pandemic to an extent that has required them to implement changes to the working arrangements of their workforce. These changes have been implemented either through JobKeeper Enabling Directions, or through negotiated changes with employees.

Consistent with broader social and economic data, it's apparent that the JobKeeper wage subsidy scheme has played an important role for many surveyed organisations, both as a financial subsidy and through empowering qualifying businesses to implement unilateral changes to employee working arrangements in circumstances where those changes would not otherwise have been permissible without employee agreement.

Almost all surveyed organisations who have implemented JobKeeper Enabling Directions consider those directions to have been implemented lawfully.

It's further apparent that for those businesses who either did not qualify for JobKeeper or chose not to participate, reliance has been placed on reaching agreement with individual employees to implement changes to their working arrangements so as to ensure organisational viability.

Changes to working arrangements have focused around: stand-down arrangements; reduced hours of work; employees performing alternate duties; and employees accessing paid leave accruals.

Anecdotally, negotiated changes have commonly occurred within a broader narrative of job preservation and it's likely that both employees and employee associations will have viewed their contributions to workplace adjustments as being a goodwill investment in the employment relationship. In the absence of the predicted 'v-shaped' economic recovery, it's likely that goodwill investment will be shortly tested as external financial support is withdrawn, and organisations are forced to implement broader structural change (including workforce reorganisation).

To maintain the trust and confidence of the workforce, it will be important that organisations that have asked employees to sacrifice their legal entitlements are transparent in relation to the organisation's financial arrangements and the conditions for restoring employees to their pre-pandemic terms and conditions of employment. Organisations that are perceived by their employees not to 're-pay' the goodwill are likely to struggle with retaining good staff over the medium term and are likely to face an increased emotional drive for disaffected employees to make complaints and pursue disputes. A similar trend is likely to play out within collective relationships.

JobKeeper 2.0 will cease on 28 March 2021. JobKeeper has been an important, but temporary and artificial lifeline for many organisations. Self-evidently, those organisations participating within the JobKeeper scheme need to have implemented a clear business plan to address the likely reality that by April 2021 revenue will not have recovered to pre-pandemic levels and external financial assistance is currently scheduled to cease. Inevitably, pandemic business plans will look to implement more permanent structural changes and adjustments to staffing levels.

While a little over 35% of surveyed organisations have commenced implementing a plan to manage the transition from external financial support and to adapt their business to a longer term 'new normal', most surveyed organisations either did not have a plan, or 'did not know'.

Table 5: Temporary changes to the *Fair Work Act 2009* (Cth) have been used to give directions to employees

Answer Choices	Responses
Strongly agree	15.83%
Agree	18.33%
Neither agree nor disagree	19.17%
Disagree	19.17%
Strongly disagree	27.50%

Table 6: We have agreed with employees to changes to days/times of work or taking of annual leave at half pay

Answer Choices	Responses
Strongly agree	21.67%
Agree	25.00%
Neither agree nor disagree	19.17%
Disagree	15.83%
Strongly disagree	18.33%

Strategic considerations/key takeaways

- While the JobKeeper Scheme appears to have operated successfully as an artificial ventilator for surveyed organisations, most surveyed organisations appear to have either not yet planned for a post-JobKeeper environment or have not yet communicated those plans to those responding to the survey on the organisation's behalf.

- Those surveyed organisations who have not yet begun implementing a longer-term pandemic business plan which does not rely on external government support, risk being forced to plan and implement structural workforce change in a time-pressured environment. This is likely to increase the risk that those organisations will:

  - not have sufficient time to consider or implement foundational structural change around their terms and conditions of employment;

  - fail to meet their consultation obligations when implementing workplace change, irrespective of whether that change results in employee job loss;

  - fail to have created the workplace narrative and cultural environment for maximising employee engagement in the process of change management;

  - seed or fuel a workforce culture where employee insecurity is unnecessarily high, and employee trust and loyalty is damagingly low. Longer term, this is likely to lead to high levels of employee disengagement, reduced productivity and increased rates of turn-over.

- At the completion of the JobKeeper scheme and removal of the capacity for qualifying employers to issue JobKeeper Enabling Directions, employers who are unable to return all of their employees to pre-COVID working arrangements will be forced to either adjust staffing levels, or be exposed to risks and business uncertainty associated with negotiating contractual arrangements, particularly where many such arrangements will not be permissible under applicable industrial instruments.

- The employment relationship is dynamic, but many employment contracts are inherently static. Forced changes to working arrangements have demonstrated for many organisations the benefit of flexible working arrangements and multi-skilled, adaptable workforces. A key challenge for many organisations will be to retain and build a flexible workplace culture, including by ensuring their contracts of employment have sufficient elasticity to accommodate changes to an employee's working arrangements (that is, by ensuring that proposed changes are already authorised by the terms of the contract). Organisations have been building more flexibilities into the employment contract to avoid the need to effect contractual variations from time to time.

Industrial Relations

Summary of responses

- Less than one-third of surveyed organisations have active relationships with unions.
- Most surveyed organisations have actively monitored and kept themselves aware of the relevant award variations that have been made in the first 6 months of the pandemic.
- It appears that a significant number (approximately 24%) of surveyed organisations with enterprise agreements consider those agreements to be no longer fit for purpose and would like to make changes.
- While the pandemic appears to have created an initial period of mutual interest, leading to constructive communications between employers and unions, around 10% of surveyed organisations reported an increase in union involvement.
- A significant proportion (almost 20%) of surveyed organisations believe that their People Strategy became unfit for purpose as a result of the pandemic.
- Most surveyed organisations either do not have a strategy in place to manage COVID-19 related industrial action, or 'do not know' if there is a strategy in place.

Analysis

The early stages of COVID-19 witnessed most organisations scrambling to introduce significant changes to the way in which their employees work. These changes have included changes to the number of hours individuals are working; alterations to the spread of hours and the days on which they are worked; the performance of alternate duties; and the requirement to work from alternate locations. While some of these changes are likely to revert over time, many are likely to have an ongoing impact on work practices in the future. The unforeseen need for flexibility means that many enterprise agreements and established people strategies are no longer "fit for purpose." As noted by the President of the Fair Work Commission in a statement dated 31 August 2020, only 20% of workers covered by enterprise agreements deal with home-based work. Similarly, as most modern awards do not expressly provide for, or deal with issues relating to working from home arrangements, the absence of such provisions within awards and enterprise agreements have constrained (and created risk and uncertainty for) both employers and employees.

The practical effect of the absence of provisions on remote working is that where industrial instruments do not deal with working from home, and a valid flexibility agreement has not been entered into, award provisions such as the span of hours within which ordinary hours can be worked, continue to apply unaltered. This means that an employee seeking flexibility may be disadvantaged in not being able to work their preferred hours (or an employer can become exposed to significant liability where employees are permitted to work such hours). Further, the employer may be required to pay overtime or penalty payments in circumstances where the employee has sought to work flexible hours outside the ordinary span of hours specified in the award or due to staggering start and finish times.

The Fair Work Commission has proposed an award flexibility schedule to assist employers and employees reach agreement on working from home arrangements, which may assist employers as they consider how to structure their business and work practises moving forward to align with the "new normal". It is crucial that employers consider whether any variations to their enterprise agreement will be required to ensure any enterprise agreement is fit for purpose in a post COVID-19 world.

In adapting to this new workplace landscape, survey participants have indicated that they have maintained good communications with their relevant union since the onset of the pandemic with some witnessing an increase in union activities. It is important for employers to have a strategy in place to manage their communication with their relevant union as they consider what changes or variations to an enterprise agreement are required to meet the new and changing needs of the business. This is particularly so for employers who are currently negotiating enterprise agreements.

For employers seeking a variation to their enterprise agreements, employers will be required to provide an access period of 7 days following the repeal of the Fair Work

Table 7: A strategy is in place to manage COVID-19 related industrial action

Answer Choices	Responses
Strongly agree	5.26%
Agree	26.32%
Neither agree nor disagree	42.98%
Disagree	13.16%
Strongly disagree	12.28%

Table 8: Our 2020 People Strategy is no longer fit for purpose

Answer Choices	Responses
Strongly agree	6.14%
Agree	11.40%
Neither agree nor disagree	41.23%
Disagree	33.33%
Strongly disagree	7.89%

Amendment (Variation of Enterprise Agreements) Regulations 2020 (the "Regulation"). The access period is the period ending immediately before the start of the voting process for a proposed enterprise agreement in which employees must have access to a copy of a proposed variation and be notified of the details of the vote. While this is currently 7 calendar days, between 17 April 2020 and 12 June 2020 this was shortened to 1 calendar day to assist employers in responding to issues arising by reason of the pandemic.

While employers may expect union access to their work sites to be restricted during COVID-19, this was not the case in the recent matter of *Bervar Pty Ltd t/a Della Rose Fresh Food v United Workers' Union* [2020] FWC 4501. In this matter, the Fair Work Commission dismissed an employer's application to suspend or restrict the union's entry rights to their site to reduce COVID-19 risks. In this case, the union had issued multiple notices about alleged coronavirus safety breaches which the employer asserted formed part of an industrial campaign against the employer. The Fair Work Commission found that a "blanket rule that no entry be permitted" would not be reasonable in the circumstances. While the Fair Work Commission ultimately dismissed the application of the employer, it expressed the view that it would be a "very good idea for the parties to cooperate" in consideration of the restrictions which were then in place in Victoria.

Further changes to the industrial landscape may also be on the horizon as the Federal Government, encouraged by successful collaboration with the unions in the implementation of the JobKeeper scheme, commenced a consultative process for industrial relations reform. The areas subject to the consultative process are:

- Award simplification;
- Enterprise agreement-making;
- Casual and fixed term employees;
- Compliance and enforcement; and
- Greenfields agreements for new enterprises.

While a breakdown between employer groups and the unions have been reported recently, the Federal Government's response to this process could have great effects on the current industrial relations landscape in Australia.

Strategic considerations/key takeaways

- Although the early stages of the pandemic appear to have created an environment in which union and employer interests could readily align, the comparative control of the health crisis and progressive loosing of social restrictions will inevitably see a return to more normal interest positioning within industrial relations.
- Anecdotally, a pivot point for aligned interests and constructive relationships between employers and unions in the early stages of the pandemic were focused around the preservation of jobs. Employers should anticipate that a similar level of cooperation will not be enjoyed as organisations change focus towards restructuring and more permanent, structural changes.
- For employers with unionised workforces, it is important to have a strategy for communicating with unions and responding to industrial action in response to COVID-19 issues.
- Employers should regularly review and fine-tune their People Strategy to ensure it is fit for purpose in a post COVID-19 world.
- Employers need to remain vigilant of their obligations to consult with unions when implementing COVID-19 related changes, including changes relating to work health and safety, or restructuring. As the employment market continues to soften, employers should expect that unions and impacted employees will focus heavily around any failure or shortcoming in the consultation process before implementing workplace change.

Recruitment Practices

Summary of responses

- A majority of surveyed organisations have continued to recruit staff during the pandemic and are continuing to endeavour providing virtual inductions, although around 20% delayed further recruitment.

- While around 20% of surveyed organisations have considered it necessary to change their recruitment and engagement strategies and are engaging more fixed term, maximum term, casual and labour-hire employees, almost 50% have not and around 30% 'do not know' if their recruitment and engagement strategies have changed.

- The pandemic appears to have caused a predictable distraction around normal continuous improvement practices, with around 75% of surveyed organisations reporting that they had still not implemented the required contractual changes to manage recent casual employment decisions.

Analysis

While some organisations may have had a recruitment freeze or may have only hired for critical roles, it is likely that recruitment levels will start to improve in the medium term. Organisations should consider long-term thinking and adopting new technologies as the way of recruiting during the pandemic and while people are still working from home.

Some organisations' recruitment levels have not been significantly impacted by the pandemic. However, certain industries have been seriously affected by the economic downturn since March 2020.

All employers would benefit from a strategic approach to recruitment.

Strategic considerations/key takeaways

Recruitment

- Online onboarding has been challenging for organisations. It is critical that employers ensure that if a working-from-home arrangement is still in place, new recruits are properly inducted. This will inevitably take longer than an in-person induction, but is important in order to set the new hire up for success.
- When conducting online interviews, employers must be mindful of not forming any view based on the candidate's living arrangements which could potentially become the subject of a discrimination claim.

- There are examples of organisations deviating from their usual recruitment process during the pandemic. This may be necessary if the in-person meetings are not possible, but employers must be mindful of potential claims if decisions are made without proper scrutiny or consideration.

- During an online interview, the interviewer may unwittingly have access to the candidate's personal life, for example, whether they are in a relationship and whether they have dependents. By having to share their private life with their potential future employer, a candidate may inadvertently share insights into their political views, religion, sexual persuasion or disability. A key strategy for employers will be to remain professional and courteous during the entire recruitment process and make sure they are not making a decision based on any information they might have learned from the candidate's personal life.

- It has been argued by some that the new JobMaker plan will increase the risk of employers discriminating against older prospective employees, as employers will receive an incentive of $200 per week to employ workers who are between the ages of 16 to 29, and $100 per week to employ workers between the ages of 30 to 35 for up to 12 months for each position created. To avoid discrimination, or a perception of discriminatory behaviour when selecting an applicant, employers should assess the applicant's skills and qualifications objectively against the selection criteria published in the job advertisement and reflected in any position description.

- Where there is a need to consider subjective criteria to select an applicant, it is important that those undertaking the assessment are clear as to why these criteria are relevant and why the employer has chosen to apply those criteria in the manner that they have, including the weight they give to these criteria in their decision-making.

Casual employees

- Organisations may need to consider a shift in their workforce. With many businesses going online and there being continued uncertainty as to the impact of the pandemic on medium and longer term demand, and as the survey's results show, more employees are being engaged on a fixed-term and casual basis. An employment contract audit is suggested so that contracts can be updated to accommodate legislative changes and casual contracts amended post-Rossato[1] and post-Skene[2].

Table 9: We are offering more fixed/ maximum term and casual contracts

Answer Choices	Responses
Strongly agree	5.45%
Agree	12.73%
Neither agree nor disagree	32.73%
Disagree	34.55%
Strongly disagree	14.55%

Table 10: We have engaged more workers through labour hire agencies

Answer Choices	Responses
Strongly agree	1.82%
Agree	7.27%
Neither agree nor disagree	17.27%
Disagree	37.27%
Strongly disagree	36.36%

1 *WorkPac Pty Ltd v Rossato (2020) 378 ALR 585*

2 *WorkPac Pty Ltd v Skene (2018) 362 ALR 311*

Strategic considerations/key takeaways

- The continuation of working-from-home arrangements will continue to present a range of challenges for employers and new-starters. Employers need to design and adopt fit-for-purpose strategies for virtual recruitment, onboarding and induction.

- As many employers seek to adopt strategies for maintaining the engagement of their existing employees, a clear focus needs to be given to creating and building the necessary relationships between new-starters and their co-workers. While those relationships can often be left to grow organically within an office environment, a work-from-home arrangement deprives the new starter of the usual opportunistic and circumstantial personal interactions which are otherwise critical for productive working relationships.

- The absence of normal day-to-day, real time supervision and interaction, creates a risk for many employers that new-starters will not readily become infused in an organisation's culture and ways of working. Employers and managers need to ensure that an appropriate, but more active process for onboarding, cultural immersion and the creation of broader working relationships is implemented.

- The risk created by suboptimal and delayed cultural immersion and workplace relationship building presents a risk for employers to innovation and collaboration. The impact of these may be delayed and not identified by employers until later in the employment relationship.

Remuneration and Benefits

Summary of responses

- Almost half of employers are not receiving Jobkeeper and conversely, a sizeable amount are receiving Jobkeeper (42%).
- Many employers have agreed to change days/times of work or to take annual leave at half pay (47%).
- The majority of employers are not in a position to plan for when JobKeeper ceases (63.86%).
- Almost half of surveyed organisations have had or intend to have annual salary increases or bonus payments in the ordinary way.
- A little over a quarter of surveyed organisations reported needing to reduce salaries and wages during the pandemic.
- Around 14% of surveyed organisations have implemented promotion freezes.
- More than half of surveyed organisations reported implementing alternative work practices outside of stand downs, reduced hours and employees taking leave.
- A majority of surveyed organisations have not updated their contracts to incorporate annualised salary clauses or to otherwise manage annualised wage arrangements for their award-covered employees.

Analysis

Surprisingly, most employers have reported that they have continued to institute annual salary increases and bonuses despite the negative economic conditions. As this does not correlate with the number of organisations accessing JobKeeper and implementing COVID-19 related changes to their businesses, it seems reasonable to infer that a large portion were awarded either because they were contractually guaranteed, or because organisations did not take advantage of any reserved discretions they held.

Employers who have not considered strategies such as contractual variations and leave directions face the risk of not having an agile and efficient workforce to meet the current challenges and those in the post-pandemic economy.

The overarching economic conditions have put many employers into difficult financial positions, with tough decisions being made to keep businesses afloat while going through Australia's first recession in 30 years. Despite this, our survey results show that a significant proportion of employers continued to raise salaries and issue bonuses during 2020.

Table 11: Annual salary increases/bonus payments will be/have been provided

Answer Choices	Responses
Strongly agree	12.04%
Agree	36.11%
Neither agree nor disagree	13.89%
Disagree	24.07%
Strongly disagree	13.89%

Table 12: Salaries/wages were reduced during the COVID-19 crisis

Answer Choices	Responses
Strongly agree	11.11%
Agree	15.74%
Neither agree nor disagree	3.70%
Disagree	42.59%
Strongly disagree	26.85%

On the one hand, this could be interpreted to show that employers are prevailing despite the economic environment. The commitment to adhere to scheduled annual salary increases and bonus payments sends strong signals to employees that the business is standing strong and weathering the storm so to speak. Such signalling has a major positive impact on the psychological and sociological sections of the people management quadrants that we often advise clients about. For employees, this signals a positive state of affairs and is likely to mean that there is less uncertainty and consequent stress about their employment and the viability of their employer.

However, it is probably more correct to say that this shows that employers have not fully utilised the options available to them to reduce their cost base and make adjustments to working practices to meet the changing economic and social climate. Close to 70% of respondents indicated that they had not reduced salaries or wages or instituted a promotion freeze, and a significant proportion, 38%, had not implemented alternative work practices during COVID-19.

Another trend we have observed from the survey is that the vast majority of respondents have not updated their employment contracts to incorporate annualised salary clauses contained in applicable awards. Because COVID-19 has been the headline stealer for most of this year, many employers may have forgotten that 2020 has been shaping up to become the year of underpayments, at least from an employment law perspective. While updating contracts may not seem like the most crucial of tasks for an organisation in the midst of what has been occurring, and many employers may choose to continue paying wages and allowances to employees, it remains a major risk area for employers to address.

The Fair Work Commission's recent focus on updating annualised salary clauses and the Fair Work Ombudsman's clear targeting of underpayments means that employers face a significant risk of legal claims if they do not ensure that they have in place effective processes and procedures to ensure that employee entitlements are being paid correctly. Employers who continue to rely on contractual "set-off" clauses as a way of bypassing onerous award conditions are set for a rude shock if they do not ensure that employee salaries and hours are at least in line with award conditions and entitlements.

Strategic considerations/key takeaways

- While employers can anticipate a degree of continued flexibility through temporary Award variations, those flexibilities are likely to be limited to the short term only, and it's fundamental that all employers plan with a longer term view.

- When planning and considering longer term structural changes to the performance of work, employers need to consider whether their existing compensation and benefit arrangements are properly aligned with the organisation's objective, and provide the right incentives to support a high performance culture.

- Employers need to assess whether the industrial instruments they negotiated in a different environment remain fit-for-purpose within the pandemic economy in which the business will operate for the foreseeable future.

- It is increasingly important for employers to take advantage of the tools and strategies available to them to adapt their way of operating to meet the new challenges in what we have dubbed the "new normal". Employers have multiple options available even outside of the JobKeeper Scheme such as contractual variations, alternate shut down periods and directions to take annual leave which help to create more sustainable work structures to meet periods of low economic activity.

- If employers are to survive and thrive in a post-pandemic economy, it is vital that they seriously look at their cost base and work practices to see where efficiencies can be made. There are many tools and strategies that employers can make use of to ensure that they are agile and responsive to economic shocks and not overly burdened by inflexible work practises and employment costs.

Consultation and Redundancy

Summary of responses

- Only 5% of surveyed organisations stated that they were waiting for the end of the JobKeeper Scheme to make redundancies.

- 42% of surveyed organisations have introduced significant organisational changes (including redundancies) since March 2020.

- One third of surveyed organisations were not aware that they could apply for a reduction in the statutory severance amount payable on application to the Fair Work Commission.

- 69% of surveyed organisations have used different strategies for consulting with staff who are working from home.

- About two thirds of surveyed organisations were aware of which employees they were required to consult before making changes to the workplace or implementing changes.

- One third of surveyed organisations did not consider their consultation obligations to be onerous.

Analysis

While the JobKeeper Scheme may have been designed to keep workers in employment, the survey data suggests that some organisations are already implementing redundancies (that is, prior to the cessation of the JobKeeper Scheme).

Organisations that have already introduced significant organisational changes will inevitably need to continue to assess whether their new organisational structure is fit for purpose. Most organisations may need to continue to implement significant organisational changes over the short to medium term in response to external health and economic factors related to the pandemic and the government's response to the pandemic.

An organisation's consultation obligations can seem more onerous when employees are working remotely.

Consultation

In general, an employer's legal obligation to consult about redundancy only arises when an industrial instrument applies to an employee and that industrial instrument contains requirements to consult about redundancy (which they almost always do). The failure to consult is particularly relevant with respect to unfair dismissal applications. If an employer is required to consult about a redundancy and fails to do so, the dismissal will not be a "genuine redundancy" and the employer may therefore be liable for an "unfair dismissal". Unfair dismissal applications increased by 43% between March and June 2020, with 1,520 more applications received compared to the same period in 2019.

The Courts and the Fair Work Commission often stress that consultation must not be perfunctory advice on what is about to happen, but rather, consultation is about providing the affected individuals with a bona fide opportunity to influence the decision maker. During these unprecedented times, providing affected employees with that opportunity to share perspectives and innovative strategies about matters affecting their employment and the organisation, may be more valuable than some organisations appreciate.

Notwithstanding the perception by some that consultation is onerous, the fact of the matter is that consultation does not need to be a particularly onerous nor lengthy process. Particularly in circumstances of extreme economic hardship where redundancies are practically inevitable, the Fair Work Commission has determined that consultation may only take one week.

Delivery of bad news

Regardless, many organisations have experienced challenges with consulting with employees who are working from home, particularly with respect to redundancies and the likely termination of that employee's employment. This alternative means of conveying "bad news" is radically different to the best practice approach of having these difficult conversations in face-to-face meetings. The "abruptness" of these means of communication may also lead to an increase in workers' compensation claims.

Key messages are more likely to be misunderstood in audio/video conferences. Individuals are not able to gain insight from the usual non-verbal cues that surround a conversation. For example, is this a "closed door" or an "open door" conversation?

The Courts and the Fair Work Commission have previously criticised employers who have informed employees via text message or email about the termination of their employment. In the "new normal", even if the majority of the workforce has returned to the office, some organisations may continue to deliver key messages through audio/video-conferences. As such, the Fair Work Commission may be required to determine whether these types of communication are acceptable, and if so, whether it is also permissible for an employer to deliver termination notices to employees who are otherwise too "sick" to attend the office.

Agile operations

While market conditions are increasingly fluctuating, organisations can be assured that they can lawfully implement redundancies based on the operational circumstances prevailing at the time the employee(s) will be made redundant. For example, in a recent unfair dismissal decision, the Fair Work Commission was satisfied that the applicant's dismissal was a case of genuine redundancy, despite the employer advertising a substantially similar role less than one month after the dismissal. Notwithstanding, even though an organisation's headcount can be rebalanced as needed, organisations should exercise caution when making decisions to let go of quality employees with significant experience, particularly when considering the costs associated with hiring and inducting new employees.

Organisations are introducing organisational changes on a more frequent basis. As such, the people management and processes surrounding the introduction of these changes have become increasingly important. Organisations that have obtained the "buy-in" of the workforce from the start of the pandemic may continue to be supported by their employees, whereas employees that feel that they are sidelined or disposable are less likely to support further changes. Now is the time for organisations to assess and improve their change management processes.

Organisational change

Approximately half of the organisations surveyed have not introduced significant organisational change (including redundancies) since March 2020. In general, many organisations are reluctant to introduce change, even when they are presented with the opportunity or business case to do so. Some organisations may not be introducing "significant" organisational changes because their operations have sufficient flexibility to accommodate the varying impacts of the pandemic. Moving forward through these uncertain times, it is increasingly important that organisations remain agile to pivot as appropriate.

Table 13: Significant organisational change has been introduced

Answer Choices	Responses
Strongly agree	11.21%
Agree	29.91%
Neither agree nor disagree	9.35%
Disagree	29.91%
Strongly disagree	19.63%

Table 14: We consider our consultation obligations onerous

Answer Choices	Responses
Strongly agree	4.67%
Agree	13.08%
Neither agree nor disagree	48.60%
Disagree	28.04%
Strongly disagree	5.61%

Reducing redundancy pay

An employer can apply to the Fair Work Commission for a reduction in the amount of statutory redundancy pay that is payable, if the employer:

(a) obtains other acceptable employment for the employee; or

(b) cannot pay the amount.

The case law imposes a high bar in regard to what an employer must do to obtain other acceptable employment for a redundant employee. The onus of proving that the alternative employment is acceptable rests with the employer. The acceptability of the alternative employment will depend on the totality of circumstances affecting the relevant employee. The test is an objective one which involves consideration of a range of factors including pay levels, hours of work, seniority, fringe benefits, workload, job security, location, as well as the employee's skills, experience and physical capacity.

If an employer is making the application because they cannot pay the required amount, the employer will need to satisfy the Fair Work Commission that is it not financially competent and cannot reasonably access or source the required funds to make the payment. The Fair Work Commission will not grant an exemption or reduction simply because it would be inconvenient or difficult for the employer to pay the entitlement. The Fair Work Commission has been unpersuaded to reduce the amount of redundancy payable even during the current recession and in circumstances where employers are suffering financial stress.

Strategic considerations/key takeaways

- Within a buoyant economy and job market, employees have tended to overlook consultation deficiencies associated with restructure based terminations. Within that context, deficiencies in consultation have been leveraged by dismissed employees as a means of negotiating an additional payment through the unfair dismissal jurisdiction. In the current, depressed job market with higher rates of unemployment, employees and unions are likely to exploit consultation deficiencies to initially delay a dismissal (through dispute processes) and ultimately challenge the dismissal itself.

- While consultation remains an important and often misunderstood legal obligation for most employers, the role of consultation spans beyond the legal realm and has longer lasting impacts on organisational culture and employee engagement.

- The Fair Work Commission has continued to emphasise the importance of consultation, and its expectation as to the genuineness of the process.

Employee Relations and Welfare

Summary of responses

- Almost half of surveyed organisations reported an increase in the number of employees accessing EAP during COVID-19.
- Almost a quarter of surveyed organisations reported not being sufficiently aware of the circumstances of those employees who were unfit for work or those receiving workers' compensation.
- Almost one third of surveyed organisations reported an increase in personal/carers leave being accessed by employees despite there not being a comparable level of community infection and transmission.
- Less than one third of surveyed organisations reported either being under-resourced to support its workforce during the pandemic, or 'not being aware' of resourcing levels.
- Over 60% of surveyed organisations reported an increase in engagement and communication between their Board/Executive and HR Team.
- Around one quarter of surveyed organisations reported an increase in the number of employees challenging decisions which impact them.

Analysis

In a post-pandemic world, employees may require more support.

Employers have not been taking steps to quantify and measure the welfare and wellbeing of their employee base.

This increases the risk of creating disengaged, unmotivated and hostile employees, and the risk of legal issues such as bullying and harassment claims.

While our survey results show that a proportion of employers have not had major employee relations or welfare issues, there are many employers who have experienced increases in the usage of EAPs, taking of personal leave and adverse behaviour by employees, which may indicate that they have not been taking proactive steps to address issues of employee relations and welfare. These challenges also tend to be the warning signs for deteriorating employee relations, poor performance and an increased potential for legal claims.

Table 15: There has been an increase in personal/carer's leave taken

Answer Choices	Responses
Strongly agree	5.61%
Agree	26.17%
Neither agree nor disagree	25.23%
Disagree	35.51%
Strongly disagree	7.48%

Table 16: We have had an increase in employees challenging decisions

Answer Choices	Responses
Strongly agree	1.87%
Agree	22.43%
Neither agree nor disagree	34.58%
Disagree	36.45%
Strongly disagree	4.67%

The increase in the use of EAP services is likely to be indicative of increased mental health issues among employees. This is likely due to the negative impact of wider measures taken to address the pandemic such as social isolation from mass working-from-home practices. Many employees prefer to work from an office environment, and not all employees are able to physically and emotionally separate their working and personal lives while working from home. For those employees who prefer an office environment or prefer to maintain the separation, compulsory working-from-home arrangements may impact on their longer-term emotional wellbeing. It is not unexpected that, in these circumstances, more employees will access EAP, and in fact should be encouraged by employers to help discharge their work health and safety obligations to address the risk of mental health issues.

Mental health issues can of course have significant impacts on productivity, performance and culture within workplaces regardless of their size or industry. Employers should be addressing these issues not just to meet their legislative obligations, but also for their employees to flourish in their employment. Employers should be taking steps to ensure that the needs of employees who are experiencing mental health issues are understood, including monitoring how changes to workplace practices in the COVID-19 period have impacted their usual output and working style. In circumstances where many employees are now working from home and accessible almost 24/7, employers may need to make adjustments to workflows and expectations on deliverables in consultation with employees, such as reviewing workload distributions, hours and leave arrangements.

Even at the best of times a bullying or harassment claim can be hugely burdensome and disruptive for employers, let alone during a pandemic. With changing work habits and the general atmosphere of uncertainty it is likely that employees may seek to challenge employer decision-making and seek to take what would be otherwise reasonable management actions as the basis for bullying and harassment claims.

Employers who do not proactively create and maintain a positive environment for employee wellbeing are more likely to be faced with employee disengagement, and the resulting workplace disputation. Employers who pursue a high-performance culture should ensure that their systems, policies and processes for promoting and managing employee wellbeing are clear, actively promoted and embedded as part of the organisational culture.

Strategic considerations/key takeaways

- Employers should not lose sight of the place of employee wellbeing within a holistic approach to employee management. The management of employee wellbeing carries importance beyond the individual employee, and has direct flow on consequences for workplace culture, individual disputation and downstream claims.

- Heightened periods of uncertainty, such as in a global pandemic, can have a deleterious effect on employee wellbeing and mental health. While an employer will often be unable to remove a lot of uncertainty for an employee, the provision of open and timely information to employees can play an important role in managing employee engagement and wellbeing.

- Periods of individual stress can often create an environment where inter-employee disputation occurs. Employers need to ensure that they have appropriate systems in place to support employees and to identify and manage the early warning signs.

Learning and Development

Summary of responses

- A significant proportion (almost 45%) of surveyed organisations reported reducing spending on training and education during the pandemic.
- Over half of surveyed organisations reported refocusing learning and development training to "mission critical" areas only.
- Over 10% of surveyed organisations reported making early cuts to their learning and development resources as part of their response to the pandemic.
- While a majority of the surveyed organisations prefer the provision of online training, around a quarter of surveyed organisations prefer face-to-face training.
- Almost all surveyed organisations prefer the ability to choose between face-to-face and online training.

Analysis

It is unsurprising that many employers have reduced spending on training and development during the COVID-19 pandemic. While this is likely to be a cost saving mechanism for many businesses adversely affected by the pandemic, for others the need to adapt to the "new normal" has led to a shift in focus and priorities.

Despite it being widely accepted that organisations must continue to invest in learning and development notwithstanding any downturn in revenue, there has been a shift in focus to "mission critical training and development." While the definition of "mission critical training" will vary between organisations, it is crucial that such training include programs necessary to meet compliance obligations, minimise the risk of employer liability and continue to develop employees and business capabilities.

As employees continue to adapt to the "new normal", it is important that training programs are adapted and delivered to ensure employees are aware of how existing policies apply when working from the home. This is particularly relevant as the increase in the use of online platforms have provided unprecedented access to the home life of colleagues and has blurred the line between home and work. Further, the absence of a physical "office" for many employees means managerial oversight is more difficult to achieve.

The rapid increase of remote working has also presented an array of security issues, which requires employers to consider whether training in areas such as business security, confidential information and data protection measures are necessary to protect its business.

While compliance and risk management are important from a legal perspective, with a 59.4% increase in total job vacancies in August 2020 when compared with May 2020, it is important to remember that learning and development can be an important factor in attracting talent. It's also critical that any reduction in spending does not hinder the ongoing engagement of employees, many of whom may feel isolated by reason of the prolonged physical separation from their normal workplace and colleagues.

Risk Management

While COVID-19 has changed the way many businesses operate, compliance and liability issues remain unchanged.

It is important to remember that Work Health and Safety obligations continue to apply when employees work somewhere other than premises provided by the employer (including their home) and that an employer must, so far as is reasonably practicable, maintain a work environment that is safe is without risk. Training may be an effective measure towards complying with these obligations and may further be utilised to improve staff wellbeing and productivity, a commercial imperative for all businesses.

As employers continue to grapple with people management strategies in unchartered waters, employers should also be mindful of the ongoing risk of bullying and discrimination claims. As we have seen a spike in bullying applications in recent months, training may be a significant factor in preventing and managing workplace bullying, particularly if it facilitates early intervention of workplace conflict prior to escalation.

Further, as COVID-19 has not changed the liability faced by employers who fail to take reasonable steps to prevent an employee from engaging in unlawful discrimination and harassment, it remains imperative that employers have policies in place and that employees are regularly trained on those policies so as to deter unlawful conduct.

Online Delivery

The changes necessary to combat COVID-19 in the workplace have forced many businesses to rethink how they train employees, develop workplace culture and bolster organisational capabilities when a team cannot meet in person.

While 52% of survey participants expressed a preference for online delivery, 75% of participants indicated that they appreciated having a choice between participating in training online or in-person.

Table 17: We have reduced our spend on training and education

Answer Choices	Responses
Strongly agree	16.82%
Agree	26.17%
Neither agree nor disagree	14.95%
Disagree	35.51%
Strongly disagree	6.54%

Table 18: We prefer training and education to be delivered online

Answer Choices	Responses
Strongly agree	15.89%
Agree	35.51%
Neither agree nor disagree	23.36%
Disagree	22.43%
Strongly disagree	2.80%

As restrictions continue, it is essential that employers consider strategies to encourage and improve online learning so that employees remain engaged and continue to develop (and reinforce skills) whilst they are separated from the physical workplace. Whilst this may require some investment of resources, it has the potential to yield long-term gain.

Strategic considerations/key takeaways

- It is essential that compliance-based training is continued during the pandemic to minimise the risk of claims and exposure to liability.

- Training can be used as a tool to engage staff while separated from the physical workplace and assist in recruiting (and retaining) talent within your business.

- Although the pandemic will continue to place significant limitations around the provision of larger group training and face-to-face training, strategic employers can pivot their learning and development to smaller group training sessions, which is also likely to have positive flow on effects and improve employee engagement with those opportunities.

- Employers need to be aware of the risks associated with short-term decision making around learning and development. While some employers will see learning and development in a similar light to discretionary spending, employers need to be aware of the longer term, slow-burn impacts that cuts to learning and development will have (including undermining the organisation's own journey to a high-performance culture).

Suppliers and Budgets

Summary of responses

- Approximately half of surveyed organisations reported an early reduction in their spend on external suppliers since the beginning of the pandemic, with around a quarter 'not knowing' if their organisation had a reduced spend on external suppliers.
- Approximately half of surveyed organisations reported an expectation of reduced external expenditure through to at least 30 June 2021.
- A majority of surveyed organisations reported more closely scrutinising fees from external suppliers and are likely to change suppliers if fees are considered excessive; and
- A majority of surveyed organisations have an increased focus on exploring creative and innovative fee proposals.

Analysis

It is unsurprising that most organisations are under cost pressure. While most are still using external suppliers in a post-pandemic world, they are being more discerning.

To be successful, suppliers are becoming innovative, offering greater value and being flexible with pricing and payment options.

Table 19: We are looking at external suppliers to be innovative and creative with their fees

Answer Choices	Responses
Strongly agree	16.04%
Agree	44.34%
Neither agree nor disagree	26.42%
Disagree	11.32%
Strongly disagree	1.89%

Table 20: We intend to maintain reduced spend on external suppliers until June 2021

Answer Choices	Responses
Strongly agree	17.92%
Agree	33.96%
Neither agree nor disagree	27.36%
Disagree	16.04%
Strongly disagree	4.72%

Strategic considerations/key takeaways

- Organisations need to be careful about sacrificing strategic and proactive advice for short term cost savings. The short term investment in appropriate services can often avoid longer term costs.

- Organisations should also review their cash flow budgets to determine what effect a downturn in the business will have on the ability to pay suppliers and repay debt. However, suppliers and other businesses are most likely also dealing with the crisis, and keeping good relationships might be beneficial for both.

- Organisations should exercise caution when focusing on short-term costs and ensuring that decisions are made on a deeper understanding of value. Lower cost services can sometimes mean inferior services.

- Organisations must not take a short-term view of their business. While cutting costs remains important, they must be strategic decisions that do not impact on the company's ability to improve performance when conditions improve. For example, reducing employee training, marketing and research expenditure may have a long-term impact on an organisation's future success.

- Challenge can often be the birthplace of innovation. The pandemic and consequential economic challenges have created a fertile opportunity for strategic organisations to engage more closely with their service providers to negotiate innovative engagement terms and to build a closer, more efficient working relationship.

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