

The logo for actlaw society is displayed in a dark blue rounded rectangle. The word 'act' is in orange, 'law' is in white, and 'society' is in a light grey color. The background of the slide features abstract geometric shapes in shades of red, orange, and yellow, with some areas having fine line patterns.

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Employment Issues

PRESENTED BY GABRIELLE SULLIVAN | SULLIVANS LEGAL CO

LEGAL PRACTICE MANAGEMENT WORKSHOP 18 - 20 JUNE 2024



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Employment Law Basics for the Legal Industry

PRESENTED BY

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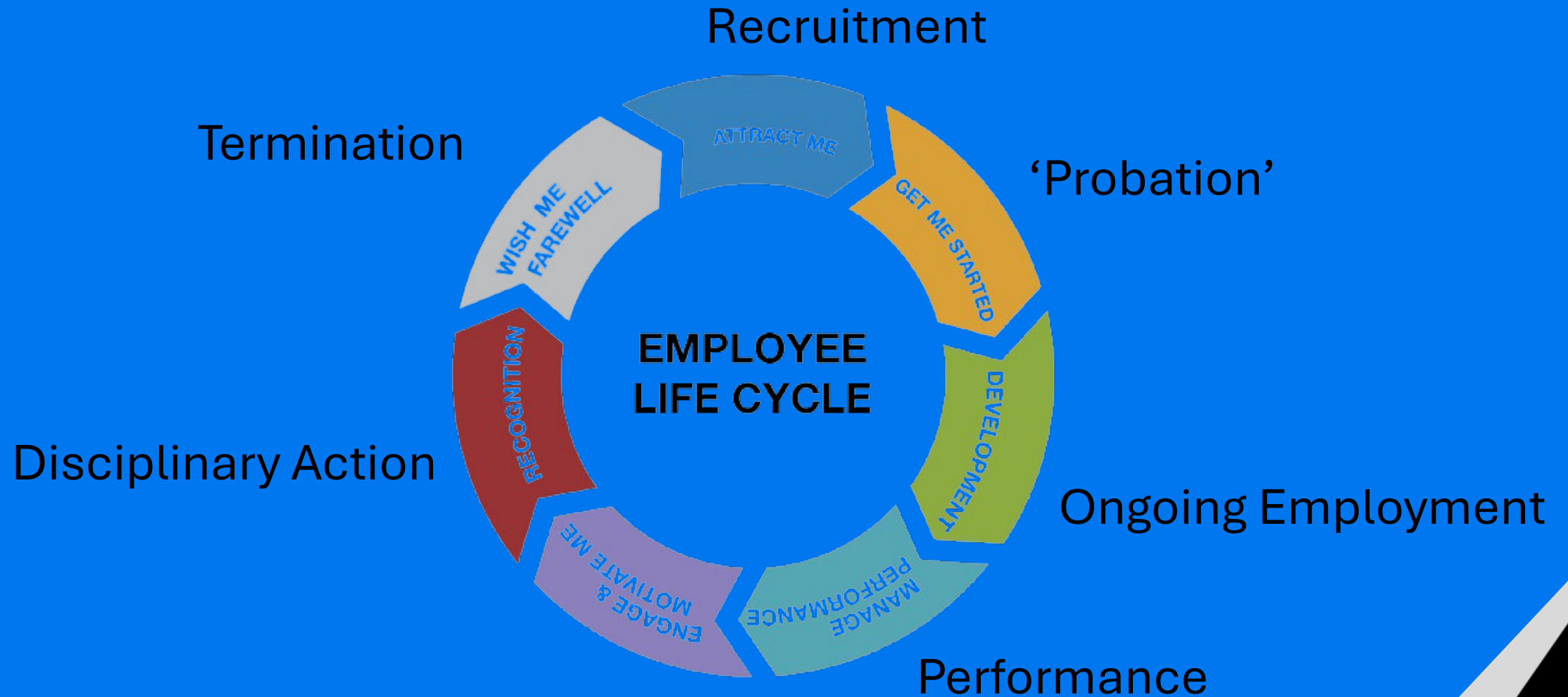
Agenda

1. Employment Law Basics for the Legal Industry
2. The Employment Law Framework
3. Risks, Issues and Solutions
4. Case Studies
5. Q&A

Disclaimer:

The contents of this presentation do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.

The Employment Life Cycle





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Types of Workers

Employees, who can be

- Permanent (full time or part time)
- Casual (absence of firm advance commitment)
- Fixed term/task
- Adult/junior/trainees

Non-Employees, such as

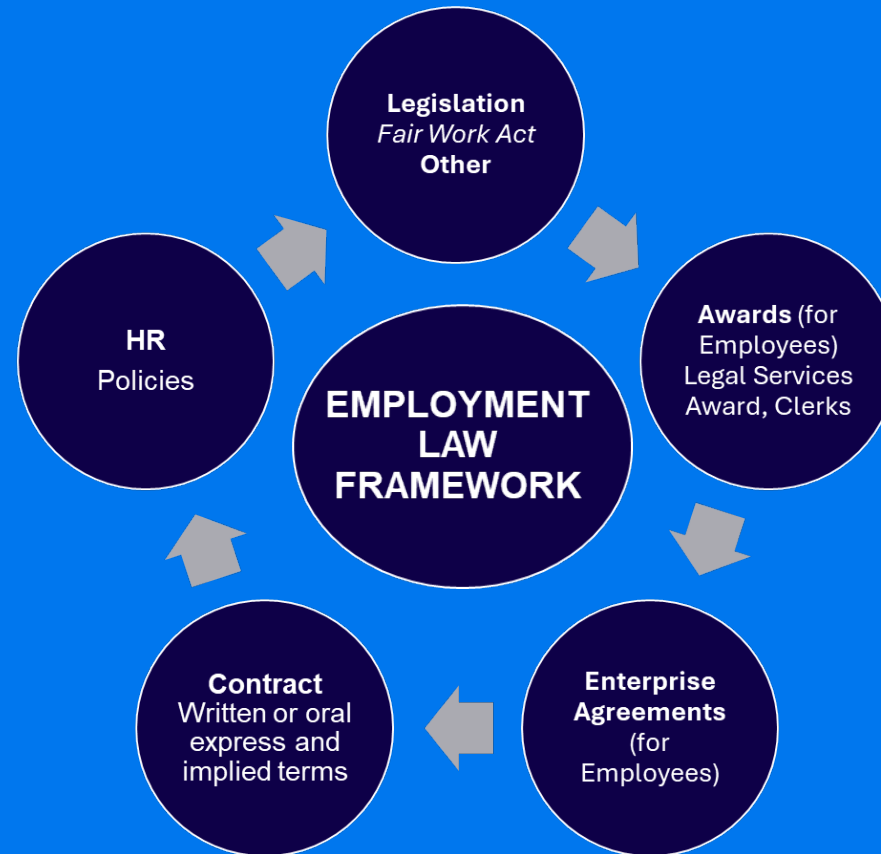
- Independent Contractors
- Partners; Directors
- Volunteers/interns
 - Intention; mutuality; training v work
 - PLT; vocational placements



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The Regulatory Framework





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Key Employment Legislation: Overview

Commonwealth Legislation

Fair Work Act 2009 (Cth)

Age Discrimination Act 2004 (Cth)

Disability Discrimination Act 2004 (Cth)

Racial Discrimination Act 1975 (Cth)

Sex Discrimination Act 1984 (Cth)

Work Health and Safety Act 2011 (Cth)

Safety, Rehabilitation and Compensation Act 1988 (Cth)



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Key Employment Legislation: Overview

Fair Work Act 2009 (Cth)

- National Employment Minimum Standards (NES)
 - Maximum hours, flexible work requests, casual conversion, parental leave, AL, PCL, compassionate leave, CSL, LSL, FDV leave, public holidays, notice of termination, redundancy pay, fair work information statement: www.fwo.gov.au
- Pay-slips and Record-keeping
- Anti-Victimisation, Discrimination and General Protections Provisions
- Stop Bullying/Sexual Harassment Orders
- Unfair Dismissal
- Sham contracting



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Key Employment Legislation: Overview

ACT Legislation

Discrimination Act 1991 (ACT)

Workplace Privacy Act 2011 (ACT)

Workers Compensation Act 1951 (ACT)

Work Health and Safety Act 2011 (ACT)



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Awards and Enterprise Agreements

Awards: Key Issues

Which Award?

- Legal Services Award; applies to non-legal staff and non-admitted lawyers.

Award issues?

- Base rate of pay, ALL, penalty rates, allowances, overtime, consultation, breaks, rostering.

Under-classification

- Err on the side of caution.



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Awards and Enterprise Agreements

Enterprise Agreement

Is an EA a good idea?



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Overview of Contracts

Minimum Requirements

None

- But unenforceable if undercut single FWA, Award, or EA minimum provision

Implied Terms

- To serve and cooperate
- To obey lawful and reasonable directions
- Fidelity and confidentiality
- Care and skill
- Termination on notice

Express Terms



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Overview of Contracts

Written v Oral: When should there be a written contract?

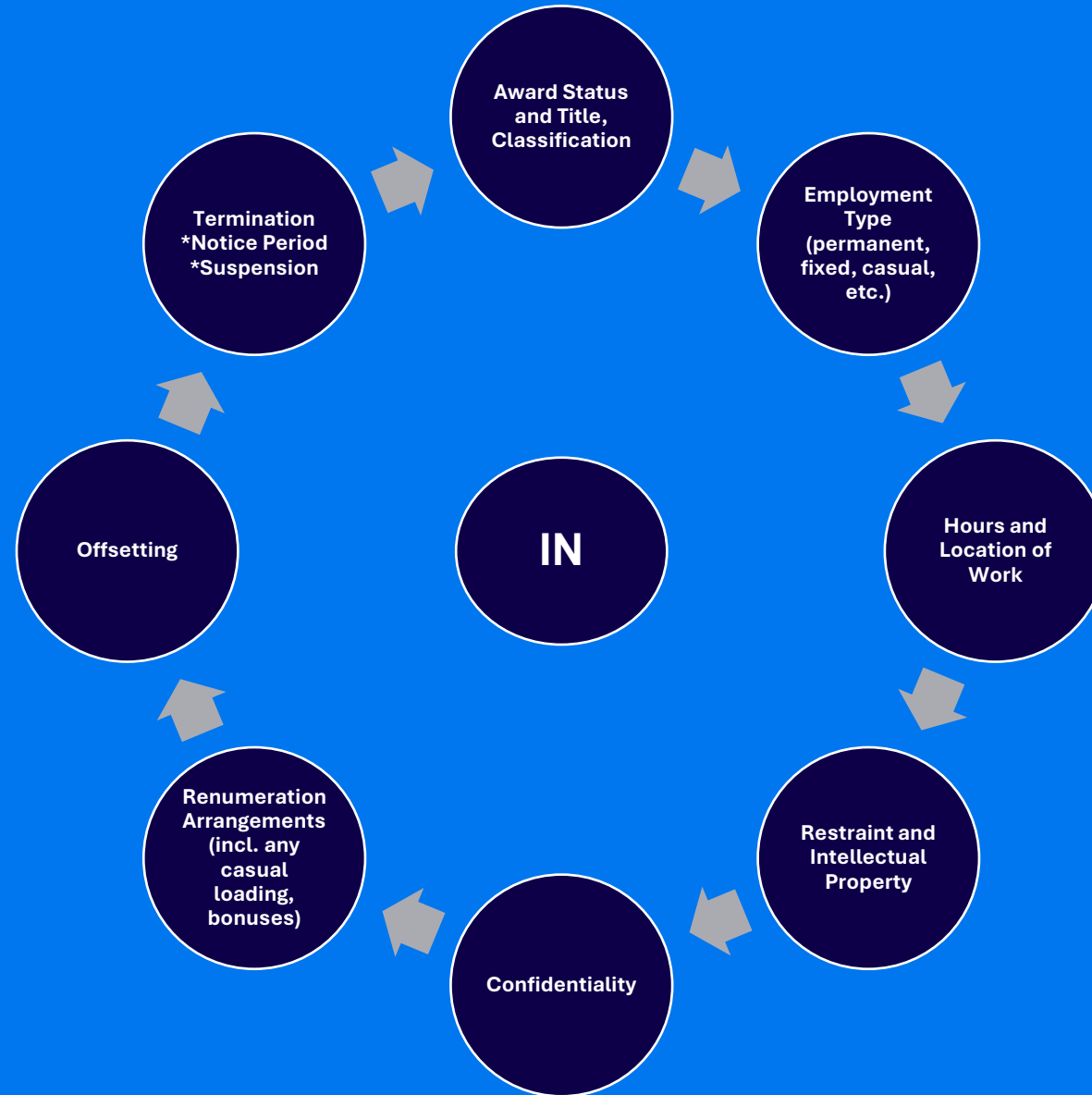
- Sham Contracting
 - Independent contractor or employee?
- Casuals
- High value employees
 - Restraints of trade provisions
 - Termination provisions
- Lower value employees
 - Offsetting above award payments



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Key Contract Terms: In

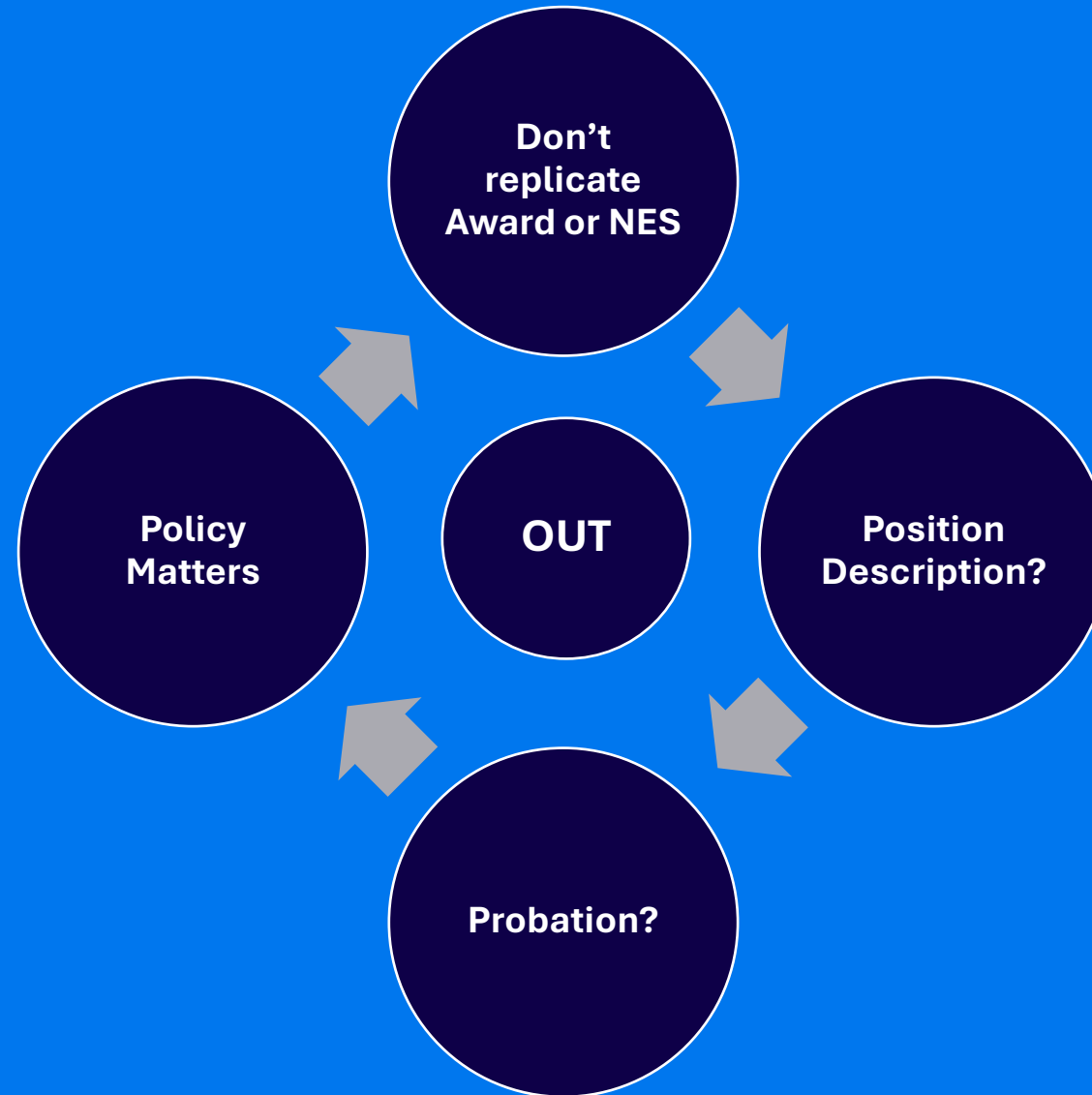




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Key express Contract Terms: Out





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HR Policies: Overview

Polices: Information; non-contractual

Key Policies:

- Work, health & safety
- Bullying, discrimination and sex harassment
 - Positive Duties – Respect@Work)
- Workplace surveillance and monitoring
- Whistleblower protection?



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HR Policies: Overview

Polices: Information; non-contractual

Criteria of good policies:

- Effective: less can be more
- Consistent (internally and with other instruments)
- Flexible
- Compliant



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Perennial Issues & Risks – At the Start

- Getting the contract deal right
- Onboarding: setting expectations
- Entitlements & Wage theft
- Discrimination
- Probation
- Termination



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Perennial Issues & Risks – At the end

- Wage theft / entitlements
- Termination: notice, grounds and unfair dismissal
- Discrimination
- Redundancy and tax treatment
- Deed of Settlement & Release
- Restraints



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Risks, Issues & Solutions

Along the way

- Injuries
- Work, health & safety
- Bullying and investigations
- Discrimination/harassment
- Misconduct
- Underperformance
- Data breaches
- Right to disconnect?



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The Right to Disconnect

- Employees cannot be subjected to **adverse treatment** for refusing **monitor, read or respond to contact** (or attempted contact) from their employer or a third party **outside of their working hours**, unless the refusal is **unreasonable**.
- Whether refusal is unreasonable will depend on circumstances including:
 - The reason for the contact or attempted contact
 - How the contact is made and the level of disruption it causes the employee





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The Right to Disconnect

- *(Circumstances continued)*
 - How the contact is made and the level of disruption it causes the employee
 - The extent to which an employee's remuneration compensates them to remain available to perform work during the period in which the contact is made or to work additional hours outside their ordinary hours of work
 - Nature of the employee's role and their level of responsibility
 - Employee's personal circumstances (including family or caring responsibilities)
- Emergency contact or contact regarding a change or work conditions is considered 'reasonable contact'.



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The Right to Disconnect

- Remedies
 - A workplace right for purposes of general protections provisions
 - Employees can raise a workplace dispute. If the issue is not resolved at the workplace level, either party can apply to the FWC for a Stop Order (operate similar to Stop Bullying Orders). Breaching Stop Order may attract civil penalties, but not criminal penalties.
- This new right applies to all employees
- This right commences 6 months after Royal Assent (12-month additional exemption for small business employers)



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Risk Management Solutions

Dispute Resolution

- Paper trail
- Mindset - Interest/relationship/solution-focused



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Risk Management Solutions

Insure

Model, lead and set culture

- Autonomy, mastery, purpose
- Respect

Tackle misconduct and underperformance

- *'The standard you walk past, is the standard you accept'*
- Continuous feedback
- Use probationary periods





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Questions?



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Case Studies

Example #1

XYZ Legal hired an EA. All started OK, but over time, the principal became concerned that the EA's attitude to client care was becoming more unhelpful. The EA had also been starting to take a few unscheduled days off with no notice.

- *What **should** an employer do about this?*



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Case Studies

Example #2

ABC Legal wants to hire a full time admitted lawyer. The only applicant wants to work part time, so he can also train in an elite soccer team.

- *Does ABC have to agree to this?*
- *Would your answer **be different** if the applicant wanted to work part time to care for his elderly mother?*



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Case Studies

Example #3

A senior lawyer at ABC Legal has decided to leave ABC and start her own practice. She has quite a few of ABC clients contact details on her private laptop (legitimately) arising from her ABC work.

- *Can she **solicit** ABC's clients?*
- *Can she **use** client contact data on her laptop to solicit those clients?*



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Case Studies

Example #4

A solicitor has left the office and logged off for the day. Their employer texts them with about an emergency task and asks the employee to call them back. The employee sees the text though doubts 'the emergency' is really an emergency and does not respond until the next day.

- *Can the employer penalise their employee for ignoring the text?*
- *What else do we need to know?*



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Questions?



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