



Employment Law Matters

Welcome to the June edition of the Employment Law Matters newsletter

HR and workplace issues are increasing in prominence and complexity, plus you as employers and HR professionals are dealing with more accessorial liabilities and exposures. A systematic approach to compliance is needed, and part of that is to stay informed about current issues, case law decisions, and key emerging matters.

In this month's edition:

- Will ScoMo keep the status quo for industrial relations and employment law?
- Blowing the whistle - is your policy up to date?
- Do employees have a right to free speech in Australia? Cut through recent controversies and look at a recent case decision
- The risks associated with the collection of employee biometric data. How does the recent Fair Work Commission Full Bench decision affect you? We have insights from two leading law firms
- Managing the modern workplace
- Just who is the Fair Work Ombudsman targeting, as they sharpen their regulator focus?
- The Australian minimum wage decision and a checklist for you to adopt
- **Singapore:** Do you have operations in Singapore? Amendments to the Singapore Employment Act reviewed
- **New Zealand:** with wide-ranging provisions from the Employment Relations Amendment Bill now in effect, do you need clarification on the new laws?
- **Regulator and decisions insights:**
 - The latest Fair Work decisions
 - The latest news from the Fair Work Ombudsman
 - The latest Employment Court of New Zealand decisions

Will ScoMo Keep the Status quo?

The Coalition did not make many significant policy announcements in relation to industrial relations during its campaign, and as a result it is a return to the status quo from an industrial relations and employment perspective. However, there are some clues that can be drawn from statements and unfinished initiatives from the last term. Article courtesy of **K&L Gates**. Click [here](#).

Blowing the whistle - is your policy up to date?

Effective 1 July 2019, new whistleblower laws introduced by the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Act) will create an extended set of protections for whistleblowers who make disclosures after that date. The Act goes further to mandate that, by 1 January 2020, all public companies, 'large

proprietary companies' and corporate trustees of registrable superannuation entities must have a whistleblower policy which complies with the new requirements. These changes are a prompt for companies to review their policies and ensure they meet the enhanced requirements of the Act. Those who don't yet have a whistleblower policy should consider adopting one to ensure they are compliant when a disclosure comes in. **Lander & Rogers** has developed a policy which is compliant with the Act or can review your existing policy to augment it with the additional requirements that have been introduced. For more information please click [here](#).

Do employees have a right to free speech in Australia?

There's been a lot of publicity recently over Israel Folau and his problems with Rugby Australia over some controversial views about homosexuals and others he posted on social media.

Some commentators have characterised that dispute as a contest between, on the one hand an employee's right to religious freedom and freedom of speech, and an employer's right to require its employees not to damage its business or to bring it into disrepute by publishing controversial views. While the rugby field might seem a long way from the cloistered corridors of academia, a recent decision of the Federal Circuit Court of Australia (Ridd v James Cook University) makes clear the questions of intellectual freedom and free speech in Australia are significant issues for employers across the higher education sector. Why did the Court find that James Cook University took unlawful action by censoring, making adverse findings against and ultimately dismissing Professor Ridd? For insights courtesy of **Lander & Rogers** click [here](#).

Australia: biometric data, the Privacy Act, and the employee records exemption

In *Jeremy Lee v Superior Wood Pty Ltd*,^[1] the Full Bench of the Fair Work Commission (FWC) considered the lawfulness of an employer directing an employee to provide their biometric data. In this case, Mr Lee objected to his employer's direction to use a fingerprint scanner to sign in and out of his work site, under Superior Wood's Site Attendance Policy (Policy). Mr Lee argued that he owned the biometric data contained within his fingerprint, and that as 'sensitive information' under the Privacy Act 1988 (Cth) (Privacy Act), his employer was not entitled to require he provide this information. **Herbert Smith Freehills** looks at this case, how the decision has raised potential concerns about directing employees to attend IMEs or participate in drug and alcohol testing, and practical guidance for employers. Click [here](#).

Keeping your finger(print) on the pulse: Employer's warned of the risks associated with the collection of biometric data

A recent Fair Work Commission Full Bench decision has shed light on the obligations and risks associated with the use of biometric technology by employers. In the first Full Bench decision considering an employee's refusal to provide biometric data through fingerprint scanning, it was held in *Jeremy Lee v Superior Wood Pty Ltd t/a Superior Wood* [2019] FWCFB 2946 (1 May 2019) that directing an employee to provide fingerprint data, in circumstances where the employee did not consent to that collection, was not lawful. The decision is important for employers to consider as it raises questions around data collection, data policies, the storage of data and

whether the refusal to provide sensitive information is a valid reason for dismissal. Article courtesy of **Norton Rose Fulbright**. Click [here](#).

Fair Work Ombudsman targets the fast food, restaurant and café industries

Fair Work Ombudsman, Ms Sandra Parker, announced FWO's priorities for 2019 – 2020, altering the agency's public image from mediator to regulator. Law enforcement and adherence to Australian industrial relations laws are the top priorities, with a strong focus on targeting "priority industries" which include the Fast Food, Restaurant and Café industries, and Franchisors. The FWO intends to enforce industrial laws by issuing compliance notices, and also announced that if these notices are not complied with, the FWO won't be shy in seeking monetary penalties through the Court system. **FCB Workplace Law** look at the FWO's stronger approach to enforcement [here](#).

Managing the modern workplace

Given the post Banking and Financial Services Royal Commission focus on corporate culture, the post Weinstein and #metoo movement era has undoubtedly heightened awareness regarding inappropriate sexual harassment in the workplace. Now the Royal Commission has called corporate Australia to account on a real need to examine our workplace cultures and the behaviours that they drive. The same characteristics of culture that can drive inappropriate behaviours towards colleagues can detrimentally impact customers, suppliers and other stakeholders. The team at **Clayton Utz** are experts on the legal issues arising from these developments. At the upcoming [HR Law Masterclass conference](#) they will unpack issues that can harbour and hide inappropriate conduct, whilst exploring ways that organisations can improve staff psychological safety to speak up, address the drivers of unacceptable workplace behaviours and minimise associated legal risks.

HR Law Masterclass conference Australia

Sydney 24 September; **Melbourne** 26 September; **Adelaide** 1 October; **Brisbane** 3 October; **Perth** 9 October

2019 Minimum Wage Decision

The Fair Work Commission's Minimum Wage Panel ("Panel") has handed down its minimum wage decision which increased the National Minimum Wage, together with all Modern Award minimum rates of pay, by 3.0%. What does this mean for you? **FCB Workplace Law** looks at: Modern awards; Annualised Salaries and Individual Flexibility Agreements; Enterprise agreements; and other circumstances. Please click [here](#) for more information

Do you have operations in Singapore? Amendments to the Singapore Employment Act reviewed

The Employment Act, which is Singapore's main employment legislation, has recently been amended, with the changes taking effect from 1 April 2019. The changes are very extensive, and every employer in Singapore is likely to be affected. Article courtesy of K&L Gates. Click [here](#).

New Zealand:

A number of changes to the Employment Relations Act 2000 came into force 6 weeks ago. This article, courtesy of Russell McVeagh, looks at how these changes may impact your business. Please click [here](#).

[HR Law Masterclass conference NZ](#)

With the wide-ranging provisions from the Employment Relations Amendment Bill now in effect - do you need clarification on the new laws?

Up to 10 Lawyers presenting on all key HR risk topics in 1 day.

Wellington September 10 | **Christchurch** September 12 | **Auckland** September 17

[Workplace Investigations Workshop NZ](#)

A pre-conference workshop to the HR Law Masterclass conference.

Facilitated in each city by leading national law firm Simpson Grierson, this is an interactive training course designed to help you unravel the complexities of workplace investigations. **Take advantage of the reduced rates if you attend both the conference and workshop.**

Wellington September 9 | **Christchurch** September 11 | **Auckland** September 16

REGULATOR INSIGHTS

For the latest **Fair Work Commission** decisions click [here](#).

For the latest news from the **Fair Work Ombudsman**, click [here](#).

For the latest **Employment Court of New Zealand** decisions click [here](#)

EVENTS | FOR CURRENT, PRACTICAL AND EMERGING UP TO THE MINUTE INSIGHT

Be sure to attend the following market leading events in Australia & New Zealand

[3rd annual Managing Ill & Injured Employees Masterclass NZ](#)

Manage your legal HR risks, workplace mental health scenarios, return-to-work & rehabilitation processes

Auckland 30th July 2019; **Wellington** 5th August; **Christchurch** 6th August

[Workforce Inclusion & Diversity conference NZ](#)

Embrace employee values, beliefs, identities and experiences for an inclusive, progressive and productive workplace

Auckland: 28-30 August 2019

[HR Law Masterclass conference Australia](#)

Up to 12 Lawyers presenting on all key HR risk topics in 1 day

Sydney 24 September; **Melbourne** 26 September; **Adelaide** 1 October; **Brisbane** 3 October; **Perth** 9 October

[Workplace Investigations workshop Australia](#)

A pre-conference workshop to the HR Law Masterclass conference, helping you to plan and manage effective investigations

Sydney 23 September; **Melbourne** 25 September; **Adelaide** 30 September; **Brisbane** 2 October; **Perth** 8 October

[Workforce Inclusion & Diversity conference Australia](#)

Advancing your inclusion and diversity programmes to enhance positivity, productivity and profitability in your workplace

Melbourne: 23-25 October 2019