



# Employment Law Matters

**Welcome to the July 2019 edition of the Employment Law Matters newsletter**

**In this month's edition:**

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  - Employment related rate increases effective now
  - Key financial thresholds for the 2019-2020 financial year
  - New Fair Work information statement released
- Interim NSW Anti-Slavery Commissioner provides insight on potential future of the NSW Modern Slavery Act
- Serious misconduct: what is, and is not, 'serious misconduct'
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**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

**Events:** up to the minute insights and education

### **Employment related rate increases effective now**

From 1 July 2019, the national minimum wage and modern award rates will increase by 3%. **K&L Gates** reminds us what you should be doing now: from reviewing annualised salary arrangements to ensure compliance, to updating payroll systems and reviewing enterprise agreement pay rates. For more information click [here](#).

### **Main financial thresholds for the 2019-2020 financial year**

**Coleman Greig** have produced a guide to the main thresholds for the 2019/2020 financial year for employers. It contains information about: The national minimum wage; Minimum award free casual wage; High income thresholds for unfair dismissal; Superannuation contribution ceilings; Taxation of ETP payments; Compensation caps for unfair dismissal; and tax free concessions for redundancy payments. To view the current thresholds information click [here](#).

### **New Fair Work information statement released**

Do you have the updated version for 2019-2020, for providing to new employees on commencement? For more information and to download the statement click [here](#).

### **Interim NSW Anti-Slavery Commissioner provides insight on potential future of the NSW Modern Slavery Act**

Whilst the Commonwealth Modern Slavery Act 2018 (Commonwealth Modern Slavery Act) is in force, the future of the NSW Modern Slavery Act 2018 (NSW Modern Slavery Act) hangs in the balance. Due to concerns including constitutional issues and duplication and inconsistency with the Commonwealth Modern Slavery Act, the NSW Modern Slavery Act will be referred to the Standing Committee on Social Issues for its inquiry and report – with opportunity for submissions. For more information courtesy of **Maddocks** please click [here](#).

### **Serious misconduct: a salutary reminder**

The Fair Work Commission recently issued a timely reminder about what is, and is not, 'serious misconduct'. Law firm **Maddocks** discuss in this article that they still see many clients whose disciplinary policies dealing with misconduct require sequential warnings before an employee's employment can be terminated for misconduct, unless the conduct amounts to 'serious misconduct'. The prescriptive nature of these policies reduces an employer's discretion to determine a sanction which is appropriate to each individual case. The result? Employers scrambling to see if the facts can be made to fit the 'serious misconduct' category. This is a course fraught with danger. For more please click [here](#).

### **Biometric data, the Privacy Act, and the employee records exemption**

In *Jeremy Lee v Superior Wood Pty Ltd*,<sup>[1]</sup> 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. For more on the FWC's interpretation of the employee records exemption within Privacy Act; and the impact of the FWC's current interpretation of the employee records exemption click [here](#) – Courtesy of **Herbert Smith Freehills**.

### **Offensive language within the workplace: When does it cross the line?**

Profanities in the workplace; acceptable always, never, or only in times of deep exasperation? Does swearing in the workplace give an employer enough grounds to terminate an employee? As an employment lawyer Shanni Zoeller from **Coleman Greig** says it's relatively common for her to hear of circumstances where employees have been reprimanded for their choice of language within the workplace - although as with all legal matters, every situation is different and must be approached as such. For analysis of different scenarios and some key takeaways click [here](#).

### **Recklessness, negligence, increased fines and the end of insurance – is your workplace ready?**

The Review of the Model Work Health and Safety Laws: Final Report (the Review) was handed down in December 2018. The Review provided multiple recommendations which could have significant impacts on penalties contained within the model work health and safety (WHS) laws. For review of the potential impacts, should the recommendations in the Review be adopted within the model WHS laws, please click [here](#) – courtesy of **Piper Alderman**.

### **Marie Boland's review of the work health and safety Laws, Part 3: Safe Work Australia's Consultation Regulation Impact Statement**

On 24 June 2019, Safe Work Australia released a Consultation Regulation Impact Statement (RIS) seeking feedback on the possible impacts of implementing the recommendations of the Marie Boland independent review of the model Work Health and Safety Laws final report. The report contained 34 recommendations for reform, and Safe Work Australia has expressed interest in gathering feedback on 12 recommendations that have "more than a minor impact" on stakeholders, or that require further information and analysis relating to issues ranging from psychological health to processes for resolving disputes about WHS issues; HSR training; and industrial manslaughter provisions. For more insights click [here](#) – courtesy of **Norton Rose Fulbright**.

### **Employment Law Matters is proud to partner with Norton Rose Fulbright for delivery of the 6th annual Managing Ill & Injured Employees workshop.**

Attend to gain an understanding of their legal rights and obligations around employees suffering from work related and non-work related illness or injury and be given practical advice on balancing the many competing issues that arise in this area. Recent and significant case law examples will assist attendees to understand the key concepts and how to apply them in practice.

**Brisbane** 12 November; **Melbourne** 19th November; **Perth** 20th November; **Sydney** 21st November. For the agenda, download the brochure [here](#).

### **New Zealand: Health and safety update - July 2019**

For latest health and safety update and decisions, courtesy of **Russel McVeagh**, click [here](#).

### **New Zealand: Increase in parental leave payments**

The Parental Leave and Employment Protection Act 1987 (Act) in New Zealand provides the minimum leave entitlements for new parents. If an employee or their partner is having a baby, or taking permanent responsibility for the care of a child under six years old, they may be entitled to be able to take Parental Leave, with 22 weeks of this leave being government-funded (i.e. paid). As of the 1st of July 2019, the maximum weekly rate of Parental Leave payments increased. For information about rates and eligibility criteria click [here](#). Courtesy of **Lane Neave**.

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

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

### [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

#### **Plus a new pre-conference workshop:**

### [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

### [HR Law Masterclass conference New Zealand](#)

New Zealand's original & leading employment law event series

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

#### **Plus a new pre-conference workshop:**

### [Workplace Investigations workshop New Zealand](#)

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

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

### **Managing Ill & Injured Employees**

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

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

**Australia:** **Brisbane** 12 November; **Melbourne** 19th November; **Perth** 20th November; **Sydney** 21st November

### [Workforce Inclusion & Diversity conference NZ](#)

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

**Auckland:** 28-30 August 2019

### [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

### [Workplace Mental Health & Wellbeing New Zealand](#)

Hear from and network with leading mental health experts, including several award-winning wellbeing program directors

**Auckland:** 22-24 October 2019