



## Effective Workplace Solutions

# WORKPLACE MATTERS

## SEPTEMBER/OCTOBER 2014

### To All of My Valued Clients

Welcome to the September/October Edition of *Workplace Matters*. There are two main issues that have impacted and exercised the minds of my clients over the past 6 months or so. The first is the continuing issue of workplace bullying and harassment, and the types of claims that have arisen; their impacts and their outcomes.

The second is a more positive story of Enterprise Agreements, and what can be achieved by heading down the path of EAs.

This edition of *Workplace Matters* looks at both of these matters in a bit more depth.

**Greg Arnold**

**Principal Consultant**



**Workplace Bullying  
and Harassment  
Claims – goal posts  
are changing and  
the stakes are  
increasing**

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**Enterprise  
Agreements – what  
can be achieved by  
“looking outside the  
square”**

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**Staff Policy and  
Induction Manuals**

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### **EFFECTIVE WORKPLACE SOLUTIONS**

(02) 6676 3445

1300 749 001

0407 920 840

[greg@ewsolutions.com.au](mailto:greg@ewsolutions.com.au)

[www.ewsolutions.com.au](http://www.ewsolutions.com.au)

# BULLYING AND HARASSMENT CLAIMS

## THE GOAL POSTS ARE CHANGING

In the last issue of *Workplace Matters* we reported on the pragmatic approach that was being taken by the Fair Work Commission (FWC) to deal with bullying and harassment claims that had been made under the new provisions in the *Fair Work Act 2009* (Cth). We also reported that the inundation of claims expected by the FWC at the commencement of these new anti-bullying provisions had not materialised.

However, it appears that claims have materialised in other jurisdictions and the claims are for more than have been claimed before. In the absence of the FWC being able to grant financial amounts by way of damages, compensation or fines, it is now apparent that litigants are heading off to those Courts that are able to provide them with an “all-important dollar value” for their suffering at the hands of bullies and harassers.

One of the more recent matters that has been reported is the case of *Thornton v JBWere*. In this case a senior executive is suing the employer JBWere for a reported \$4.5 million in the Federal Court. The former Queensland state manager of wealth management firm JBWere, said a culture of harassment in the organisation began in January 2009, when she was pregnant with her first child.

According to court documents, Thornton said her supervisor told her “*a woman's IQ halves when she falls pregnant*” and that he had made comments about her figure, commenting that “*Yep, you are having a boy because your bum has blown out.*”

While pregnant with her second child, another colleague told her he was “*pissed off*” and “*frustrated*” about her impending maternity leave, and no longer wished to share clients.

Upon returning to work in July 2013, shortly after having her second child, Thornton claims she was given higher targets and lower bonuses than her colleagues, while her client base was significantly reduced. She further contended that she was unfairly performance managed out of the company.

Whilst the Company is defending the claims, Justice Geoffrey Flick has agreed to mediation, but warned JBWere that there is “*a significant public interest*” in this matter, as it involved alleged contraventions of the General Protections provisions Fair Work Act, however His Honour has commented, “*That's not a matter you can just buy your way out of.*”

For those clients that have been involved in my Bullying and Harassment Workshops, you will recall that this case bears a remarkable resemblance to *Keegan v Sussan Corporation*, where in similar circumstances, the Supreme Court of Queensland granted the Plaintiff and amount of \$237,000 for similar comments and treatment of an employee who had returned from maternity leave.

What this case highlights is that it's just not the new anti-bullying provisions of the *Fair Work Act* that should be concerning employers. There is a raft of other legislation and avenues available to staff who believe that they have been bullied and harassed in the workplace.

It also highlights that once again the employer becomes vicariously liable for failing to educate employees and for failing to adhere to its own policies. It is clear that comments that may have been “acceptable” and “tolerated” 20 or 30 years ago is no longer acceptable to today’s workplaces.

### **Mitigating against and preventing bullying and harassment claims**

Of all of the matters that have arisen regarding bullying and harassment, the following key measures have been identified as being essential for preventing and mitigating against bullying in the workplace.

- **Policies and Procedures** - Have clear, concise and comprehensive policies and procedures in place;
- **Education** - Ensure that all employees are aware of what bullying and harassment is and make sure they are aware of the policy and what is required in that policy;
- **Managers** – ensure that all managers and supervisors are aware of what bullying and harassment is and make sure they are aware of the policy and what is required in that policy;
- **Managers** – ensure that managers know what to do and how to handle a bullying and harassment claim.

If you would like to have *Effective Workplace Solutions* undertake a series of **Bullying and Harassment Workshops** for your staff and managers – or if you would like assistance in developing and implementing bullying and harassment policies and procedures, please do not hesitate to contact us on 1300 749 001 or email us.

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## **Our Services**

- **Unfair Dismissal Matters**
- **Underpayment of Wages Claims**
- **Enterprise Agreements (EA’s) and Individual Flexibility Agreements (IFA’s)**
- **Policy Formulation and Staff Handbooks**
- **Dispute Mediation and Resolution**
- **Strategic Organisational Change**
- **Workplace Health and Safety – Advice and Auditing**
- **Injury Management and Workers Compensation**
- **Employment Contracts**

# ENTERPRISE AGREEMENTS

## THE CHANCE TO “LOOK OUTSIDE THE SQUARE” AND CONCENTRATE ON WORKPLACE CULTURE

I have read with interest in the past few weeks of the very bold plan by well-known entrepreneur Sir Richard Branson to grant unlimited leave to all of his staff in the Virgin Group in the UK and US. As you would know, Branson has always been innovative in his approach to business and not often been known to be a “conformist”.

The Virgin entrepreneur said he believes that stripping away the restrictions will have long-term benefits for his business, boosting productivity and morale by focusing on the work people get done rather than how many hours and days they work.

His approach to this issue is that he has the faith in his staff to be responsible for taking leave and has the confidence that his staff will not abuse the system. So clearly it’s all about the “culture” of the workplace at the Virgin Group. A “culture” that he has developed over many years.

So what has this got to do with Enterprise Agreements? Well, I have for some time been encouraging my clients to use EAs as a means and an opportunity to look outside the square and to help embrace, or indeed change and enhance the culture that you have in your workplace. I’m not at all suggesting that my clients adopt the Virgin model – that would probably be an insane approach for many businesses, but there are many other opportunities for businesses to make changes to other areas of employment terms and conditions that would enhance the culture of the workplace.

Here’s a few examples:

- **Customer Service** - You may have a culture (or would like to embrace a culture) of superb customer service. If that’s the case, then you could you develop various provisions in an EA to help address that customer service culture.
- **Training and development** is an excellent way to develop a sense of belonging amongst staff, whilst at the same time providing benefits to the business. This helps to develop a culture of learning and development in you organisation. LendLease, in particular, is an excellent example of this approach.
- **Employee Wellness Programmes** - research has shown that if staff are fit and healthy, then their overall approach to work is more positive; it results in higher levels of productivity, reduced absenteeism, reduced workers compensation claims and increased morale.
- **Enhanced Communications** – by way of the introduction of staff committees or consultative committees that meet regularly to discuss the business, how it’s travelling and what changes can be made to assist in greater efficiency and productivity. This helps to break down the barriers between staff and management and make the staff feel part of the decision making process of the business.

These are just a handful of the types of provisions that can be developed and used in EAs. You don't find any of these provisions in the Award. Developing EAs is also about finding ways to improve productivity and efficiency levels within your organisation, in addition to developing provisions that enhance and embrace the workplace culture – if you end up with a mix of all of the above, then you have achieved what EAs should, in my view, be all about. It's a journey, and it can be rewarding. But if you end up with an EA which contains Award provisions, and maybe tinkered at the edges of the Award, then you have achieved little or nothing in the process.

In a recent EA that was negotiated and developed by EWS on behalf of our client, Murwillumbah Services Memorial Club (MSMC), the issue of Compassionate Leave was raised by the members of the Consultative Committee representing the staff. Their concern was that the Award, in essence, provided 2 days Compassionate Leave when a relative had passed away. The staff indicated that 2 days was not sufficient to deal with the grief and the issues surrounding the death of a relative or close friend, particularly if that relative or friend lived some distance from Murwillumbah.

The result was, after discussions between the staff and management, the Compassionate Leave provisions of the EA were varied to allow 6 days per annum. This is the sort of issue that enhances the provisions of the Award, provides some better provisions for the staff, but is likely to be of little or no cost to the employer. It should be highlighted here that MSMC has a great culture of co-operation amongst the staff and excellent customer service. This is reflected in this year's EA, and the predecessor EA negotiated in 2007 and contains a number of the examples previously listed above. Both of these EA have been publicly recognised for innovation in Agreement making.

If you are considering introducing an EA into your workplace as a means of enhancing, embracing or assisting in developing a positive workplace culture, please contact *Effective Workplace Solutions*, and we can discuss the strategy and the process for making effective and positive changes to your workplace.

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# STAFF POLICY AND INDUCTION MANUALS

## MAKING IT EASY – ALL THE HARD WORK DONE

An integral part of the employment relationship and employment contract with your staff is the policies and procedures that you provide to ensure that your staff are aware of their rights, responsibilities and duties in the workplace. Ideally all of these policies and procedures should be contained in one easy to read and understand document that is provided to all staff both new and current.

### **Making it Easier**

*Effective Workplace Solutions* can make it easy. We can produce a quality and professional document that becomes your Staff Handbook for your business. You pay a nominal fee and *Effective Workplace Solutions* provides you one single document for all of your staff that is simple but comprehensive and complies with legislation. All the hard work done.

### **Tailored to Meet Your Needs and Your Business**

The Staff Handbook that you receive will be a collaboration of our expertise and your knowledge of your business requirements. You will be involved in the development of the policies that will best suit your business. *Effective Workplace Solutions* will work with you to present to your business a document that has specific application and relevance to your business.

**If you would like to make an appointment to discuss the development of a Staff Handbook, please contact *Effective Workplace Solutions* on 1300 749 001**