

# BenchmarkingHR

BEST PRACTICE IN HUMAN RESOURCES AND EMPLOYEE RELATIONS

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## Former FWA president urges IR stability

Achieving stability in the workplace relations system is a greater priority than more change, says former Fair Work Australia president Geoffrey Giudice, now a consultant with law firm Ashurst Australia.

In its new bi-annual publication *Fwd: Thinking*, Mr Giudice asked: what value should be put on maintaining a stable system?

"What is the economic benefit in having a system with which all parties are familiar and which employers, both here and overseas, can be confident will not change, at least so far as its major features are concerned?"

He said that even a superficial examination of IR changes in the

### Back start-ups call

*The Employee Ownership Australia and New Zealand seeks government recognition of the vital economic role of start-ups, which are predicted to contribute \$109 billion and 540,000 jobs by 2033.*

*It urges acceptance of several guiding principles around a review into enterprise share schemes, including a regime that prioritises option plans.*

*"Start-ups globally predominantly use options rather than shares because of their simplicity for companies and employees. They are an important, low-cost retention mechanism for key personnel ... vital to future growth of companies in the start-up phase. There is low downside risk to employees and significant potential for upside benefits where a company is eventually successful."*

past 20 years indicated that much of the change implemented had been "ephemeral and reform has been illusory". He also noted that politics played a disproportionate role in workplace relations policy.

"Although workplace relations laws are politically controversial from time to time in comparable countries, Australian governments seem to put forward reform proposals for more often than their counterparts overseas. A policy formulation process which emphasises areas of agreement and defuses areas of disagreement may not be readily obtainable but it is sorely needed."

He said there was a "realistic chance of identifying significant common ground" if parties adopted the objective of a more stable system.

"While complete agreement cannot be achieved, attempting to narrow the areas of difference would be a good start. It will take strong leadership from employers, unions and government to shrug off the dispute culture and the political influences - which are both deeply ingrained."

He said that a Productivity Commission inquiry could result in sound policy proposals and a more durable system, but the prospects would be enhanced with some consensus about the terms of reference and who would conduct it.

"The terms should be broad enough to encompass agreed economic and social objectives such as growth, inflation, productivity,

employment and income levels. Importantly, the achievement of a period of stability in the legislative framework should be part of the terms of reference.

"It would be desirable that the composition of an inquiry and the terms of reference, so far as possible, be negotiated or at least the subject of consultation with the major interests."

Mr Giudice also warned mandating productivity bargaining could have unforeseen circumstances.

"For many employers productivity improvement is ongoing and any implementation of productivity-enhancing measures does not depend on the approval of the workforce or a union.

"Requiring such employers to bargain about productivity might paradoxically slow the rate of change and make it more expensive."

Read more on [www.ashurst.com/publication.aspx?id\\_Content=17](http://www.ashurst.com/publication.aspx?id_Content=17).

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# Institute concerned over protected action policy

The Australian Institute of Employment Rights voiced concern over a proposed Coalition policy on protected industrial action.

It noted that before the election, Senator Eric Abetz had put some detail around the policy by saying such action would be allowed only after “genuine and meaningful” negotiations between the parties about “sensible and reasonable” claims.

The institute also said an approved agreement would require the Fair Work Commission to be satisfied that as part of their negotiations that the parties had “considered and discussed ways of improving productivity”.

“The Coalition’s policy seeks to impose further tests around bargaining, especially in the consideration of whether unions can take protected industrial action, and continues to impose upon parties conditions on what they can, should and must considering in bargaining, whether or not the parties want to do so.

“It is unclear to the AIER why these decisions cannot be left to the parties directly involved. Surely employers can make a judgement for themselves as to whether making an agreement is in their interests or not, including any consideration of productivity benefits.

“There is a genuine public policy interest in ensuring

good faith bargaining occurs but the parties should be able to agree upon the outcomes so long as they do not undercut basic minimum standards set down in the Act or awards without external interference.”

AiGroup chief executive Innes Willox said the immediate restoration of the ABCC should be a priority for the incoming government and shouldn’t wait for the completion of a Productivity Commission IR review.

“There needs to be some change and some change very quickly. We need to get the Building and Construction Commissioner, the ABCC, back up and running so there’s a tough cop on the beat in the construction industry,” he told Sky News. “We have significant concerns about what has been going on in the ... industry over recent years.”

A report on reviving the watchdog was given to Tony Abbott in the lead-up to the election by a working party of Liberal MPs. It was reported the Coalition believed that restoration was feasible within 100 days after the election.

Senator Abetz flagged the Coalition would crack down on union-friendly deals on government-funded infrastructure by enforcing a strengthened national construction code to police conditions that applied to workers.

## Competitiveness slips

Workplace relations issues underpinned Australia’s continuing slippage in international cost competitiveness, according to a World Economic Forum report.

Australia slipped from 20th to 21st out of 148 countries in the *Global Competitiveness Report 2013-14* despite stacking up well on infrastructure and education.

AiGroup chief executive Innes Willox noted that Australia fell from 13th to 54th in labour market efficiency and 17.3% of respondents said restrictive labour regulations were the most problematic areas for doing business locally.

Australia also declined on flexibility of wage determinations (123rd to 135th) and pay/productivity (80th to 113th) and ranked 137th for the rigidity of hiring and firing practices.

He said the results highlighted the pressing need to improve key areas such as IR to lift Australia’s competitiveness.

AMMA chief executive Steve Knott said the “extraordinarily poor” results should “ring real alarm bells” for those overseeing the labour market and they destroyed any claim that the balance of our IR system was “about right”.

The report is at <http://www.weforum.org/issues/global-competitiveness>.

## Bosses must inject confidence

Employers must take greater responsibility for re-injecting confidence into workers rather than adopting a “wait-and-see” approach following the election, says Randstad’s Steve Shepherd.

“It’s easy to see why business leaders and economists may predict choppy waters over the next six to 12 months,” he said, quoting such factors as mixed economic fortunes and recent political uncertainty.

The group director said this made it clear that business leaders needed a high level of flexibility and strategic insight to tackle challenges while moving to capitalise on business opportunities.

But he said many were putting plans on hold because of legislative changes scheduled to come into effect this year and early 2014, together with expected further changes under the new government. This contributed to varying levels of uncertainty.

“Six months can go by where businesses have not been fully productive to drive profitability and growth, which can impact on employee confidence, morale, retention, and turnover levels.”

He said that despite a change of government, the flow-on effects didn’t take effect for many months, if not years, so caution could actually mean losing a leading position and competitive advantage.

“The challenge for leaders is to know how to effectively navigate their business through a changing environment, ensuring it remains flexible and fluid, adapting to changing market conditions and being innovative while capitalising on opportunities.”

## Days lost to industrial action fall

New Bureau of Statistics data showed working days lost to industrial action fell nearly 30% in the year to June 30. The figure of over 200,000 was similar to 2008 under WorkChoices. Only 20,000 days were lost in the June quarter, down from March’s 52,100.

# Agents for change in contact centre revolution

Increasingly demanding customers means a dramatic increase in the complexity of the skillset for contact centre agents and their ability to manage and conquer change, says a FuturePeople report.

An industry-wide survey on salaries, trends and leadership revealed a revolution among centres powered by technology but with people at its core.

It found that six in 10 managers anticipated major changes to the agent's role in the future.

"This survey indicates that contact centre roles are becoming more complex, without a doubt," says CEO Linda Simonsen, "but it also bears out that we will increasingly need to develop the emotional intelligence of our agents."

The survey showed 40% of centre leaders identified enhanced skills across multiple channels as the top necessary change, while 67% identified a greater focus on "soft skills" like emotional intelligence and 87% cited EI-related skills as the defining characteristic of long-term staff.

"What we're seeing here is the agent of the future will be both multi-channel and emotionally intelligent," Ms Simonsen says. "They're not just masters of engaging through technology; they're masters of reading and interacting with people. That's quite an

ask for someone who might be on \$45,000 a year."

The survey found 61% of managers predicted future difficulties with recruiting the right people.

"As contact centre roles become more complex, the gap between customer expectations and agent skills is only going to increase," Ms Simonsen says. "We need to be proactive now about attracting and developing the skills we know we will need in the future."

She argues this partly involves adjusting salaries to compete with other industries and ensuring they reflect the skill and experience of both new entrants and people developed within the industry.

It means rewarding high performers for their contribution so incentives like bonuses and flexibility take on a new dimension. She notes that 70% of insurance centre staff receive some sort of cash bonus.

Ms Simonsen says it also means spruiking the benefits of the industry as a whole and the opportunities on offer.

"The findings in this study show an absolute opportunity to reinvent the agent and take agents on a journey around multi-channel skills and emotional intelligence.

"Give them a clear career development plan and we could start offering a role that's so attractive to the country's best and brightest that it makes them want to really stick around." *Inquiries: 1300 917 193.*

# The pace of organisational acceleration quickens

Organisational acceleration is increasingly driving critical business and human capital decisions, says a Deloitte report *Resetting Horizons: Human Capital Trends 2013*.

This framework for strategic change is one of the trends which feature in a global survey of over 1300 businesses and talent leaders in 59 countries. It highlights the immediate need for businesses to embrace and adopt change programs which deliver measurable results.

Deloitte Consulting Human Capital Partner David Brown said global leaders had a greater sense of urgency on organisational acceleration, with 86% believing it was highly relevant compared with 80% of Australians.

"In my experience many change programs fail to deliver the outcomes the organisations seek. The reasons are varied, but a common thread is wasted effort and time. Organisational acceleration harnesses analytics to guide a business in a timelier and more efficient manner through three important components of change: insight, precision, and lasting impact to reduce the time and waste in change efforts."

The report said the key drivers of acceleration included leaders "feeling the pressure" through increased demands to deliver results because of 24/7 globalisation; expansion due to more complex structures, and applying more precision and rigour to the process.

The report said the latter could see sustainable results delivered by harnessing the power of analytics and "big

data". This could pare back wasted time and effort by helping target exactly what needed to happen.

Mr Brown said: "Analytical insights emerge from trends, correlations, and patterns found in data. The data should include objective data, such as information from production, operations, finance, customers, and other external sources in order to accomplish specific outcomes."

He noted that 69% of respondents demanded more from their change initiatives by pursuing customised, precise and sustainable strategies.

"It is now all about results. New 21st century leadership models demand hands-on, creative leaders. They need to work directly with customers and understand how to empower, engage, and inspire global teams.

"Executives now gauge the success of a change program by how it solved a specific business problem, not merely whether it was implemented."

See [www.deloitte.com/view/en\\_AU/au/news-research/media-releases/4181ab675fdc0410VgnVCM2000003356f70aRCRD.htm](http://www.deloitte.com/view/en_AU/au/news-research/media-releases/4181ab675fdc0410VgnVCM2000003356f70aRCRD.htm).

## New VEOHRC commissioner

Former Herbert Smith Freehills employment partner Kate Jenkins was named new Victorian Equal Opportunity and Human Rights Commissioner by Attorney-General Robert Clark. She took up the position on September 9, replacing Helen Szoke.

# Australia must 'get serious' about culture change

Australia must get serious about changing corporate culture if it is to remain globally competitive and business leaders have a key role, says leading consultant firm Human Synergistics.

It released new data revealing those who focused on the long term and built constructive cultures had a 43% greater impact on staff productivity than those with short-term focus, and had a far higher influence on team motivation (55%). These exemplary leaders generally made a vast difference to long-term company performance.

Chairman Shaun McCarthy said Australia must build resilience into all industries and institutions, done "best by transforming corporate cultures from the inside out".

He noted that Australasia was now officially lagging behind the Asian countries in global competitiveness, quoting figures from the Institute for Management Development.

Australia was placed 16th in the rankings for most globally competitive economies, falling over 10 places from 2010 when we were in the top five. Mr McCarthy said this worrying trend needed a prompt response.

"Companies need to do more with less. Culture change is actually by far the best way of unlocking employees' productivity and turning fortunes around, but it is often overlooked in favour of shorter term measures.

"The drive for short-term performance is on the rise - but it is incredibly damaging to longer-term prospects. Our data demonstrates that only organisations with more constructive cultures, which are focused on longer-term thinking, strategy and value creation, prosper in all economic climates."

He said Human Synergistics' method of measuring the relationship between organisational culture, employee contribution and bottom-line results highlighted the undeniably direct relationship between management capability, culture and economic performance.

"We have recorded our culture transformation work with 459,000 people and can see that when organisations become constructive there is a massive jump in efficiency. In fact, the most constructive leaders and managers are 27% more effective than those at the bottom end of the scale [who are] usually in those organisations who don't invest in culture and focus on short-term results."

## Bonuses still prevalent but gaps exposed

Bonuses and benefits for key accounting, banking and finance staff are still prevalent, but a survey of 2300 Australian professionals reveals some gaps.

Lloyd Morgan found over the past year 24% of them received an average cash bonus or commission of \$9300, with the highest single recipient reaping \$200,000.

But this represented a 6% fall from the \$9900 in 2011-2012, while the number getting the top-up dollars fell 12%. A large gender disparity also remains with males getting an average \$12,900 compared with \$6400 for females.

The survey showed 38% of respondents received one or more benefits as a work perk (unchanged from the previous year) with car-related deals (parking and allowances), and flexible working hours the most common.

Of the 1280 banking and finance professionals, 49% received an average bonus or commission of \$19,500 with the highest single recipient reaping over \$500,000.

This represented a 6% fall from \$20,700, while those getting the top-up dollars remained unchanged. The gender gap was \$25,800 to \$9500 and actually increased by 12,500 over the previous year.

Executive general manager Paul Barbaro said that gap was consistent across several other sectors "but not as drastic as what we're seeing in banking and finance".

For example, the gap in accounting was about \$6500 and in the ICT sector \$3000.

He said inducements "remain popular to snare and keep top candidates" despite an increasing jobless rate and the jobs market favouring hirers over candidates.

"Across the board businesses are keenly aware of how important it is to keep their people motivated

and rewarded. With economic conditions marked by uncertainty and skilled professionals reluctant to leave secure employment, strong inducements remained key to attracting people.

"Workforce indicators predict some slow but positive growth from early 2014 and companies will look strategically at the skills they need and what they're prepared to offer for them so we can see the value of bonuses and work perks to climb again."

Mr Barbaro said while car-related benefits remained a staple for middle and upper management, work/life balance was playing a greater role as people increasingly asking for perks supporting their health and wellbeing.

## National award winners named

REA Group General Manager of People and Brand Simone Carroll was named Australian HR Director of the Year in the 2013 Australian HR Awards in Sydney.

She was recognised for outstanding leadership at an executive level for successfully leading the transformation of the group's culture and organisational structure that supported rapid three-year growth.

Superannuation firm QSuper won HR Team of the Year, Maree Morgan-Monk of Peoplecare Health Insurance HR Manager of the Year, and an event staging company won the Best Use of Technology category.

Staging Connections, a first-time entrant, was recognised for connecting with its varied workforce particularly through the first drum roll Talent Management System and an industry-first StageSafe App.

# Staff turnover turns on organisational size

A survey of 561 Australian HR practitioners shows nearly a third expect staff turnover to decrease in the next 12 months and nearly half expect it to remain steady from a relatively low base.

Respondents to the Australian Human Resources Institute survey reported an average turnover rate of 13% for the past 12 months, compared with 18.5% in a similar AHRI survey in the first part of 2008.

The rate varies considerably depending on an organisation's size, with a high of 17% among businesses with 250-499 employees, as low as 11% for businesses with fewer than 99 staff, and 10% for businesses of 1000 or more employees.

Chairman Peter Wilson said the figures suggested that "perhaps more businesses are getting recruitment and retention right".

"On the other hand, the relatively low rate might indicate that employees are showing a reluctance to move, with confidence low and wages flattening out in a prevailing mood of business uncertainty, and significant risks of lower growth and higher unemployment next year."

The survey found 47% of respondents believed turnover in their organisation was too high while the three top reasons for people departing were lack of promotional opportunity (20%), poor relationship with manager (17%), and insufficient pay (12%).

Better induction processes (12%), improved employee communication (12%) and better selection techniques (10%) were the three most common interventions for improving retention; 59% of respondents saw their

organisation's brand as a positive retention tool, and 11% viewed it negatively.

Exit interviews were the most common technique for measuring retention's effectiveness.

The report is on [http://www.ahri.com.au/\\_data/assets/pdf\\_file/0006/19563/PULSE\\_Retention-report-FINAL.pdf](http://www.ahri.com.au/_data/assets/pdf_file/0006/19563/PULSE_Retention-report-FINAL.pdf).

**Ensuring effective diversity management relies on three key factors, Melbourne Business School associate dean Professor Ian Williamson told AHRI'S HRIZON Conference.**

He said organisations must understand and embrace the need for some flexibility. This meant not having a "one-size-fits-all strategy when bringing in individuals from different backgrounds but having "some sense of flexibility to encourage a sense of inclusiveness".

He said employers must view a diversity strategy as a mechanism to implement their business strategy.

"So the diversity strategy is completely aligned with how we engage with our clients, the types of products we're going to offer, the markets we're going to be in. These conversations happen simultaneously. When there's a disconnect, you're not going to have success."

Professor Williamson said employers must understand that while a strategy may be great, leadership would always determine its effectiveness and one middle manager could undo much hard work by bad implementation.

"Leadership will always determine the potential of any practice or any approach. Good organisations will have managers who understand and are in tune with what it means to manage a diverse workforce."

## Smoothing out the 'boom and bust cycle'

Skills development is one of the keys to smoothing out the "boom and bust cycle" in Queensland's civil and engineering construction industry, says Construction Skills Queensland CEO Brett Schimming.

A mid-term snapshot from the CSQ and Queensland Major Contractors Association found industry work on major projects would fall by 53% from 2013-14 to 2016-2017 rather than the 40% earlier predicted. The update to the *2013 Major Projects Report: Queensland Engineering Construction Outlook* report released in February outlined industry challenges in managing structural change.

Mr Schimming said these were mirrored by changes in industry training and development and the report continued to signal the next big shift in skills development.

"The construction industry has undergone significant workforce realignment in recent years with the GFC and subsequent resource boom causing a simultaneous slow-down in traditional residential and commercial sectors, alongside a booming civil and heavy infrastructure market. Because what we build changes what we train, this has seen a distinct shift in our training pipelines from traditional trades to occupations such as plant operators, electricians and welders. Making that shift has been

difficult for industry, with existing workers needed to access upskilling and gap training to remain attractive to employers. Now it's clear that there will be a shift back from major infrastructure activity, which will in turn realign training priorities."

But Mr Schimming said the real question surrounded the "sustainability of this type of workforce planning".

"It's just not efficient to keep shifting the construction workforce focus between sectors that are actually quite different in their skilling requirements. Construction is already a volatile industry. Any steps that can be taken to smooth out the boom and bust cycle for major project activity would have a profoundly positive effect on sustainable skilling strategies, including apprenticeships and traineeships."

QMCA president Tony Hackett stressed the need to smooth out the cycle and ensuring a more consistent flow of work in an "increasingly complex industrial relations landscape." He urged the implementation of key productivity levers including "streamlining unproductive workplace practices" and ensuring the "right mix of skills and competencies to meet future demand".

See report on [www.qmca.com.au](http://www.qmca.com.au).

# FWO secures a record \$343,860 penalty

The Fair Work Ombudsman secured a record \$343,860 penalty after Perth's Federal Circuit Court found a cleaning company and its manager deliberately underpaid six cleaners, including five foreigners.

Judge Toni Lucev penalised Housekeeping Pty Ltd \$286,550 and Catherine Paino-Povey \$57,310 and ordered the company to back-pay the four women and two men \$22,510.

The cleaners were aged in their 20s and 30s, five were from Taiwan, Hong Kong, New Zealand and Ireland, and three spoke little English.

Judge Lucev said the underpayments were deliberate and especially targeted the more vulnerable employees, the defendants were dishonest in their representations to the FWO, and stifled its ability to conduct a proper investigation.

She said the penalty must be an appropriate deterrence to all industries from committing similar breaches.

Each worker cleaned suburban houses for only one to three months between June 2011 and January 2012, regularly working 9-10 hours daily but only being paid for 7.6. They were also underpaid overtime and penalty rates, leave, meal break and travelling time entitlements. Money was also unlawfully deducted from their wages.

The defendants also breached laws on pay slips, employment records and compliance with notices to produce them, and on frequency of payments, and Judge Lucev said they had shown no contrition.

He noted evidence that they were still involved in the industry "at least for the time being" and this had generated ongoing complaints to the Ombudsman.

- A Chinese state-owned enterprise was fined \$14,850 by Adelaide's Federal Circuit Court.

China Sanan Engineering Construction Corporation used Chinese workers between October 2009 and June 2010 to assess and supervise the dismantling and removal of a press formerly used by Mitsubishi Motors.

The FWO launched legal action after investigating information from the Immigration Department about claims the workers were paid as little as \$1.90 hourly until March 2010.

Judge Denys Simpson accepted that the enterprise had met its Australian minimum wage requirements but this only occurred after the workers returned to China and he fined them for frequency of payments breaches.

More details on [www.fairwork.gov.au/media-centre/media-releases/2013/09/pages/20130901-china-sanan-litigation-judgement.aspx](http://www.fairwork.gov.au/media-centre/media-releases/2013/09/pages/20130901-china-sanan-litigation-judgement.aspx).

- The owner-operator of a Melbourne migration agency will face the Federal Circuit Court for allegedly underpaying five Chinese immigrants in their 20s \$76,186.

Charged were Liu Ming Pan from the Australian Chinese Centre for International Education and his private company Australia China Trading Investment Consultancy Group.

It is alleged that between April 2009 and March 2013

they paid the clerks/translators flat hourly rates of \$9-\$10 for "trial" periods of two to four months, before paying them between \$13.74 and \$16.

The Clerks Private Sector Modern Award 2010 entitled them to over \$16 an hour for all work, with higher rates for overtime and public holiday work.

Annual and personal leave were also allegedly underpaid. Underpayments have been rectified.

It is alleged Mr Pan was aware of the need to pay minimum entitlements after being informed of this by the FWO during an earlier investigation into a complaint from a Chinese working visa holder. It was resolved through a voluntary back-payment.

- The former operator of an Anakie general store near Geelong faced the Circuit Court for allegedly underpaying two employees \$19,445 between 2009 and September 2012. Charged were The Thirsty Farmer Pty Ltd and former store manager/part-owner Renee Batty. The employees mainly worked as food and beverage attendants at the store's restaurant and take-away shop.

- FWO inspectors will audit up to 30 WA employers Australia as part of a campaign focusing on ensuring businesses that employ staff under enterprise agreements meet their legal requirements. It follows the results of other recent campaigns which showed some employers weren't fully aware of their pay obligations.

## IRC move condemned

The union movement condemned a move to reduce the NSW Industrial Relations Commission to one judge, with four retiring due to a lack of work.

IR Minister Mike Baird said the number of annual filings had fallen from over 900 to fewer than 100 over the past nine years, mainly due to the transfer of private-sector workers to the federal IR system.

He also said president Justice Roger Boland acknowledged that by year's end the court was only expected to generate enough work for one judge.

But Unions NSW claimed the move was an attack on workers' rights to have grievances heard by an independent authority.

- The Transport Workers' Union announced an in-principle agreement with the Toll Group after employees earlier approved legally protected industrial action.

It includes a 15.25% pay rise and a 1.5% increase in superannuation contributions (0.75% linked to joint efforts to raise industry standards), and would apply to existing transport workers, with TWU engaged in setting conditions for new work.

National secretary Tony Sheldon said the key issues were job security and the "creeping expansion of casualisation and outsourcing".

He said Toll must provide a "level playing field" for all employees, and withdraw its incentive to move work into "fly-by-night" business units.

# Lessons from unfair dismissal clarification

Employers should review their reliance on a breach of company policy in unfair dismissal cases after the Fair Work Commission Full Bench ruled three Australia Post employees were unfairly dismissed, says Ashurst Australia.

Its employment alert said the decision showed the FWC took account of several criteria in considering whether a dismissal was “harsh, unjust or unreasonable”. These are contained in section 387 of the Fair Work Act and included “any other matter that FWC considers relevant”.

Ashurst said the majority ruling confirmed that while a wilful breach of an employer’s reasonable policy often provided a “valid reason” for dismissal, other factors including a failure to adequately communicate and enforce the policy, may lead to a finding of harshness.

It recommended that employers review their workplace policies and procedures to ensure they clearly articulated the consequences of non-compliance.

“If appropriate, policies should clearly state that a breach may result in termination.”

They should also take active steps to ensure policies were applied in the workplace and to educate employees on their terms and effect.

“Ensure all breaches are dealt with in a consistent manner, with consideration given to the nature and circumstances of the breach.”

Employers also shouldn’t assume that promulgating a “zero tolerance” policy would alone justify dismissal in the event of a breach.

“Even in the gravest cases of misconduct, consider all the circumstances and disciplinary options before making a decision to terminate employment. This includes affording an employee due process and taking into account any mitigating circumstances.”

See [www.ashurst.com/publication-list.aspx?id\\_content=1362&expandOfficeList=true&id\\_queryContent=6891](http://www.ashurst.com/publication-list.aspx?id_content=1362&expandOfficeList=true&id_queryContent=6891).

The commission also ruled that sending pornography wasn’t an automatic sacking offence.

The workers had used Australia Post’s email system to distribute sexually explicit material in their Dandenong workplace, but the panel found their terminations were harsh and they should be reinstated.

Two commissioners noted an emerging trend regarding the “accessing, sending or receiving and storing pornography by an employee as a form of serious misconduct that invariably merits termination of employment”. But they said this was inconsistent with basic principle, although they didn’t endorse the emailing of porn at work.

They argued the same unfair dismissal laws applied in workplace pornography cases as with other forms of misbehaviour and that the former was “not a separate species of misconduct to which special rules apply”.

They also said Australia Post didn’t take into account the workers’ long service and they noted its lack of warnings and enforcement of policies.

The ruling said it was reasonable for a firm to restrict access to pornographic material but found the Dandenong workplace had a past culture of tolerating this type of behaviour. See [www.fwc.gov.au/decisionssigned/html/2013FWCFB6191.htm](http://www.fwc.gov.au/decisionssigned/html/2013FWCFB6191.htm).

## Handling employee misconduct

A lack of HR expertise needn’t be a barrier to an effective and successful workplace investigation into alleged serious employee misconduct if the right steps are taken, says HR investigator Brad Petley.

“Even where employee misconduct constitutes a valid reason for their dismissal, a failure to adequately investigate allegations will likely backfire.

“When serious misconduct leads to a knee-jerk reaction (for example, a sacking) employers too often shoot themselves in the foot by failing to afford procedural fairness to alleged wrongdoers.”

He said an employer lost \$4500 in an unfair dismissal case because of a “deficient and practically non-existent” investigation into the behaviour of an abusive and disgruntled employee.

The FWC said it could have avoided such procedural failures through a “fair, proper and rigorous investigation” and allowing the employee to respond to allegations.

“Knowing how to correctly investigate allegations of misconduct and how to put these allegations to an employee can be the difference between sound, justifiable disciplinary action or a large compensation payout to a rogue ex-employee,” Mr Petley said.

See more on <http://www.hrinvestigator.com.au/news>.

## Two more full bench decisions

The FWC released details of two other full bench rulings.

The panel upheld an appeal over whether the commission must determine whether an applicant has been “dismissed” from their employment before a conference could be conducted regarding a dispute.

It concluded that the FWC didn’t have jurisdiction to effectively dismiss an application on the basis of finding that the applicant wasn’t “dismissed”, quashing the decision of Commissioner Johns. The application will be remitted to him for the conducting of a conference.

A decision regarding annual leave claims determined there should be variations to the Legal Services Award 2010, Building and Construction General On-Site Award 2010 and the Cleaning Services Award 2010 and Road Transport and Distribution Award 2010.

These related to requiring an employee to take leave under particular circumstances, clarification of the rates, loadings and allowance on which loading is calculated, and the loading payable in respect of all untaken leave paid out on termination.

See [www.fwc.gov.au/index.cfm?pagename=aboutbriefs&year=2013#030913a](http://www.fwc.gov.au/index.cfm?pagename=aboutbriefs&year=2013#030913a).

# Getting the best out of expatriate investment

Companies who move expatriates around the world must review their global mobility policy to ensure a Return on Investment, says a leading authority on the issue.

Australian Dr Yvonne McNulty is co-author of a new book *Managing Expatriates: A Return on Investment Approach*, with New Zealand Emeritus Professor Kerr Inkson which draws extensively on her research into expatriate ROI and the changing model of expatriation.

She says companies spend tens of billions of dollars annually on moving expatriates but year-on-year struggle to manage and improve the return from these expensive employees.

She says more employees are seeking international experience as part of developing their career and fulfilling their work-life ambitions, yet employers often overlook the individual ROI investment they seek.

The book shows the problem overwhelmingly lies in poor management of expatriates. This is caused by a short-term profit-driven focus, inadequate strategic practices, misunderstandings about international careers and the global war for talent, and a failure to adopt a rational strategic approach.

The authors explain how to use an ROI approach to produce superior results and they say a key is to understand what is important to expatriates.

Dr McNulty says her research has shown employers must address several key issues when reviewing their global mobility policy.

She says a review of the gap between the “corporate ROI” (cROI) - what the company expects - and the “individual ROI” (iROI) - what expatriates expect from

each assignment - will likely reveal more of a difference than initially assumed.

A second key consideration is the “met” and “unmet” expectations of their assignees.

These include promises and obligations fulfilled (“met” expectations), and misunderstandings/discrepancies about actual versus expected outcomes (“unmet” expectations).

Another key issue is how expatriates view the fulfilment of the “psychological contract” with their employers, particularly during and after assignments, and how this compares to the fulfilment of cROI which may be compromised and placed at risk due to unfulfilled iROI.

The book provides a practical “insider’s” guide on why expatriates seek and accept international assignments, how they feel impacted by new forms of remuneration and other working conditions, and how assignments fit in with their longer-term career aspirations.

The authors “debunk the myth of one type of assignee: the ‘there-and-back’ expatriate”, and say there are many alternatives, plus new forms of mobility likely to dominate global staffing strategies for the coming decade.

They explore the replacement of “organisational expatriates” with “global careerists,” a new type of international employee whose free agent mentality can have significant implications for global staffing.

They believe that “the frequent mismatch in expectations between expatriates and their employers can be overcome once the issues are understood”.

The soft-cover book is distributed in Australia by McGraw Hill. *Inquiries: 02 9900 1909.*

## Mercer pushes for super lifetime contribution cap

Consulting firm Mercer wants the federal government to introduce lifetime concessional tax limits to superannuation contributions in place of annual limits.

It said this would create a fairer and far more equitable retirement savings system for all and help address the crisis of declining retirement readiness.

It proposes that if individuals don’t use the current concessional cap of \$25,000 in a given year, half of what’s unused should be rolled over to the next year and so forth. But a concessional contribution in any year shouldn’t exceed three times the annual cap, making \$75,000 the maximum in any single year.

Mercer’s *Superannuation Sentiment Index* showed only 30% of workers believed their savings would last beyond age 70 and it says lifetime limits will be a “big step forward” in addressing this. It would also correct the unfair treatment of people who took career breaks and reduce the cost of retirees for taxpayers.

The superannuation industry, including peak bodies and several funds, support the call for the lifetime caps, but Mercer is the first to outline how the change could work to create a fairer and better system.

Pacific managing director and market leader David Anderson said the caps would “provide all Australians with an equal opportunity to build their nest egg when they’ve got the financial capacity to do so”.

“We should simply begin now; it does not need to be retrospective.”

He said most Australians couldn’t afford additional super contributions of \$25,000 for much of their working life and were so were disadvantaged by leaving the bulk of them to the latter part of their career, often when their disposable income was at its highest.

“Retirement savings are a lifetime journey and all Australians should have the opportunity and flexibility to build a more secure retirement when they can afford it.”

## Rivers boss reaches settlement

Rivers boss Philip Goodman reached a settlement for an undisclosed sum with designer Sallyanne Robinson who accused the 55-year-old of sexual harassment. The 32-year-old had sought aggravated damages in the Federal Court, which earlier said two other women could enter the witness box to make similar allegations.

# Steadiness translates into longer-time hiring

Employers' continuing steady view of the domestic economy is translating into longer-term hiring intentions, according to the *H2 2013 Michael Page Australia Employment Index*.

It found 50% of surveyed employers would keep staff numbers stable for the rest of 2013 and 19% would increase the size of their teams, but 46% expected to hire in 12-18 months and 40% in 18 months or longer.

"While Australia has been reasonably shielded from the impact of the US and Eurozone economies and there is a sense of hopefulness in the domestic market, employers in Australia are taking a somewhat vigilant approach to hiring," says Phillip Guest, the Regional Managing Director for PageGroup Australasia and Japan.

"The domestic employment market has been in a bit of a holding pattern over the past year or so and employers are becoming increasingly conservative in their hiring intentions."

The survey found 45% of respondents who planned to hire this year anticipated an increase of up to 5% and a further 31% anticipated between 5% and 10%, while 76% of respondents don't expect the economy to grow during the second half of 2013.

Mr Guest said the election result could see a positive shift in employer outlook into the new year, translating into renewed hiring activity.

See more details on <http://www.michaelpage.com.au/newsandresearchcentre>.

## Jobless at a post-GFC high 5.8%

- Unemployment rose to a post-GFC high of 5.8%, in line with economists' forecasts. Australian Bureau of Statistics data showed a 0.1% rise in August, with full-time jobs falling by 2600 and part-time jobs by 8200.

The participation rate fell by 0.1% to a near seven-year low 65%. Total working hours increased by 1.1 million to 1.65 billion.

- The AiGroup released several industrial indexes for August.

The joint Housing Industry Association *Australian Performance of Construction Index* registered 43.7 points, down 0.4 on July. The employment sub-index continued a downward trend (by 1.6 points to 44.6).

The *Australian Performance of Manufacturing Index* was 4.4 points higher at 46.4. It was the 26th consecutive monthly contraction, the longest period in the PMI's 21 years. The pace of contraction eased for employment (46.3 points).

The *Australian Performance of Services Index* fell 0.4 points to 39.0 - its lowest level since the GFC. An improvement in new orders (up 5.5 points to 39.8) was insufficient to offset a steeper contraction in employment (45.5). See surveys on [www.aigroup.com.au/portal/site/aig/economicindicators/](http://www.aigroup.com.au/portal/site/aig/economicindicators/).

- The *ANZ Bank Job Advertisement Series* fell 2% in August following a 1.1% fall in July. Newspaper advertising fell 3.2% and internet advertising fell 2%. The number of ads are now just 5% above the lows reached during the GFC following six consecutive monthly declines. See [www.media.anz.com/phoenix.zhtml?c=248677&p=irol-jobad&nyo=0](http://www.media.anz.com/phoenix.zhtml?c=248677&p=irol-jobad&nyo=0).

- New data shows 6.3% of new postgraduates were seeking full-time work at the time of the *Australian Graduate Survey* in 2012. This was essentially unchanged from 6.6% in 2011 but notably higher than 3.6% in 2006, according to Graduate Careers Australia's annual survey.

It revealed 9.2% of postgraduates were working part-time while seeking full-time work, and 84.5% were full-timers.

- The National Centre for Vocational Education Research revealed mixed results on apprenticeship commencements.

A report for the June quarter showed the trade uptake rose to 22,500, up 1200 from March, while the non-trade intake increased by 1400 to 36,400. The latter report showed commencements for March fell by one-third compared to the same period last year, with 10,000 fewer under 19s starting apprenticeships.

## Review labour costs call

Myer chief executive Bernie Brookes used an announcement of an 8.7% fall in annual profits to \$127.2 million to urge a review of labour costs.

He said the issue must be addressed in order to boost the retail sector's productivity and international competitiveness.

"The way in which we do that is ensuring that our labour costs are kept at a certain level. We're not advocating any reduction in penalty rates, but we are advocating a proper review to ensure that they don't continue to escalate at the level they have been escalating."

He said penalty rates had been increasing too quickly under the Fair Work Act and he wanted a Productivity Commission review to address them.

"The increases in penalty rates that we've suffered under both through general retail award and the ... Act have been substantial. They've made us uncompetitive on a world scale and our view is that we're not looking for a winding back of those penalty rates."

"What we are looking for is stopping the continued escalation of them, particularly on Saturdays and Sundays and after hours during the week."

But ACTU president Ged Kearney said his comments confirmed unions' fears that "business will put enormous pressure on the Abbott government to get rid of penalty rates".

"We will fight rigorously against a reining in of penalty rates. We will prosecute our argument at the Productivity Commission; we will campaign heavily around it. We will, if we have to, mobilise the workers who depend on penalty rates."

# Make skills a high priority call

The CEOs of Group Training Australia and TAFE Directors Australia have urged a high priority on skills and training under a Coalition government.

In a joint statement, Jim Barron and Martin Riordan pressed for the Skills and Training portfolio to be afforded high-level ministerial representation, given its importance to national economic productivity and workforce participation.

“Skills and vocational education and training were identified as key economic drivers by both major parties during the election campaign.

“In looking forward to the appointment of a new minister in the portfolio, we also anticipate a period of continuity and stability in national VET leadership.”

They noted the sector’s significant period of upheaval which had seen five ministers in four years but it had also developed a good working relationship with the Coalition in the same period and looked forward to that continuing when actual ministers and portfolios were announced.

They said Shadow Minister Sussan Ley - a constant in the portfolio for much of that time - was widely recognised for a strong grasp of sector issues.

## Presenting news in brief

- A new agreement between the leading professional bodies for HR and people development in Australia and the UK will enable mutual recognition for individuals holding corresponding professional grades of membership. Members joining either AHRI or the Chartered Institute of Personnel and Development will have existing credentials recognised - providing access to the equivalent grade. Read more on [www.ahri.com.au/\\_data/assets/pdf\\_file/0013/20137/CIPD-and-AHRI-mutual-recognition.pdf](http://www.ahri.com.au/_data/assets/pdf_file/0013/20137/CIPD-and-AHRI-mutual-recognition.pdf).

- The chief executive of the world’s largest PC maker will share at least \$US3.25 million (\$A3.6m) of his bonus with workers for a second straight year after the company posted record sales. A memo to some staff confirmed that Lenovo boss Yang Yuanqing was recognising the contributions of its 10,000-strong workforce.

- Anti-Discrimination Commission Queensland and the Queensland Civil and Administrative Tribunal launched a new information video. *Getting a fair go in the Tribunal* will help parties to discrimination matters navigate and understand the management of complaints referred for a hearing and decision. View the film on [www.youtube.com/watch?v=EzxiGZ3Mz3o&feature=c4-overview&list=UU7Ko4Y36y-i6D25yfgL638g](http://www.youtube.com/watch?v=EzxiGZ3Mz3o&feature=c4-overview&list=UU7Ko4Y36y-i6D25yfgL638g).

- Power Systems Australia flagged it would recruit up to 300 Geelong-based Ford workers, who will be made redundant when local manufacturing ends. The small Campbellfield company plans to make gas-fired generators for export to Asia and the Pacific. A new Geelong factory would make them and the current 22 employees would assemble them.

- Northern Territory Correctional Services Minister John Elferink said prisoners were being paid award training wages at a potash project jointly operated by Rum Jungle Resources and Reward Minerals. The venture near Curtin Springs, 250km south-west of Alice Springs, has had trouble recruiting staff, but the United Voice union said the initiative was akin to slave labour.

- Rural services giant Elders expects to cut about 10% of its 2200 workforce to ensure a return to profit. It forecast an underlying net full-year loss of up to \$39 million, due to weaker-than-expected live cattle exports. It is continuing a restructure and aims to reduce its annual operating costs by \$25 million.

- The ABC reports a slowdown in the mining boom is forcing many WA companies to scale back or axe their graduate intake programs. See [www.abc.net.au/news/2013-09-10/engineering-feature/4949360](http://www.abc.net.au/news/2013-09-10/engineering-feature/4949360).

- New job ads placed on SEEK rose 1% in August, the first increase since January. The Index report showed a total decline of only 1% over the past three months, 5.2% lower than for the period December to May. Queensland was by far the best-performed state (up 4.5%) while NSW was next at 0.4%.

# Coalition targets wages increases

The *Australian Financial Review* reported that the Coalition planned to abandon \$1.5 billion worth of union-linked wage increases for aged and childcare workers agreed to by the Gillard government.

Up to 350,000 workers would be affected and most would be required to sign up to enterprise bargaining agreements for their employers to be eligible for funding to back rises.

The paper reported a spokesman for Tony Abbott saying that the Coalition would re-direct the funds and wouldn’t need agreement from the Senate to rescind the hikes.

## Staff development ‘sacrificed’

Employers are partly at fault for a lack of “work-ready” employees in Australia, says John Buchanan, director of the Workplace Research Centre at the University of Sydney.

He told the *AFR* that many employers preferred to hire casual workers and so invested less in training and on-the-job development. This in turn meant that failed to produce enough suitable workers for the labour market.

“If there’s a problem in the system of workforce development, the employers are not taking responsibility like they used to. In the lemming-like pursuit of maximising quarterly returns, they’ve sacrificed commitments to long-term workforce development.”



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## Why equal pay is worth the fight

*September 3 marked Equal Pay Day, a symbolic reminder of the additional 64 days from July 1 that the average woman has to work to earn the same as the average man did the previous financial year. The calculation is based on the current national gender pay gap - 17.5% - which equates to the average full-time woman earning \$266.20 less weekly than males (\$1252.20 compared to \$1518.40, an annual difference of \$13,842.40). The Workplace Gender Equality Agency, Chief Executive Women and the ACTU called on employers to help close this pay gap.*

WGEA Director Helen Conway says the gap is a high-level figure impacted by industrial segregation and pay inequities at the organisation and job levels. “People often ask, ‘does this mean employers pay women less than men for doing the exact same job?’ While that may be true in some instances, the issue is more complicated. An organisation may pay women and men doing the same jobs the same amounts, but have an organisation-wide gender pay gap because women are under-represented in management, and over-represented in lower-paid roles.” She says the uneven spread of women and men across industries also plays a part. “Workers in female-dominated industries tend to receive lower wages than those in male-dominated industries such as mining.”

She says employers have a key role in addressing the issue, including under new reporting requirements for non-public sector employers with 100 or more staff. “If employers committed to addressing the gender pay gap at an occupational and organisational level, we could expect to see some reduction in the national gender pay gap which would result in greater economic security for women during their working lives and in retirement. Employers will benefit by attracting and retaining talented staff, reducing their turnover and accessing a larger pool of talent.”

CEW president Christine Christian notes its joint research with Bain & Co shows the gaps widens as women move up the corporate ladder and into junior and senior management.

“The research shows the reasons for this are diverse and complex. One reason is 80% of women tend to undersell their capabilities and experience. Other reasons can include a clear lack of recognition or understanding inside an organisation that there is a problem and a lack of leadership in addressing the problem. CEW is talking to a number of progressive companies in Australia who are trying to address the imbalance within their own organisations. Only by highlighting the discrepancy and discussing at a senior executive level will efforts be made to right the imbalance. It is imperative these initiatives are led by the CEO and the board.”

She also says women must stand up and say, “I deserve this! This is what I have done; this is what I can do. My contribution needs to receive equal recognition with my male colleagues and we need to talk about me being paid what I deserve’.”

ACTU president Ged Kearney says some inequality is inexplicable, other than to point to entrenched gender bias in Australian workplaces.

“Women in childbearing years without children still earn a lot less than men, which is pretty perplexing. The only reason we can point to is that employers worry they might have children and therefore hold their wages back. Or, perhaps the women themselves don’t fight for a pay rise. Either way, what we end up with is a generation of employees who are underpaid just because they are women.” She says graduates are another example of nonsensical inequality. “Why should a women graduate get less than a bloke? Until Australia closes the gap we will continue to cheat these employees.”

She urges women to stand up and be counted. “Too many times women trade off pay rises or promotions so they can keep family-friendly hours and, importantly, they don’t identify discrimination when it’s staring them in the face. That needs to change.”

***Lack of movement in all but government and ASX boards demonstrates clearly that “hope is a not a business strategy” to improve gender balance on boards, said Women on Boards Directors Ruth Medd and Claire Braund.***

Their 2013 Boardroom Diversity Index reports the number of women board members in 850 organisations across eight sectors (also including, Cooperative Research Centres, Mutuals, Health Funds, National Sporting Organisations, Research & Development Corporations and Superannuation Trustees) as at June 30. “Only in the government sector do we see more than 30% women on boards and committees. The former federal government set mandatory targets of 40% women on its boards by 2015 and exceeded this overall with significant progress across many portfolios. Of particular note is that the top 34 federal government boards by remuneration have almost reached the 40% target.”

Braund and Medd say sporting organisations’ commitment to gender balance as part of their governance reforms is a “step in the right direction’ and they expect a significant increase in gender representation by 2015.

They say the ASX200 “has made strong gains since the change to the Corporate Governance Principles and Recommendations in 2010, but this is slowing, and unless chairs maintain the focus on improving diversity and gender balance on their boards, this progress is likely to stall”. Medd and Braund say the ASX200 is dragged down by the top-listed 39 WA companies “who have only 7.7 of directorships held by women”. By contrast the government had increased female representation on State-Owned Corporations from 23.1% to 29.1%.

“Clearly WA industry could be learning from its state government which is managing to find women for its largely port and infrastructure based boards.”

See more on [www.womenonboards.org.au/pubs/bdi/2013/](http://www.womenonboards.org.au/pubs/bdi/2013/).

## **Case study: investing in people to deliver strong growth**

In a competitive skills market and flattening industry, resources and infrastructure company Hilti Australia has doubled its profits and saved over \$1 million in recruiter fees over the past four years, according to managing director, Jan Pacas.

He says the company is an accredited Aon Hewitt Best Employer for the third year running and this highlights how its investment in training and high performance culture had driven productivity and growth.

“At Hilti, we set ambitious goals and know it is our employees who are the key to delivering growth. In 2011, we set a target of doubling growth in Australia by 2015 and we are on track to achieve this; having already doubled our profits over the last four years,” says Mr Pacas, who adds that employees take ownership of their role in achieving business goals and strive to achieve them.

“Staff development, business transparency and a high-performance culture has ensured strong attraction, retention and employee engagement. Hilti’s ongoing investment in our staff has been instrumental in achieving growth, and continues to set Hilti apart as a best employer in a slow market.”

Mr Pacas says Hilti has adopted a “Triple Bottom Line” approach which contributes to both overall engagement and business results by connecting employees with customers and company performance.

“The triple bottom line has been an integral part of our sustained levels of growth. Our combination of a high performance culture and employee engagement leads to high customer satisfaction, solid financial results and happy shareholders.”

In addition to doubling profits, Hilti's internal leadership development program has saved the company over \$1 million in recruiter fees over the past three years. In a growth year, Hilti, promotes 15 managers annually, 85% appointed internally.

Mr Pacas explains: “Hilti has been focused on building a high performance culture that promotes employee engagement, increases productivity and delivers a career path for employees. Our aim is to find and retain the right people; who are interested in the company for a career and for what we do, not just remuneration. Employees want to know that there is a career path for them to progress into, and our leadership development program provides opportunities to grow within the company. Training our own staff into the next role is important to retain company knowledge, skills and expertise in the field. It also reduces the need to pay high recruiter fees for each managerial appointment.”

Mr Pacas says business transparency, including communication of in-depth financial information, empowers staff to contribute to the organisation's goals and objectives.

“In the last 12 month, Hilti introduced an internal program that shares financial information, including revenue, profitability and capital expenditure, with the entire company on a quarterly basis. It creates a flywheel effect; where everyone feels responsible for working together towards the ultimate goal. This approach has clearly paid off, with 94% of employees stating they understand how they could contribute to the company goal, and 88% saying that they take individual responsibility towards achieving long-term business goals.”

Mr Pacas says the organisation is continuing to experience growth this year, and expects it to accelerate as the year progresses.

“In the year ahead, Hilti will continue to invest in its people by focusing on leadership development and high employee engagement to remain in a strong market position and continue to deliver outstanding results.”