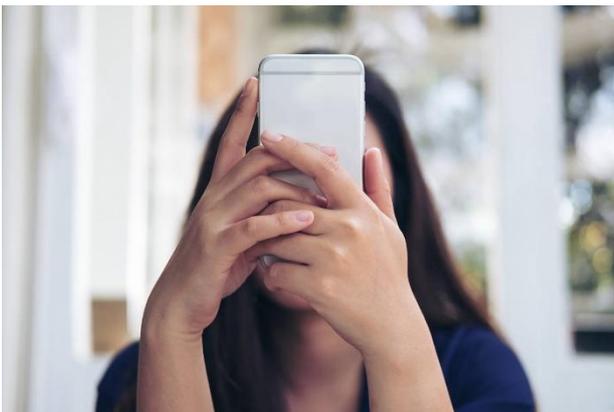


# A VISION IN THE WORKPLACE

## Our May edition of Vision includes:

- ‘Right to Disconnect’ and Remote Working Arrangements: What Employers Should Know; and
- Possible delay to Superannuation Guarantee rate Increase: Employers should still prepare.



## ‘Right to Disconnect’ and Remote Working Arrangements: What Employers Should Know

COVID-19 has shattered workplace norms about how traditional work is carried out, by ushering in a new and unprecedented ‘work-from-home’ culture (WFH). Technology has also facilitated the extension of work, connecting employers and employees virtually at all hours of the day. Consequently, remote working arrangements and technology advances have blurred the lines between worker’s professional and private lives, calling into question what is and is not considered ‘work’ for individuals still working from home in the wake of COVID-19.

The issues surrounding remote work have developed significant debate, namely that with relation to workers’ right to ‘disconnect’ once the work-day is over. Some of Australia’s largest unions have pushed for more Australian workers to have a ‘right to disconnect’ from phone calls, texts, and emails outside of work hours, arguing that this combats against overwork and can improve the mental well-being of employees.

The right to disconnect has been achieved by Victorian police employees in previous workplace negotiations relating to their latest enterprise agreement (**the Agreement**). Clause 59 of the Agreement relieves employees of a duty to be contactable outside of working hours, except during emergencies or genuine welfare matters.

Union leaders have stated that such a right will protect officers against the ‘availability creep’ or being contacted outside of work with respect to matters that can be dealt with during an employee’s next shift. This shifts the burden from the employee to remain accessible, to the employer to consider whether a phone call/email sent outside effective working hours is conducive.

During COVID-19, the education sector face exploding workloads, leading to the renegotiation of agreements to account for a right to disconnect. The pandemic forced Australian families and students into home-schooling, meaning that the working hours of teachers reached an all-time high, alongside parents’ expectations about being able to contact staff.

Around the world, nations have responded to overwork issues arising from remote work. In 2016, France

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introduced workplace laws identifying the right to disconnect and Ireland's Workplace Relations Commission has developed a code of practice reflecting the same, namely the *National Strategy on Remote Working* which provides guidance for employees and employers navigating disengagement outside normal working hours. Current trends of legislating and identifying the right to disconnect beckons the need for Australian employers to respond proactively.

## What does this mean for employers?

The 'right to disconnect' calls for the redefinition of 'working hours', particularly since that remote work, in many workplaces, is here to stay. This will require employers to collaborate with employees and their representatives, to develop rules to regulate remote work to better distinguish the line between an employee's working life and personal life and give an identifiable face to 'working hours' and what this looks like.

*"Without clear boundaries separating work and the rest of your life, working people can be both expected to work extra unpaid hours and be subject to a job that is at high risk of mental health problems,"* Australian Council of Trade Unions (ACTU) secretary Sally McManus has stated.

Mounting pressure from unions may result in the incorporation of the 'right to disconnect' in enterprise agreements across a variety of sectors. Employers can benefit from strategies to deal with on-coming, potential agreement changes by considering the creation of a Remote Working policy, so that expectations about 'working hours' are clearly defined.

If you require assistance with the creation of practices, guidelines, or policies explaining remote work, please do not hesitate to contact [Nick Stevens](#), [Luke Maroney](#) or [Daphne Klianis](#).



## Possible delay to Superannuation Guarantee rate Increase: Employers should still prepare

Frozen at 9.5% for the last six years, discussion has fired up about the superannuation guarantee (SG) increase this July. The SG rate is scheduled to increase by 0.5% to 10% on 1 July 2021, with incremental increases to 12% by 2025. However, it remains unclear whether all the increases will be implemented. Federal Government Treasurer Josh Frydenberg has stated that a final decision concerning the increase will be made in the May 2021 Budget.

Uncertainty surrounding the scheduled increase grew after the Australian economy was plunged into a pandemic-induced recession in 2020. Accordingly, employers and politicians have argued that during economic recovery post-COVID, it may not be an optimal time for employers to contribute an increased

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amount to employees' superannuation. The same groups argue that increases in SG may come at the expense of pay rises for Australian workers.

The Federal Government has been receptive to the issues around the scheduled SG rate increase. Minister for Superannuation Jane Hume says that although the superannuation rise has been legislated to occur, "*the Prime Minister must consider the economic circumstances*" of our current climate post-COVID before making a decision on the SG increase.

Proponents of the SG rate increase warn that any delay could cause more harm than good. In response to economic strain imposed by the pandemic, the Federal Government enabled the option for Australians to withdraw from their superannuation accounts. Estimates show that more than \$33 billion have been already withdrawn from superannuation accounts, and it is estimated that approximately 590,000 Australian have '*completely cleaned out their retirement savings, the majority of them under the age of 35*' says Shadow Treasurer Jim Chalmers.

*"Now more than ever, Australians need the legislated increase in the super guarantee to rebuild their retirement balances,"* Mr Chalmers said.

## Issues for employers to consider

In the absence of any change to the current law, here are a few key things for employers to consider in light of the prescribed SG rate increase this year.

To meet SG obligations under the *Superannuation Guarantee (Administration) Act 1992* (Cth), employers will be required to contribute an additional 0.5% to

employees' superannuation if the increase occurs on 1 July 2021.

Employers will need to plan how the SG rate increase will be communicated to employees, and how the increase will be implemented, which will depend on the nature of the employer's employee remuneration scheme.

For example, if employees receive a superannuation-inclusive remuneration package, employers will need to explain to employees that due to the increase in the SG rate, their take-home nett payments may be reduced as of 1 July 2021. However, should employers consider implementing a pay increase to ensure employees' wages are not impacted by the SG rate increase, this must be budgeted and communicated appropriately with relevant stakeholders and employees and, in some circumstances, might require variation to contracts of employment.

For employees that receive SG contributions on top of their nett income, employers will need to account for the new SG rate payable when budgeting for upcoming employee benefits. It is recommended that employers also consider their existing payroll system capabilities and the implementation of necessary adjustments to accommodate for the SG rate increase. There might also be terms in individual contracts of employment or relevant enterprise agreements that employers will need to specifically consider.

Notwithstanding the potential delay of the SG rate increase this July, employers must consider how the legislated increase will impact employee remuneration

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arrangements from 1 July 2021 onwards and plan accordingly.

If you have any questions relating to the prescribed SG rate increases set for 1 July 2021, please do not hesitate to contact Nick Stevens, Luke Maroney, or Daphne Klianis. Stevens & Associates Lawyers will keep clients up to date on any further developments on the SG rate changes. If you have any questions please do not hesitate to contact [Nick Stevens](#), [Luke Maroney](#) or [Daphne Klianis](#).

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