



# MANAGING EMPLOYEE RISK REPORT

**PREPARED BY**

*Greg Reiffel Consulting*

---

*What's in this report?*

# CONTENTS

- Symptoms of poor risk management
- Costs to your business of poor risk management
- 2019 at a glance
- Governing bodies:
  - The Fair Work Commission
  - The Fair Work Ombudsman
  - Victorian Equal Opportunity & Human Rights Commission
- Risks & Solutions:
  - Recruiting Employees
  - Termination of Employment
  - Payment Errors
  - Bullying
  - Discrimination
  - Sexual Harrassment
- Action Plan
- About the Author

# SYMPTOMS OF POOR RISK MANAGEMENT

- Absenteeism (not turning up for work)
- Presenteeism (showing up with a 'lazy' work ethic)
- Not wanting to turn up for work
- Worker's compensation claims
- High employee turnover
- Low quality of work



[WWW.FACEBOOK.COM/GREG-REIFFEL-CONSULTING-326274318274061/](https://www.facebook.com/greg-reiffel-consulting-326274318274061/)



[WWW.LINKEDIN.COM/COMPANY/GREG-REIFFEL-INDUSTRIAL-RELATIONS-HUMAN-RESOURCES-CONSULTING/](https://www.linkedin.com/company/greg-reiffel-industrial-relations-human-resources-consulting/)

# THE COSTS TO YOUR BUSINESS

- Financial costs:
  - Deadlines not met
  - Rework
  - Time lost that could be spent growing your business
- Legal implications:
  - Underpayment of wages or superannuation
  - Unfair dismissals
  - Claims against bullying or harassment

As well as...

- Staff morale & business culture is affected
- The longevity of your business & reputation
- Retention of your assets, so everything you've worked hard to gain

*this year's numbers*

## 2019 AT A GLANCE

The overview of numbers & costs of employee management complaints in 2019 so far.

# 751

*bullying claims*

# 19,568

*unfair applications*

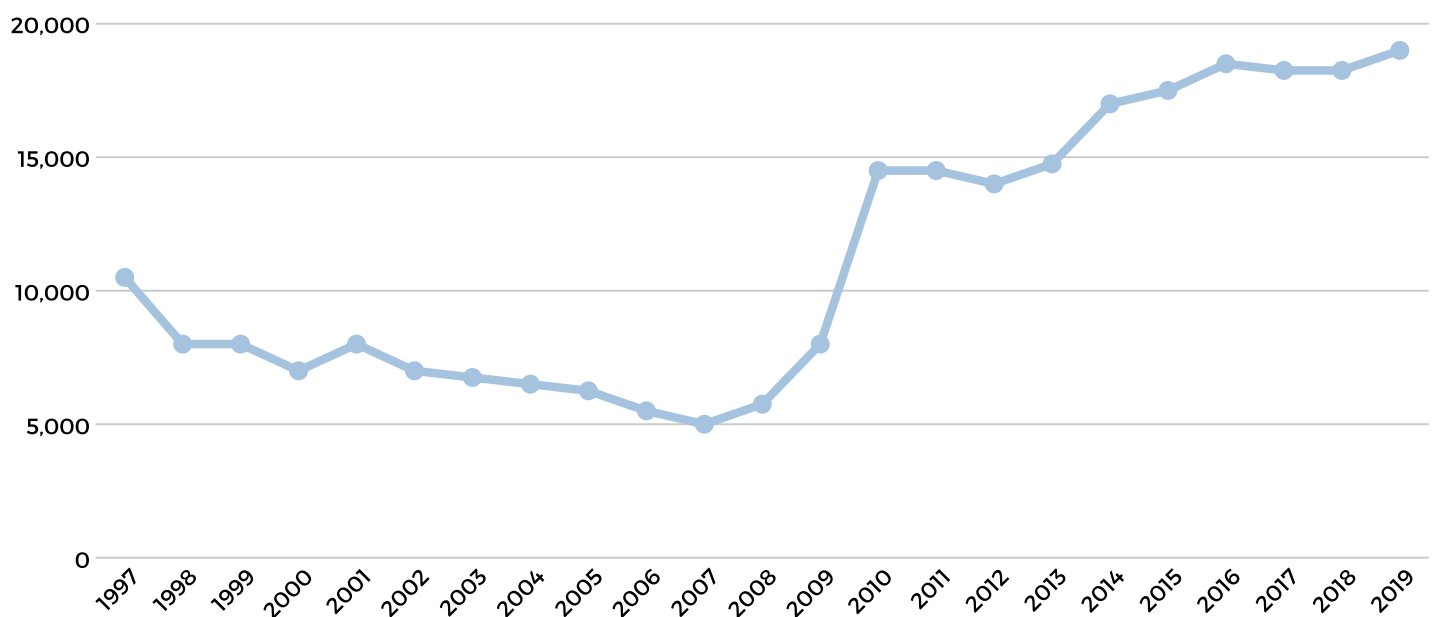
Unfair dismissals costs to business (est. minima) .	<b>\$195,680,000</b>
Wages recovered by the Fair Work Ombudsman	<b>\$140,204,976</b>
Penalties imposed by the courts for wages underpayment	<b>\$4,204,976</b>
Employees that recovered shortfall of wages	<b>17,718</b>

FWC

# THE FAIR WORK COMMISSION

**\$10,000***average settlement per unfair dismissal***100%***increase in bullying claims since 2014*

## Unfair Dismissal Claims



The Fair Work Commission of Australia covers:

- Unfair Dismissal Claims
- Bullying Claims
- Annual Wage Cases
- Enterprise Agreements
- Industrial Actions
- General Protection & Unlawful Termination Claims
- And more...

# THE FAIR WORK OMBUDSMAN

The Fair Work Ombudsman is a statutory agency created by the Fair Work Act 2009.

It's roles include:

- Provide education, assistance, advice & guidance to employers, employees, outworkers, outworker entities and organisations.
- Promote & monitor compliance with workplace laws.
- Inquire into & investigate breaches of the FW Act.
- Take appropriate enforcement action
- Perform statutory functions efficiently, effectively, ethically & economically.

## 400%

*increase in money paid  
from business to employee  
in last 2 years*

---

## \$45 MILLION

*paid from businesses to  
employees this year*

# VICTORIA EQUAL OPPORTUNITY & HUMAN RIGHTS COMMISSION

The commission has responsibilities under three laws: Equal Opportunity Act 2010; Racial & Religious Tolerance Act 2001: & Charter of Human Rights & Responsibilities Acts 2006

It is illegal to discriminate an employee, or discriminate when hiring, on the basis of:

- Age
- Marital Status
- Parental Status
- Disability
- Gender Identity
- Employment Activity
- Carer Status
- Family Responsibilities
- Lawful Sexual Activities
- Industrial Activity
- Pregnancy
- Breastfeeding
- Race
- Religious Beliefs
- Political Belief or Activity
- Sex
- Sexual Harassment
- Personal Associations
- Discriminatory Questions

## DISABILITY, GENDER & SEXUAL HARRASMENT

*Top three types of complaints to the Victorian EOHRC.*



# RECRUITING EMPLOYEES

Recruiting and replacing employees can be costly.

- ▶ **EMPLOYEE'S RATES**
- ▶ **SUPERVISOR'S RATES**
- ▶ **ADMINISTRATION RATES**
- ▶ **LOSS OF HOURS/WORK**
- ▶ **TRAINING COSTS**
- ▶ **ADVERTISING JOB**
- ▶ **UNIFORM/EQUIPMENT**

## THE RISKS

- Being able to find employees with the right skills
- Avoiding discriminatory advertising of the job, and discriminatory interviews
- Hiring friends & relatives can be very problematic
- Ensuring your references check out

## THE SOLUTION

- Policies & Procedures on how to hire correctly will result in choosing the best candidate.
- Referencing checking thoroughly
- Pre-employment medicals
- Ensuring letter of offer and contract of employment are completed and consistent
- Following code of conducts

# TERMINATION OF EMPLOYMENT

Termination of employment is a complex piece of law, that in recent years has been turned into industry by no-win no-fee reps encouraging sacked employees to sue their previous employers.

These types of businesses rely on settlements or 'go away' payments, which is not a win for your business.

## THE RISKS

- If you lose at arbitration, the FWC can order you to:
  - Reinstate the employee with back pay
  - Pay up to six months of their wages as compensation
- Or you are at risk of adverse action, which can result in:
  - Being dealt with in a federal court
  - Paying fines with no limit

## THE SOLUTION

- Recruiting the right people, is your recruitment process thorough enough?
- Enforce a code of conduct for all employees, outlining what behaviours are not accepted
- Create a Disciplinary Policy that is applicable to all employees and followed consistently
- Get advice from an external Employment Law Expert before you dismiss an employee, or if you receive a claim from the FWC
- Greg Reiffel offers a free consultation especially for this risk and solution.

# ERRORS IN PAYMENTS

Payment errors can be as simple as underpaying superannuation, mistake in monthly wages, miscalculated commission or bonuses and more.

## THE RISKS

- Your records are likely as incorrect as your payments
- Lack of or missing payslips
- Underpaid employees, such as overtime and other entitlements
- Unlawfully deducting money from the employees pay
- Fines incurred
- Reputational damage

## THE SOLUTION

- Audit what you pay your employees against the appropriate award rate of pay
- Greg Reiffel can assist, potentially saving you \$10,000's in fines and back pay

# BULLYING CLAIMS

What counts as 'bullying' and what is the appropriate action to take?

Definition of Bullying:  
*Repeated and unreasonable behaviour directed towards a team member or a group of employees that creates a risk to health and safety.*

Definition of Unreasonable:  
*Behaviour that a reasonable person, given the circumstance, would see as unreasonable, and includes threatening, intimidating, victimising or humiliating behaviour.*

Bullying is **not**:  
*Reasonable management action taken by managers or supervisors to direct and control the way work is carried out, if the action is taken in a reasonable and lawful way.*

## THE SOLUTION

- Have anti-bullying policies in place that have a zero tolerance approach
- Ensure every single employee is aware of their obligation (which a code of conduct can help with)
- Provide regular awareness training of this subject

# DISCRIMINATION

Discrimination is treating, or proposing to treat an employee unfavourably because of a personal characteristic, directly or indirectly.

Directly:

*When a person or group is treated unfavourably because of a personal characteristic protected by law. For example, a team member is harassed and humiliated because of their race or a team member is refused promotion because they are 'too old'.*

Indirectly:

*When an unreasonable requirement, condition or practice is imposed that has, or is likely to have, the effect of disadvantaging people with a personal characteristic protected by law. For example, redundancy decisions being based on people who have had a worker's compensation claim rather than using objective selection criteria.*

## THE RISKS

- There are both federal and state laws protecting 'vulnerable' people
- Not understanding the requirements of 'merit-based' hiring when filling vacant positions
- Both employer and employees can be breaking the law when discriminating other employees or potential employees
- There is no maximum limit for compensation awarded for this legislation

## THE SOLUTION

- Put procedures in place for hiring the best person for the job and follow this completely
- Your code of conduct will help employees understand their obligations, ensure this is provided and regularly referred to
- Check the policies and procedures in place to educate and guide you on how to eliminate discrimination in the work place.

# SEXUAL HARASSMENT

Sexual harassment is unwelcome sexual behaviour that would be expected to make someone feel offended, humiliated or intimidated. This behaviour can be physical, spoken or written.

Just because someone doesn't object to this behaviour at the time does not mean they are consenting

It can include:

- *comments on appearances or personal lives*
- *leering or staring*
- *touching, fondling, hugging*
- *sexually suggestive jokes or comments*
- *offensive screensavers, photos or calendars*
- *repeated requests for dates*
- *any request for sex*
- *explicit emails, texts or social media posts.*

## THE RISKS

- You or any of your employees can be accused of sexual harassment
- Sexual harassment claims are among the highest in terms of complaints made
- Devastating effect to your business and personal reputation
- There is no maximum limit for awards granted under this legislation

## THE SOLUTION

- Policies and procedures are in place to educate and guide you on how to eliminate sexual harassment in the workplace
- Providing a 'safe' environment that enables the reporting of such transgressions
- Ensure all employees are aware fully of their obligations and the code of conduct

# WORK PLACE SAFETY

The Occupation Health & Safety Act 2004 (Victoria) states:

- So far as is reasonably practical, health and safety requires an employer to:
- eliminate risks to health and safety
- if it is not reasonably practicable to eliminate risks to health and safety, to reduce those risks so far as is reasonably practicable

'Reasonably practical' means:

- the likelihood of the hazard or risk concerned eventuating
- the degree of harm that would result if the hazard or risk eventuated
- the availability and suitability of ways to eliminate or reduce the hazard or risk
- the cost of doing this

## AN EMPLOYER MUST:

- Provide or maintain plant or systems of work that are safe and without risks to health
- Make arrangements for ensuring, safety and the absence of risks to health in connection with the use, handling, storage or transport of plant or substance
- Maintain each workplace under the employers management and control in a condition that is safe and without the risk to health
- provide adequate safety information and equipment

# WORK PLACE MANSLAUGHTER

The OH&S Act is about to be updated concerning Workplace Manslaughter, which will mean:

- the new offence will apply to an employer
- it will apply to deaths of employees, contractors and members of the public
- 20 years imprisonment is the maximum sentence

'Negligence' can arise in different ways, including: an accumulation of conduct by different individuals; unwritten rules; policies; or general work practices of the organisation.

Conduct is 'negligent' if it involves a great short fall of the standard care that a reasonable would have exercised in the circumstances and involves a high risk of death or serious injury.

## THE RISKS

- Insurance premium rise
- Exclusion from tender for working
- Liable for first 10 days pay to the injured employee plus \$721
- Lost time & productivity
- Increased scrutiny from WorkSafe
- 20 years in jail or multi million dollar fines

## THE SOLUTION

Put in place an OH&S plan that will:

- Identify all hazards in the workplace
- Explores ways of eliminating each hazard
- Ensures all employees are properly inducted, trained and supervised
- Is thoroughly documented.
- If you have a workers compensation claim, ensure that the Return to Work plan fits the circumstances of the injured employee.
- Consider alternate, lighter duties and/or gradual return to work



*next steps*

# ACTION PLAN

- ✓ Records kept and payslips issued in with Fair Work Regulations
- ✓ Position Descriptions for all roles  
Recruitment process in place the ensures the best person for the job is hired
- ✓ Letters of offers and contracts of employments issued for all employees
- ✓ All job-offers subject to reference checks, police checks and medical checks (if necessary)
- ✓ All employees inducted and future training identified and carried out
- ✓ Code of Conduct to 'set the rules'  
Policies and Procedures in place that reflect the law and your workplace culture
- ✓ Get outside assistance with claims of bullying, discrimination and sexual harassment
- ✓ Get advice prior to dismissing an employee, or (having already sacked the employee) received an unfair dismissal claim.

*About the author.*

## ABOUT GREG REIFFEL



Greg Reiffel is a highly knowledgeable and accomplished consultant having:

- Over 30 years experience in HR, Employee & Industrial Relations and OH&S
- Worked across various sectors such as: Civil Construction; Education; Utilities Management; Local Government Manufacturing & FMCG; and Non-profit organisations.
- Experience working with key employer bodies such as: Victorian Employers Chamber of Commerce & Industry (VECCI), Civil Contractors Federation (CCF).

Qualifications include:

- Graduate Diploma of Business: (Industrial Relations/Human Resource Management) equivalent to Bachelor Hon's
- Certificate IV in Training & Assessment
- OH&S Lead Auditor Certification
- Work Effectively with Aboriginal & Torres Strait Island People Certification

Greg is also a Certified Professional member of the Australian Human Resources Institute (AHRI).

# WHAT CLIENTS HAVE TO SAY...

'HE HAS GREATLY RAISED THE BAR IN TERMS  
OF WHAT I EXPECT FROM THE HUMAN  
RESOURCE PEOPLE THAT I NOW COME IN  
CONTACT WITH."

"GREG HAS BEEN OFFERING ME HR AND  
INDUSTRIAL ADVICE FOR OVER 15 YEARS, IT  
IS ALWAYS PROMPT AND CONCISE."

"ETHICAL, HONEST AND TOTALLY  
PROFESSIONAL IN HIS DEALINGS AND CAN BE  
RELIED ON TO ADD VALUE TO ANY  
BUSINESS."

"GREG HANDLED VARIOUS EMPLOYMENT  
ISSUES, SOME OF WHICH WERE UNDER  
CHALLENGING CIRCUMSTANCES, AND BUILT A  
RAPPORT WITH OUR STAFF AND  
CONTRACTORS."

# NEED ASSISTANCE WITH HR & INDUSTRIAL RELATIONS?

I CAN SAVE YOU \$10,000'S IN BACK PAY OR  
'GO AWAY' PAYMENTS, ENSURE YOUR  
BUSINESSES REPUTATION, HANDLE ALL  
DIFFICULT HR CIRCUMSTANCES AND HELP  
ELIMINATE EMPLOYEE MANAGEMENT RISKS  
DESCRIBED IN THIS REPORT.

FOR A FREE CONSULTATION PHONE CALL:

**0438 906 050**

DROP ME AN EMAIL TO ARRANGE A  
CONSULTATION:

**GREG@GREGREIFFELCONSULTING.COM.AU**

OR HEAD OVER TO MY WEBSITE FOR A FULL  
LIST OF SERVICES I CAN OFFER YOUR  
BUSINESS:

**WWW.GREGREIFFELCONSULTING.COM.AU**