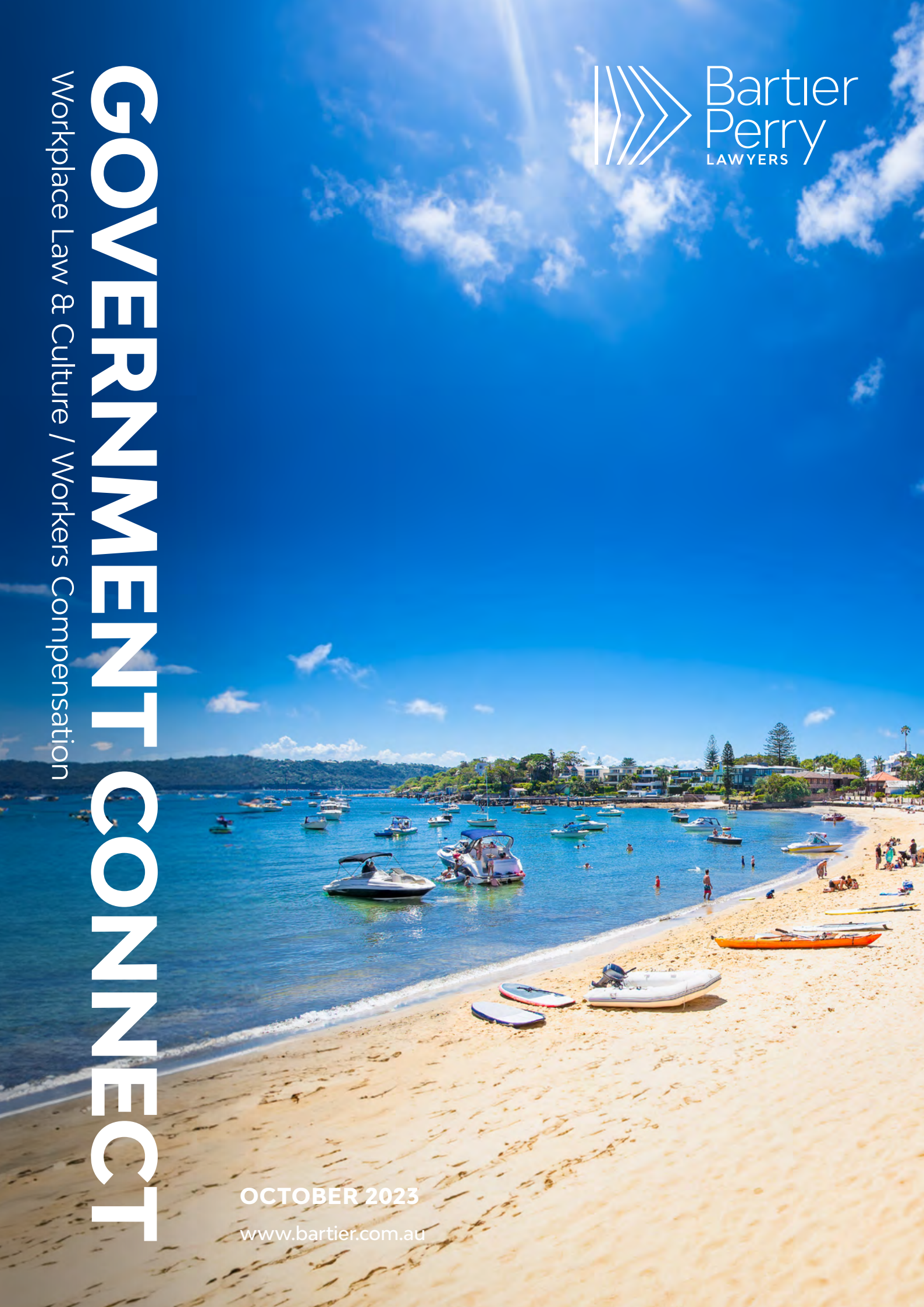
GOVERNMENT CONNECT

Workplace Law & Culture / Workers Compensation

Bartier Perry LAWYERS



OCTOBER 2023

www.bartier.com.au

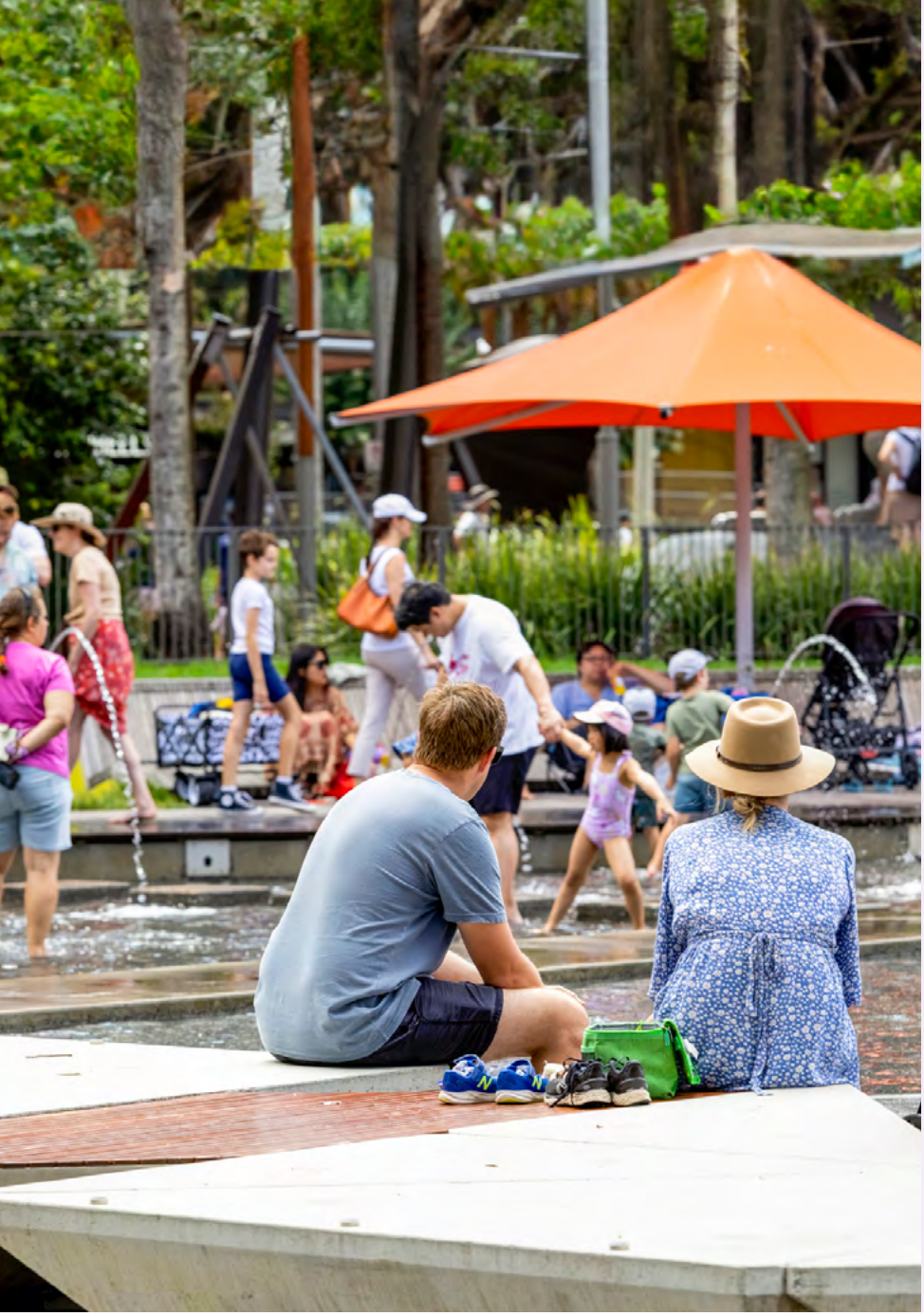


TABLE OF CONTENTS

3 Introduction

4 Avoiding the long and winding road to employee termination

6 Vicarious liability – where it starts, where it ends, and why defining that point can be difficult

8 Senior Executive Service – a harsh or uncalled for dismissal is not reviewable

10 What is an injury in Workers Compensation law? It's not as simple as it looks

12 You can't do or say that – even in your own time!

Upcoming CPD Government Workshop

Exit stage left - ending contracts and relations

Sometimes things need to end. For a multitude of reasons a contract ceases to be desirable or functional, and a relationship unviable. How does a government agency exit the contract and relationship with as little fuss as possible? Is it possible?

In this seminar, we explore the considerations, mechanics and tribulations that inform and follow decisions to end a contract and relationship in the context of:

- A commercial contract; and
- An employment relationship.

We will look at pre-planning for termination, executing a termination through to defending the decision to terminate if challenged.

You will hear from three speakers:

- Rebecca Hegarty – Partner, Corporate & Commercial
- David Creais – Partner, Dispute Resolution & Advisory
- James Mattson – Partner, Workplace Law & Culture

Date: 19 October 2023

Time: 8.00-10.30am

To book visit **www.bartier.com.au/insights/events**

INTRODUCTION

Welcome to our October 2023 Government Connect.

Workplace law has been a hot topic of conversation this year. There has been an array of changes, and proposed changes to employment related legislation, including discrimination laws at the Federal level. At the State level, there is an inquiry into the *Industrial Relations Act 1996* and changes to wages policy. Employees remain focused on topics of equal and fair pay, wage compliance and eliminating unsafe workplaces, including from psychosocial hazards and sexual harassment.

It's also worth remembering that workplace law also places obligations on employees as well as limits on their rights. The articles in this issue of Government Connect highlight many of those aspects of the law, reminding our readers that employers too, are provided legal protection against bad employee behaviour or unwarranted attempts at compensation or recompense.

For agencies, maintaining an equitable balance between employee and their own rights can be a delicate affair. They are subject to much greater scrutiny than most privately owned organisations and likely to be harshly judged in the court of public opinion if they get it wrong. It is important, therefore, to have clarity around sensitive issues such as employee termination, inappropriate behaviour at work events, compensation for workplace injuries and where employee comments made on social media in their own time become a legitimate concern for their employer.

Besides providing that clarity in this issue, we will also keep you updated as further changes occur between now and the end of the year. In addition, keep an eye out for our Government workshop coming up in October, Ending Contracts and Relations. We'll be looking at the considerations, mechanics and tribulations that inform and follow decisions to end a commercial contract and/or employee relationship. They are many and varied and you don't want to miss it!

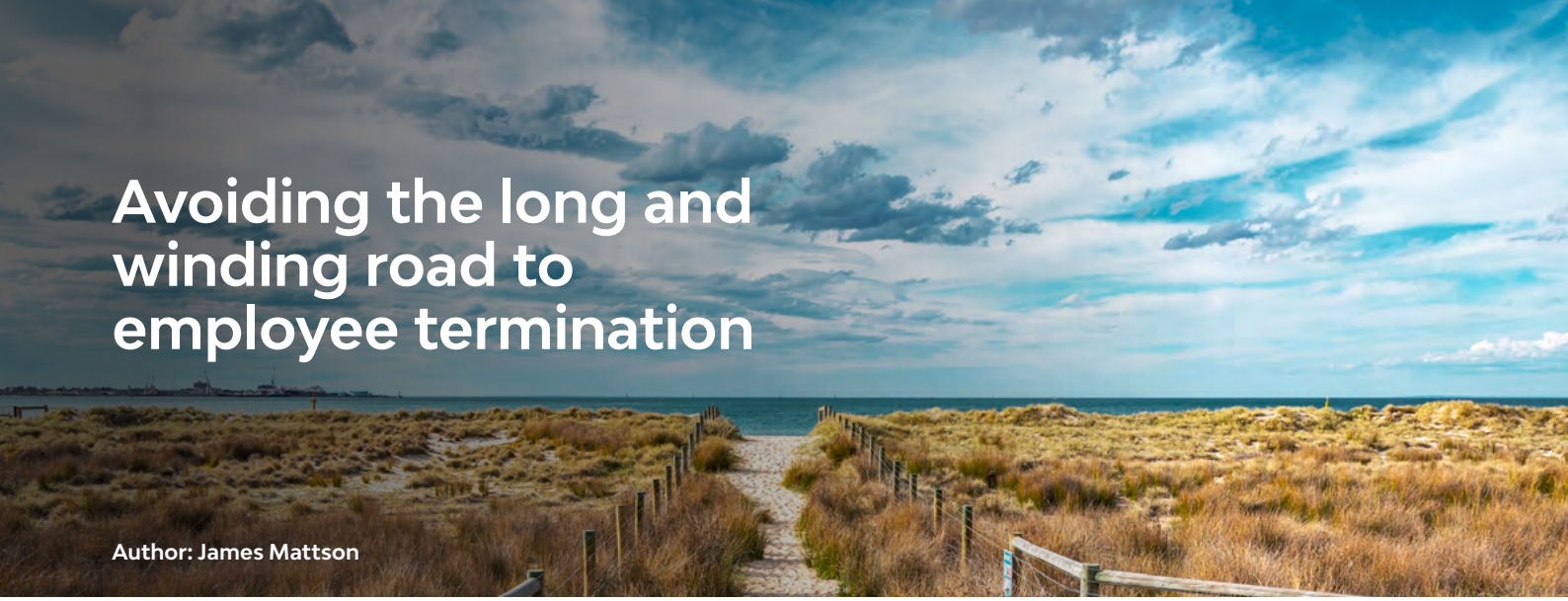
Finally, we love to get feedback on this issue and ideas for topics you'd like to see covered in future editions. Please let us know your thoughts so we can keep it as relevant to you as possible.

The same philosophy applies to our overall service to you. Our government clients are very important to us and if there's anything we can do better, don't hesitate to tell us. If there are specific value adds we can provide you with, or if you would like to chat about any subjects in this issue, please reach out to myself or any of our NSW Key Team listed at the back.

James Mattson

Partner, Workplace Law & Culture

NSW Government Cluster Partner – Health, Premier and Cabinet and Communities and Justice



Avoiding the long and winding road to employee termination

Author: James Mattson

Employees must be given time to respond to a proposal to end their employment. But they needn't be given forever.

It is common for employees to ask for more time to respond to allegations or proposed disciplinary action. In fact, such requests are sometimes made multiple times, leading to a long, drawn out – and often costly – process.

In some cases, a request may be for legitimate reasons and due to matters beyond the employee's control. In others, they are made simply to stall or avoid the process. These requests can be a source of real frustration for employers.

Questions that often arise include: if an extension is requested, must it always be granted? How long (or short) is a reasonable extension? How many times can or should an extension be granted?

These questions arose in *Lahner v Health Secretary on behalf of Western Sydney Local Health District* [2023] NSWIRComm 1060. Having had 12 weeks to obtain a medical report regarding his ongoing employment, but not having done so, Mr Lahner was seeking to prevent a decision being made on his ongoing employment.

THE FACTS

Mr Lahner had not worked at Western Sydney Local Health District since 25 March 2020. He remained unfit for work with no return in sight. Three years later, on 31 March 2023, Mr Lahner was asked to show cause why his employment should not be ended on medical grounds and was given 14 days to respond.

Mr Lahner sought more time, stating, *"It is impossible to obtain medical appointments, legal advice, industrial support, notify statutory authorities and access to political intervention within your timeframe."* In response, the District then gave him until 11 May 2023 to reply.

Mr Lahner wanted more time, claiming the earliest he could get an appointment with his doctor was 4 July. At no time did Mr Lahner say he expected any further report to say he was now fit for employment. In addition, Mr Lahner was seeking work injury damages.

THE LEGAL FRAMEWORK

Under section 88(b) of the *Industrial Relations Act 1996*, the NSW Industrial Relations Commission may take into account *"whether the applicant was given an opportunity to make out a defence or give an explanation for his or her behaviour or to justify his or her reinstatement or re-employment"*.

The District, Mr Lahner's employer, argued that *"an affected worker need not be given infinite opportunities to respond but 'an opportunity.' Further, it is trite that it is a matter for the [worker] whether he avails himself of that opportunity in a proper and timely manner."*

THE DECISION

Commissioner McDonald agreed with the District. Mr Lahner had received ample opportunity to respond and any decision to terminate his employment before 4 July 2023 would not be unfair, she said.

Firstly, Commissioner McDonald found *"there is not a skerrick of evidence that there is even a possibility that the Applicant may be fit for any work, let alone work of the kind required to fulfil his role with the Respondent. All the evidence is to the contrary."*

Secondly, in those circumstances, Mr Lahner's *"case is one of form over substance – he seeks to use the principle of procedural fairness to delay his dismissal in circumstances where there is no evidence that he will, in a practical sense, lose any opportunity to submit to the Respondent's delegate that he is fit for work."*

As such, Commissioner McDonald found *"in the absence of any evidence that there is a possibility that the Applicant may be fit to perform his duties, the Applicant will not be denied procedural fairness if he is not allowed (further) time to obtain a medical report from a suitably qualified medical specialist and consequently the threatened dismissal of the Applicant is not unfair"*. Despite finding in favour of the District, Commissioner McDonald did offer some words of caution:

> *Given the age of the medical evidence I would have had no hesitation in finding that the Applicant would indeed be denied procedural fairness if he*

asserted that he considered himself fit to perform some or all of his duties and he was not provided a reasonable opportunity to present updated medical evidence to establish his fitness, before a final decision was to be taken in respect of his ongoing employment. For the Respondent to proceed in those circumstances would be unjust, particularly when such evidence is likely to be available within a relatively short period of time.

In those circumstances, is it still a question "as to how long should an employee be given to respond?"

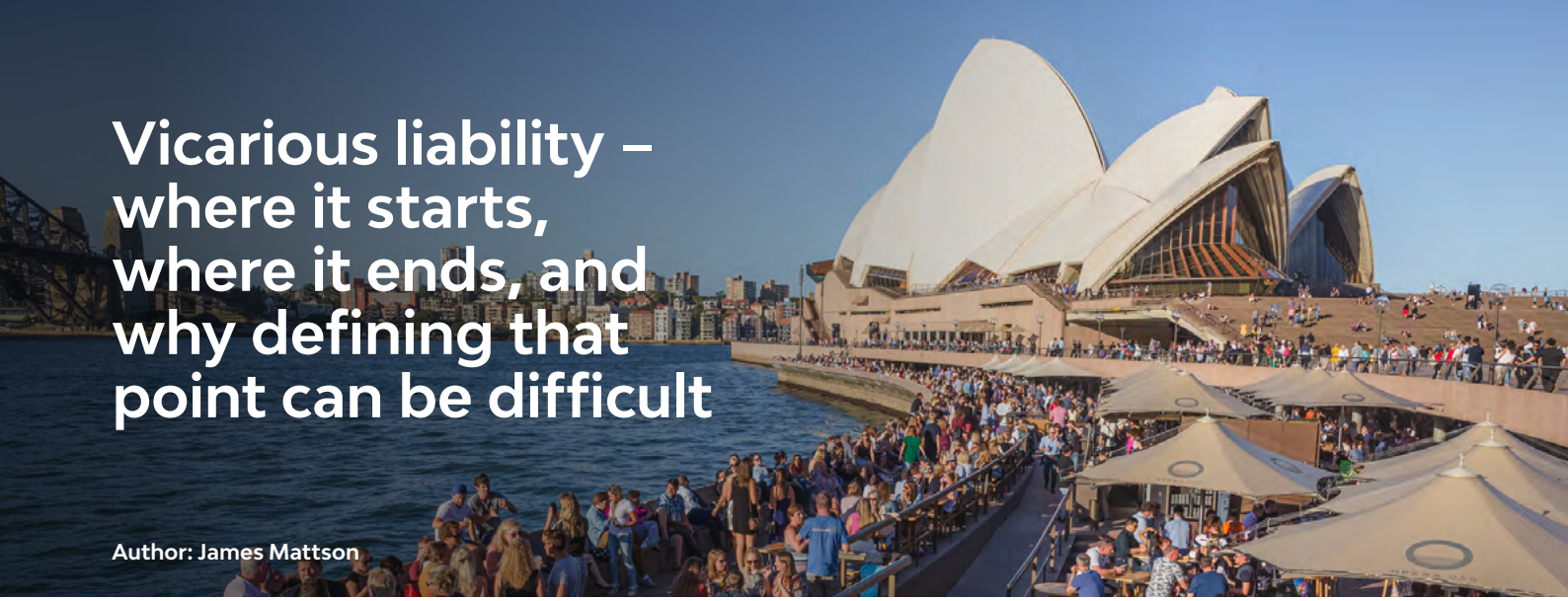
In this particular case, however, Mr Lahner had sufficient time to arrange a fitness assessment, and failed to do so. Mr Lahner only did so late in the piece; seven weeks after he first received the show cause letter. *"In the circumstances, I consider that the Applicant has had a reasonable opportunity to present and have considered medical evidence to persuade the Respondent's delegate that he is fit,"* the Commission said.

LESSONS LEARNT

The decision makes clear that there are limits on employees' time and opportunities to respond; employers are not subject to employees' whims on this matter.

Employees must respond in a timely manner and employers must grant them reasonable time to obtain the necessary documents, such as medical reports. Tactics that are deployed simply to delay a decision will not be supported.

Vicarious liability – where it starts, where it ends, and why defining that point can be difficult



Author: James Mattson

It has long been a principle *"that it is just to make the employer, whose business the employee is carrying out, responsible for injury caused to another by the employee in the course of so acting, rather than to require that the other, innocent, party bear their loss or have only the remedy of suing the individual employee"*. This is known as vicarious liability.

This principle is reflected in legislation, like the *Employees Liability Act 1991* (NSW), confirming employees are not liable if they commit a tort in their employment.

But there are limits to that liability. Under the *Employees Liability Act*, an employee is not protected, and nor is the employer accountable, if the employee's conduct is serious and wilful misconduct or if it did not occur in the course of, and did not arise out of their employment.

Where then, does "the course of employment" end and "not the course of employment" begin? This question was raised in the Australian High Court in *CCIG Investments Pty Ltd v Schokman* [2023] HCA 21 (2 August 2023).

In that case, the issue was what happens if an employee causes harm to another employee in employer-provided accommodation but outside work hours. Is the employer vicariously liable?

THE FACTS

Mr Schokman worked at Daydream Island Resort and Spa (part of Queensland's Whitsunday Islands) as a food and beverage supervisor. His employment contract contained a clause which stated "[a]*s your position requires you to live on the island, furnished shared accommodation located at Daydream Island Resort and Spa will be made available to you…."*

So it was that soon after moving into his room at the resort, Mr Shokman was joined by a new worker, Mr Hewett, who shared the accommodation with him.

On 6 November 2016, Mr Hewett had a few after-work drinks and returned to the accommodation at about 3:00am the next morning. Mr Schokman heard him vomiting in the bathroom and then walking around hiccupping. Mr Schokman then went back to sleep. He woke suddenly about 30 minutes later in a distressed state and unable to breathe. Mr Hewett was standing over Mr Schokman's bed with his shorts down and his penis exposed. He was urinating on Mr Schokman, who was inhaling the urine and choking.

Mr Schokman suffered a cataplectic attack, which is characterised by sudden and temporary loss of muscle tone and control. Mr Schokman claimed damages from the employer for Mr Hewett's conduct.

NOT THE EMPLOYER'S RESPONSIBILITY

The High Court confirmed the well-stated principle that:

> *For an employer to be held liable for the tort of an employee the common law requires that the tortious act of the employee be committed in the* ***course or scope of the employment*** [emphasis ours]

The Court then tackled the question of whether Mr Hewett's actions fell under that definition, noting that: *"It is the nature of that which the employee is employed to do on behalf of the employer that determines whether the wrongdoing is within the scope of the employment … the identification of what the employee was actually employed to do and held out as being employed to do that is central to any inquiry about course of employment".*

The majority judgment of Kiefel CJ, Gageler, Gordon and Jagot JJ found that *"without more the drunken act of urinating on another employee whilst they are asleep was not connected to anything the employee was required to do".*

"Nothing … points to the drunken act in question being authorised, being in any way required by, or being incidental to, the employment. In truth, it had no real connection to it".

The fact that the employer provided Mr Hewett's accommodation was not enough to establish that the conduct was 'in the course of' or 'scope of' his employment.

"Consistently with the policy of the law, an employer should not be held liable for acts totally unconnected with the employment", the Court said.

SIMPLE, LOGICAL – AND NOT ALWAYS THE CASE

The ruling follows an earlier decision of the High Court that an employer was not liable for an employee who injured her head while having vigorous sex during a work conference.

The logic is simple and seemingly unassailable. Why should an employer be liable for the conduct of an employee in their own private time?

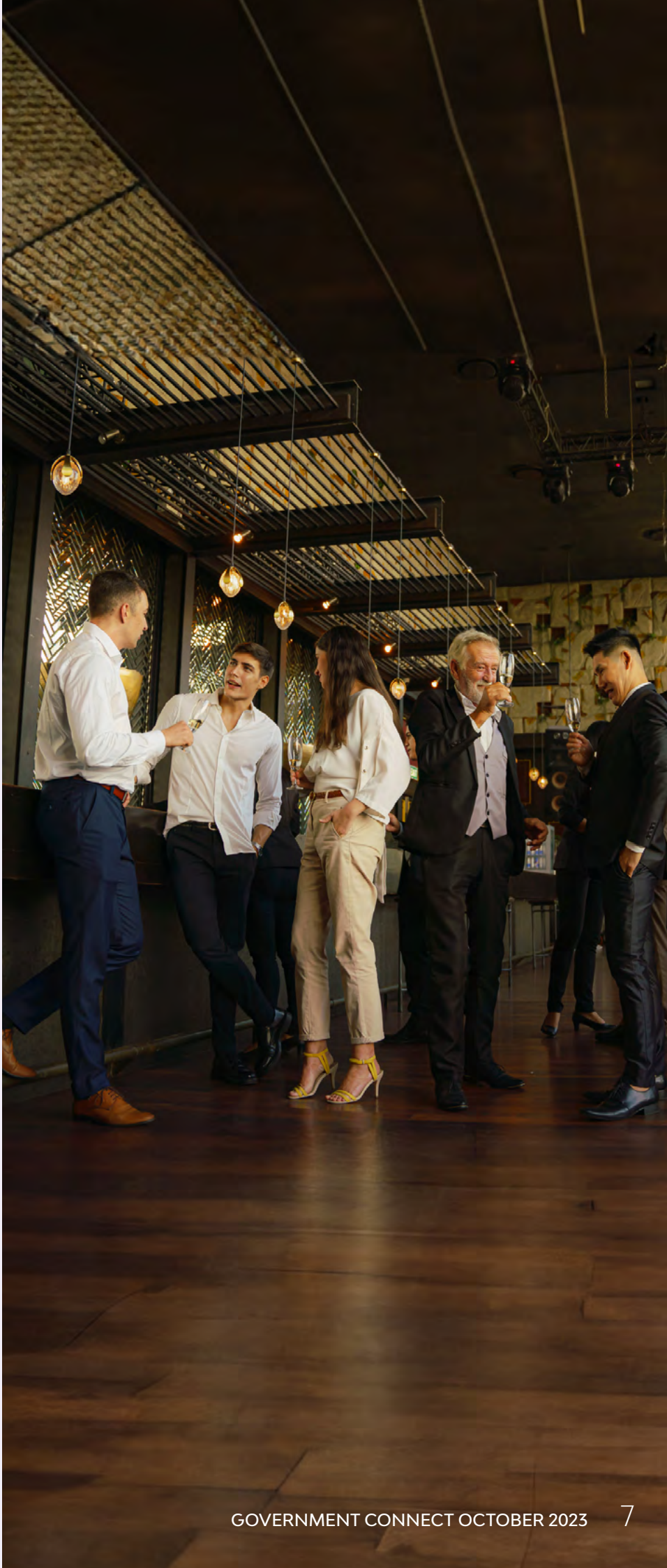
However, the definition of vicarious liability varies considerably in different statutory contexts, and employers should not interpret these two cases as the last word on the matter.

For example, under s 106 of the *Sex Discrimination Act 1984* (Cth), an employer is liable for the acts of its employees 'in connection with their employment' unless the employer establishes it took all reasonable steps to prevent the employee engaging in that conduct.

The phrase 'in connection with their employment' is broad – broader, in fact, than 'in the course of their employment'. That difference led to a different outcome in *South Pacific Resort Hotels Pty Ltd v Trainor* [2005] FCAFC 130. Here the Full Federal Court found the employer was liable for the sexual harassment of one employee by another employee out of work hours but in employer-provided accommodation.

The Court stated that to find the employer accountable, all that was required was "*that the unlawful acts in question be in* ***some way related to or associated with*** *the employment"* [emphasis ours].

It remains to be seen how far the High Court's logic in *Schokman* will reach in to other areas of employment law. In the meantime, employees should not assume their out-of-work conduct will not become a legitimate concern of their employer, especially where it impacts relations at work.



Senior Executive Service – a harsh or uncalled for dismissal is not reviewable

Author: James Mattson

A senior executive, Mr Azzi, allegedly disobeyed a direction on three occasions and was terminated for misconduct. Mr Azzi challenged the decision on the grounds that the decision was infected by jurisdictional error. The NSW Supreme Court disagreed: *Azzi v State of New South Wales* [2023] NSWSC 1028.

The *Government Sector Employment Act 2013* **(GSE Act)** severely curtails the right to review a dismissal decision for the NSW senior executive service. Section 58(7) of the GSE Act says no proceedings lie in respect of such dismissal decisions. However, the NSW Supreme Court has a power to overturn such decisions where the person making the decision acted outside of their legal authority to do so. This is known as a jurisdictional error.

Jurisdictional error is a feature of employment law unique to the government sector. It does not involve reviewing the merits of the decision or an error of fact – even if the finding of fact is perverse or contrary to the overwhelming weight of evidence. And not every error of law will be a jurisdictional error. A decision-maker can make an error within jurisdiction and such decisions cannot be challenged.

In this article, we take a closer look at the *Azzi* decision and distil some lessons for good decision-making.

THE FACTS

Mr Azzi was employed as a Director for the State Insurance Regulatory Authority. One of his reporting staff relocated to Germany (apparently to escape domestic violence) and continued to work remotely on important work. However, changes in policy meant the Authority no longer permitted employees to work overseas. Mr Azzi was directed three times to tell the employee to immediately cease working from overseas.

Weeks later, it became evident that the staff member was still working overseas. Mr Azzi was again directed to tell them to stop working. This time, he sent the employee an email a day later, stating *"you are not permitted to do any work for SIRA while overseas"*.

A decision was made to put allegations of misconduct to Mr Azzi – that is, he had failed to follow directions given to him. Mr Azzi responded by contesting that he "failed to comply".

The Department followed the process provided by the *Government Sector Employment (General) Rules* **(Rules)**:

1. An initial assessment was made, following which Mr Azzi was advised of the "details of the allegation of misconduct" and the action which may be taken (r 38(3))
2. Mr Azzi was given a reasonable opportunity to respond (r 38(4))
3. The Department made a decision either to proceed or not to proceed (r 38(5))
4. The Department notified Mr Azzi of findings of misconduct and of the action proposed (r 40(1)(a) and (2)(a))
5. Mr Azzi was given a reasonable opportunity to respond in relation to the proposed action (r 40(2)(b))
6. The Department took into account Mr Azzi's response before deciding on what action to take (r 40(2)(c))
7. Mr Azzi was notified of the decision (r 38(5)).

The Secretary ultimately approved the dismissal; indeed the Secretary was the only person who could make that decision. The dismissal was communicated to Mr Azzi by the CEO.

WAS THE DECISION INFECTED BY A JURISDICTIONAL ERROR?

For a jurisdictional error to have occurred, the decision-maker must have exceeded the limits of their authority with the result that the purported decision is no decision at all.

Things that **do not** constitute a jurisdictional error are errors of fact or errors in the weight placed on particular pieces of evidence. In fact, such errors – even if ruled *"perverse"* or *"contrary to the overwhelming weight of the evidence"* – do not even amount to an error of law, let alone a jurisdictional error.

Mr Azzi first challenged his dismissal on the basis the decision was communicated to him by the CEO. The Supreme Court rejected that argument, saying *"heads of Department are entitled to have administrative tasks (like communicating their decisions) performed by agents, such as a CEO, or other authorised agent"*.

Mr Azzi then challenged the decision on the grounds of a lack of procedural fairness, something to which senior government executives are entitled to receive by law and under the GSE Act. A failure to afford procedural fairness can result in a decision being overturned. While the common law requirements of procedural fairness cannot be constrained by legislation, compliance with statutory requirements which are intended to achieve procedural fairness – like the Rules – can be taken into account in an assessment of whether a decision is invalid because of a failure to comply with procedural fairness.

Mr Azzi argued that he was denied procedural fairness by not being given access to emails relating to the directions issued to him. Given the Secretary had been told different things by Mr Azzi and his accuser, procedural fairness required access to documents as part of its obligation to make *"an obvious inquiry into a critical fact"*, said Mr Azzi.

The Supreme Court disagreed saying, *"on no view of the principles of procedural fairness was the* [Department*] obliged to trawl through (or allow [Mr Azzi] to trawl through) contemporaneous emails over a period of months to ascertain which version they tend to support in order to determine a contest of credit between two employees"*.

The Supreme Court noted that: the Rules do not require an oral hearing in the disciplinary process, Mr Azzi had access to his emails during the disciplinary process, and the number of emails 'relating to' the direction was over 2000. *"The mere fact that [Mr Azzi]* (or his legal representatives) *can postulate an avenue of further inquiry (of whatever variety) does not mean that the defendant's failure to undertake such an inquiry amounts to jurisdictional error"*, the Court said.

Mr Azzi also argued that a failure to comply with the direction could not amount to misconduct. If there was no misconduct, the decision was infected by jurisdictional error. The Supreme Court disagreed, saying *"failure to comply with a lawful and reasonable direction is capable of amounting to misconduct in an employment context by reference to its ordinary meaning"*. The Court concluded:

> *Although failure to comply with a lawful and reasonable direction is capable of amounting to misconduct, it was a question for the defendant whether it did so in the present case. Once the defendant found that it did amount to misconduct (a decision which also attracted procedural fairness), the Secretary had a power to terminate the plaintiff's employment as long as it accorded procedural fairness to the plaintiff before making that decision. No jurisdictional error has been established.*

Finally, Mr Azzi raised several arguments before the Supreme Court that were not raised in his earlier responses to the allegations. The Supreme Court held *"it is not a jurisdictional error for the decision-maker not to have addressed an argument which was not put"*.

CONCLUSION AND WHAT THIS MEANS FOR GOVERNMENT EMPLOYERS

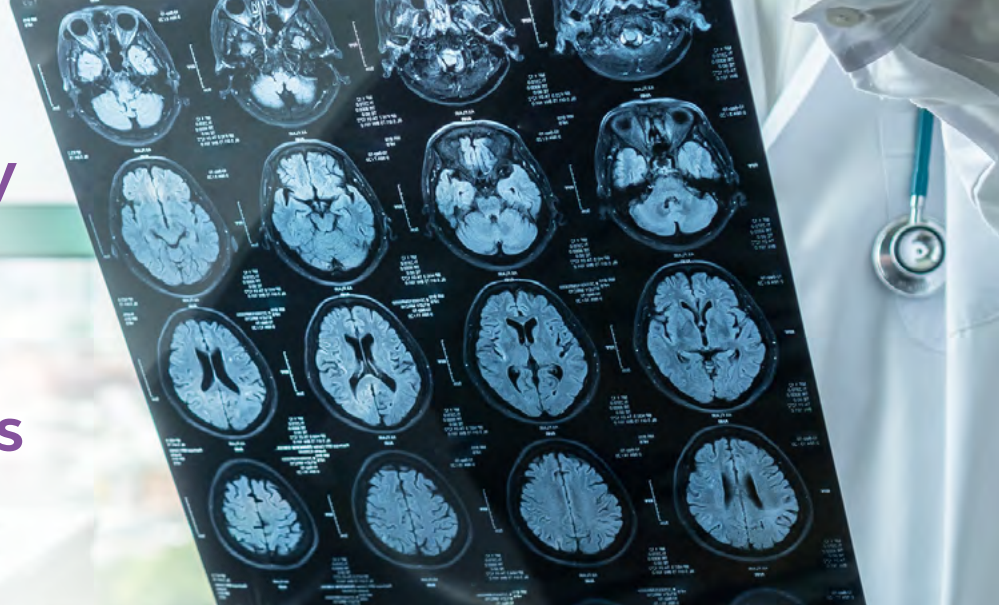
While the Court said Mr Azzi's dismissal may have been harsh or uncalled for, s 58(7) of the GSE Act means the Court had no jurisdiction to adjudicate on that matter. All the Court could determine was whether the decision was infected by jurisdictional error. Because the Department, and Secretary in particular, acted within their bounds of authority, and fairly, no jurisdictional error was found and the summons was dismissed.

This ruling emphasises that good decision-making in employment matters includes knowing and acting within the bounds of your authority at all times. A fair process, and a good foundation for a fair decision, includes:

- making the affected person aware of the critical issues or factors affecting the decision
- giving notice of the substance of matters adverse and critical of them (as opposed to every piece of information)
- affording them the opportunity to respond
- following any process prescribed in legislation.

By following these steps, you can have confidence in the decision made, even if others may disagree with that decision.

What is an injury in Workers Compensation law? It's not as simple as it looks



Author: Will Murphy

For a worker to be entitled to workers compensation they must suffer an injury. And that raises a deceptively subtle question: what exactly is an injury?

The *Workers Compensation Act* defines two types of injury which may be compensable: personal and disease. It also sets out tests to determine whether an employer is liable for either type.

PERSONAL INJURY

Some injuries are clearly personal, a broken leg for example.

However (and this is where the subtlety arises), the courts have held that personal injury also includes pathological events such as a burst blood vessel in the brain (leading to a hemorrhage into the brain). The bursting of the blood vessel is a personal injury. The hemorrhage may also cause (personal) injury to the brain.

Next question then: what connection with employment is required in order for a worker who has suffered a personal injury to be entitled to workers compensation payments?

To attract compensation, the following tests apply to the injury:

1. It must occur "in the course of" the worker's employment. The course of employment is a temporal concept. That is, it covers the period during which you are working.

   However, "the course of employment" can also include activities that are incidental to employment. For instance, let's assume you arrive at work and before turning on your computer you go into the kitchen to make a cup of coffee. If you spill boiling water on yourself, you will have suffered a personal injury "in the course of" your employment. That is because in making a cup of coffee you were engaged in an activity which was reasonably incidental to your job.

   A further example is if an employer arranges a sporting event for staff. If a staff member is injured while participating in that event, even if it is outside normal work hours, they will have suffered injury "in the course of" their employment because their employer arranged the event. The injury may also be compensable if the employer encouraged the worker to attend a sporting event that wasn't arranged by the employer.

2. If a worker does not suffer personal injury "in the course of" their employment, they may still be entitled to compensation if their injury "arose out of employment". That test will be satisfied if the worker's employment in their job caused, or to a material extent contributed to, the injury.

3. However, even if a worker suffers a personal injury arising out of or in the course of their employment, to be entitled to compensation they must also establish that their employment was a substantial contributing factor to the injury.

   That requires a real and substantial causal connection between the worker's employment and the injury.

   This requirement has been watered down by the courts and the Personal Injury Commission to the point that it almost appears that if a person is at work when they are injured, employment will be found to be a substantial contributing factor. For instance, if you are sitting at work and your knee gives out when you stand, resulting in pathology, employment is likely to be found to have been a substantial contributing factor in your injury.

DISEASE INJURY

The first question is: what is a disease? It is not always easy to differentiate between a personal injury and a disease injury.

The cases tell us a disease is a morbid condition of the body that may be initiated by some external cause or be idiopathic. Examples include Covid infection, repetitive strain injury and, often, psychological conditions.

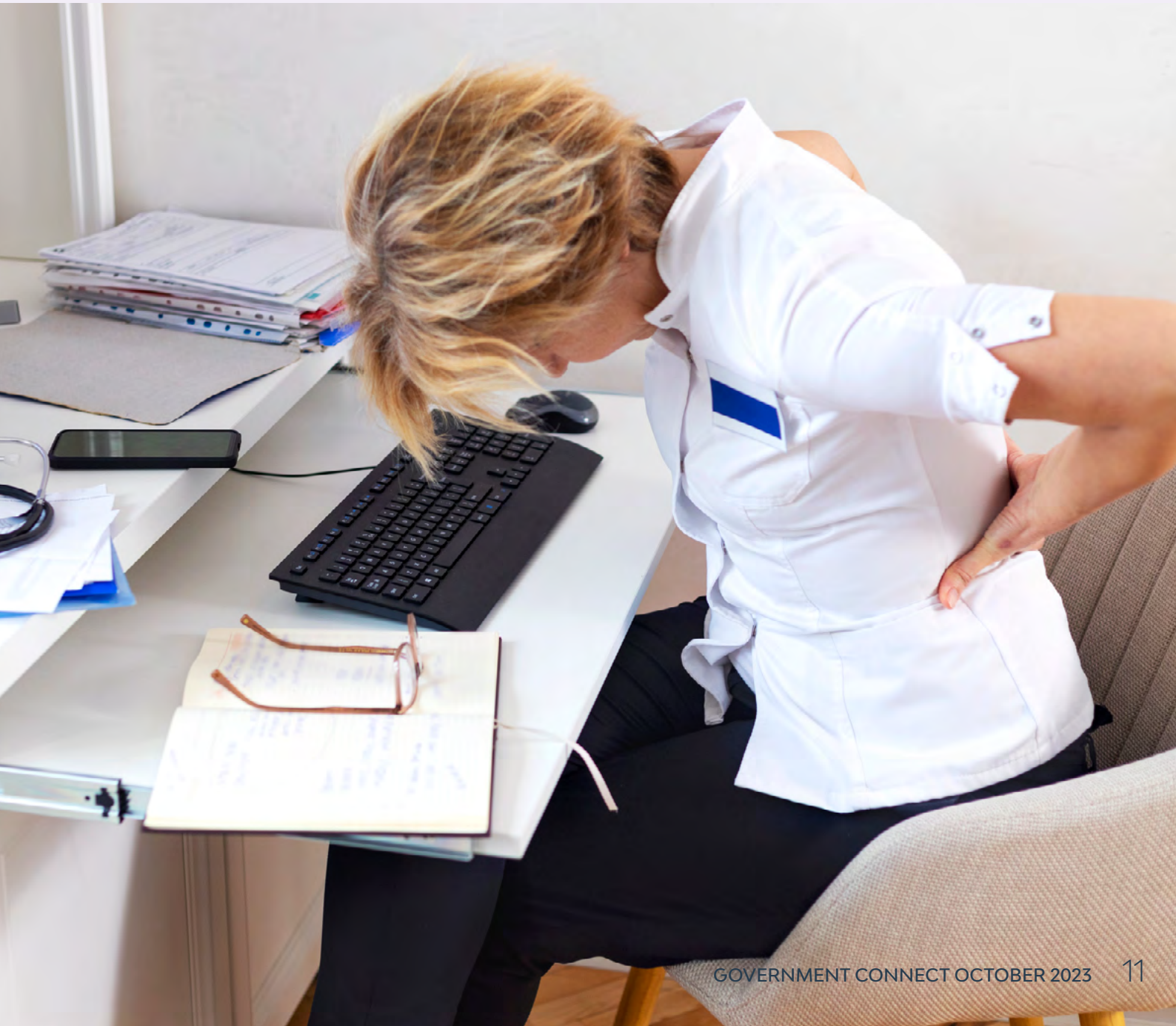
The test for determining whether a disease is compensable is different from that for a personal injury. The legislation defines two types of disease injury and provides tests for whether or not they are compensable:

1. A disease which develops in the course of a worker's employment. For it to be compensable, the worker has to establish their employment was the main contributing factor in them developing the disease.
2. If a worker has a pre-existing disease, the condition can be compensable if the disease is aggravated in the course of their employment, and their employment was the main contributing factor in that aggravation. A common example is pre-existing degenerative back conditions aggravated by work.

Note that for a disease injury to attract compensation, employment must be the **main** contributing factor. This is a higher threshold than for personal injuries, where work must merely be a **substantial** contributing factor.

What's the difference between the two? Case law tells us there can be more than one substantial contributing factor to an injury, but only one main contributing factor.

There are many liability issues in workers compensation law, of which this article only covers two. However, to get to first base, a worker must satisfy the liability tests relating to personal injuries or disease injuries. If they do not satisfy the relevant tests, they are most unlikely to succeed in any attempt to receive workers compensation.



You can't do or say that – even in your own time!

When do private comments become a legitimate concern for an employer?

Author: James Mattson

Social media challenges the divide between private and public life; between conduct at work and conduct out of work hours. While ordinarily employers do not have the right to involve themselves in the private life of their employees, social media can bring supposedly private comments by employees into the workplace with relative ease.

In *John v Health Secretary in respect of the Ambulance Service of NSW* [2023] NSWIRComm 1073, the NSW Industrial Relations Commission upheld the dismissal of a paramedic for misconduct during her attendance at an anti-lockdown protest in her own time.

THE FACTS

Ms John was a paramedic employed in the NSW Health system by NSW Ambulance. On 13 July 2021, Ms John was required to self-isolate under public health orders for 14 days following exposure to a Covid-19 case. It would be reasonable to expect a paramedic to comply with health orders.

On 24 July 2021, while the Greater Sydney region was in a Covid-19 lockdown, a protest rally took place in the Sydney CBD. Ms John participated in defiance of the health orders.

Ms John live-streamed her participation on TikTok, using an account that identified her as a paramedic. During the livestream, Ms John made derogatory and distasteful remarks about NSW Police.

Later, on 24 July 2021, Ms John called her supervisor. She informed him that she had *"fucked up"* and explained her participation in the protest. She said that she had *"uploaded stuff to* [her] *TikTok account and that someone* [had] *taken it upon* [themselves] *to share it all over Twitter."*

WAS IT MISCONDUCT CONNECTED TO WORK?

There was no contest that Ms John engaged in misconduct in relation to her work. As a paramedic, Ms John was expected to comply with the law and, in her role, work with NSW Police.

The question was whether the dismissal was harsh.

Commissioner Sloan accepted Ms John had reasons for attending the protest. However, *"they do not explain her decision to livestream the event, much less the damaging and offensive commentary which she offered to accompany it."* It was accepted that her comments about police *"might make it difficult for police officers to feel comfortable working with her in the future"*. The Commission accepted that "[i]*t is difficult to imagine a more serious case of misuse of social media"*.

Ms John was unsuccessful in her unfair dismissal claim.

LESSONS

Unlike the United States, Australia provides no free-standing, wide-ranging freedom of speech in its Constitution or, for that matter, employment law.

That does not mean all expression of opinion on social media is subject to sanction. Context and the seniority of the employee matter. Here, Ms John was in an important role and required to interact with others, like the NSW Police. Her attending the rally and making the comments she did created an appreciable tension with her employment, role and responsibilities.

The case is a timely reminder for employees of how easily social media can bring out-of-hours conduct into the workplace. As Gageler J of the High Court of Australia said, a level of circumspection relevant to the employee's position, seniority and the circumstances of the communication is required for so long as you choose to remain an employee.

Employees cannot just ignore their contractual and statutory duties simply because they have, and can express, an opinion or view. Employees are citizens of many communities, including a workplace community. By accepting employment with an employer, an employee agrees to act in good faith and in the best interests of the employer. While everyone is entitled to personal views, there is a time and place for their expression and much to be said for the respectful manner of their expression. For Ms John, the occasion was not at the lockdown rally when she was meant to be isolating!

YOUR KEY NSW GOVERNMENT TEAM

Our experienced team of lawyers are dedicated to providing our NSW Government agency clients not only with highest-order legal advice, but with outstanding legal service.

We are delighted to offer our services across the following NSW Government sub panels.

SUB PANEL 1
CONSTRUCTION

- Construction
- Major infrastructure projects
- PPPs and associated transactions
- Construction related dispute resolution and arbitration

DAVID CREAIS
Partner*
T +61 2 8281 7823
M 0419 169 889
dcreais@bartier.com.au

SHARON LEVY
Partner*
T +61 2 8281 7818
M 0499 774 224
slevy@bartier.com.au

ROBERT KALDE
Partner*
T +61 2 8281 7972
M 0419 272 981
rkalde@bartier.com.au

NICHOLAS KALLIPOLITIS
Partner*
T +61 2 8281 7939
M 0488 536 304
nkallipolitis@bartier.com.au

SUB PANEL 2
COMMERCIAL

- Commercial and contractual matters
- Financial Services law
- Intellectual Property
- Information Technology
- Competition law
- Taxation law

JASON SPRAGUE
Partner*
T +61 2 8281 7824
M 0414 755 747
jsprague@bartier.com.au

REBECCA HEGARTY
Partner*
T +61 2 8281 7941
M 0437 811 546
rhegarty@bartier.com.au

KAREN WONG
Senior Associate
T +61 2 8281 7959
M 0408 280 408
kwong@bartier.com.au

* Bartier Perry Pty Limited is a corporation and not a partnership.

SUB PANEL 3
ADMINISTRATIVE LAW, GOVERNMENT AND REGULATORY

- Administrative law, statutory interpretation and governance advice
- Statutory Applications
- Enforcement, regulation and prosecution

DAVID CREAIS
Partner*
T +61 2 8281 7823
M 0419 169 889
dcreais@bartier.com.au

DENNIS LOETHER
Partner*
T +61 2 8281 7925
M 0402 891 641
dloether@bartier.com.au

JAMES MATTSON
Partner*
T +61 2 8281 7894
M 0414 512 106
jmattson@bartier.com.au

JENNIFER SHAW
Partner*
T +61 2 8281 7862
M 0407 290 849
jshaw@bartier.com.au

SUB PANEL 4
EMPLOYMENT, WORK, HEALTH AND SAFETY (and icare workers compensation)

- Employment and industrial relations
- Visiting practitioner contract and appointment disputes and appeals
- NSW Police specific matters
- Work health and safety
- Discrimination

DARREN GARDNER
Partner*
T +61 2 8281 7806
M 0400 988 724
dgardner@bartier.com.au

JAMES MATTSON
Partner*
T +61 2 8281 7894
M 0414 512 106
jmattson@bartier.com.au

LINDA MACKINLAY
Partner*
T +61 2 8281 7828
M 0412 839 198
lmackinlay@bartier.com.au

WILL MURPHY
Partner*
T +61 2 8281 7819
M 0418 606 342
wmurphy@bartier.com.au

MICK FRANCO
Partner*
T +61 2 8281 7822
M 0413 890 246
mfranco@bartier.com.au

* Bartier Perry Pty Limited is a corporation and not a partnership.

SUB PANEL 5
PROPERTY, PLANNING, ENVIRONMENTAL

- Complex property advice, transactions and accreditation
- Routine/standard property advice and transactions
- Planning, environmental, heritage, and natural resources law
- Statutory land acquisition
- Crown Land and local government

DENNIS LOETHER
Partner*
T +61 2 8281 7925
M 0402 891 641
dloether@bartier.com.au

STEVEN GRIFFITHS
Partner*
T +61 2 8281 7816
M 0419 507 074
sgriffiths@bartier.com.au

MELISSA POTTER
Partner*
T +61 2 8281 7952
M 0481 236 412
mpotter@bartier.com.au

ANDREW GRIMA
Partner*
T +61 2 8281 7949
M 0475 037 758
agrima@bartier.com.au

EDWARD CHOI
Senior Associate
T +61 2 9259 9673
echoi@bartier.com.au

Other services include liability litigation, general litigation, dispute resolution and debt recovery, inquiries.

CLUSTER	CLUSTER RELATIONSHIP PARTNER
Premier & Cabinet	James Mattson
Treasury	Darren Gardner
Planning and Environment	Dennis Loether
Customer Service	Rebecca Hegarty
Health	James Mattson
Education	David Creais
Transport	Darren Gardner
Communities and Justice	James Mattson
Regional NSW	Dennis Loether
Jobs and Tourism	Rebecca Hegarty

* Bartier Perry Pty Limited is a corporation and not a partnership.

VALUE ADDED SERVICES

Bartier Perry is committed to a partnership approach with NSW Government. We believe the way to provide best value add services is to work with Agencies to identify opportunities and initiatives that best meet your needs. We invite you to reach out to panel relationship partner James Mattson or any of our cluster partners to discuss these offerings or to discuss areas where we can add value. We will also ensure we contact you with suggestions (that are outside of the below offerings) as they arise.

Our value add offerings include:

ADVICE HOT-DESK

NSW Government agencies can, without charge, contact us to obtain brief advice. Our clients tell us that they value this service which often allows them to address potential issues early.

ATTENDING TEAM MEETINGS

For example, we would welcome attending team meetings to not only learn about what is occurring but to be available to answer questions for 15-30 minutes to provide guidance. Similar to a 'hot-desk' but structured to be face-to-face and engaging.

MENTORING PROGRAM

Agency staff have told us they value the informal mentoring program we have in place. Lawyers, often employed by NSW Government agencies, may be working without a supervising lawyer and require hours of supervision to obtain their unrestricted practising certificate. We assist by meeting weekly or fortnightly to review their caseload and make suggestions on strategies and approaches. We align our mentoring approach to the Law Society of NSW's structured mentoring program.

CPD, TRAINING AND EDUCATION

We provide our clients with tailored seminars, workshops and executive briefings for senior management on current legislative changes and regulatory issues. Seminars are captured via webcast for regional clients and those unable to attend in person. Videos are then uploaded to our website.

E-UPDATES ON LEGAL REFORM

We distribute electronic articles on a weekly basis which detail legislative and case law changes and industry developments as they occur, and often before they occur. We encourage our clients to re-publish our articles across their internal communication platforms, as appropriate.

PROVISION OF PRECEDENTS, LIBRARY AND RESEARCH FACILITIES

We can provide precedent documents and templates from our library on request. We have an extensive library and subscribe to the three major online resource providers (Thomson Reuters, CCH and LexisNexis). NSW Government Agencies may have access to our physical library resources at any time and can conduct research using our online services together with 20 hours per year of complimentary paralegal support.

SECONDMENTS AND REVERSE SECONDMENTS

We understand the provision of secondees is particularly valued and we welcome the opportunity to continue to provide legal secondments to NSW Government Agencies. We would also welcome the opportunity for a reverse secondment for NSW Government Agency staff who may benefit from spending a week (or similar) working in our office alongside one of our senior lawyers.

All articles, upcoming events and past videos can be found under the Insights tab at – www.bartier.com.au

ABOUT BARTIER PERRY

Bartier Perry is, and has always been, a NSW based law firm committed to serving the needs of our clients in NSW.

Our practice has corporate clients from a wide range of industry sectors, and appointments to all levels of government including statutory bodies. With over 110 lawyers, we offer personalised legal services delivered within the following divisional practice areas:

- Corporate & Commercial and Financial Services
- Dispute Resolution and Advisory
- Property & Planning
- Insurance Litigation
- Estate Planning & Litigation, Taxation and Business Succession
- Workplace Law & Culture

YOUR THOUGHTS AND FEEDBACK

Thank you for taking the time to read our Government Connect publication.
We hope you found it informative.

If you have any comments on this issue, or suggestions for our next issue, we'd love to hear from you.

Please email info@bartier.com.au

BARTIER PERRY PTY LTD
Level 25, 161 Castlereagh Street, Sydney NSW 2000
T +61 2 8281 7800
F +61 2 8281 7838
bartier.com.au
ABN 30 124 690 053

Bartier Perry

@BartierPerryLaw

Bartier Perry

bartierperrylawyers

BARTIER PERRY LAWYERS