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FOCUS AREA
The focus area of this topic is the contribution of human resource management to business performance.

OUTCOMES
Students should be able to:
• evaluate management strategies in response to changes in internal and external influences
• discuss the social and ethical responsibilities of management
• analyse business functions and processes in large and global businesses
• explain management strategies and their impact on businesses
• evaluate the effectiveness of management in the performance of businesses
• plan and conduct investigations into contemporary business issues
• organise and evaluate information for actual and hypothetical business situations
• communicate business information, issues and concepts in appropriate formats.
The best of both worlds — Molly’s story

Molly is a senior lawyer and had worked for Connor Partners, a Melbourne-based legal firm for several years before taking maternity leave to have her first child. The time had come for her to return to work and while she was keen to go back to her job, her preference was for part-time work and if possible, variable start and finish times.

A month before her scheduled return she approached a senior partner at her law firm about her preferences. The senior partners at her firm organised a time to meet with Molly where she was informed that flexible arrangements were possible. There was also the possibility of a job-share arrangement with another of the senior partners, Spiro, who was nearing retirement and wished to work part-time too. The job-share would require both Molly and Spiro to be in the office on Wednesdays to liaise.

Connor Partners were happy to accommodate both employees and past experience had indicated that clients were also pleased to continue working with people who were familiar to them.

Situations such as this are becoming common in the workplace as employees seek a positive work–life balance and businesses want to demonstrate more socially responsible behaviour towards employees. Enterprise agreements and the Fair Work Act allow for such flexible arrangements between staff and employers.

A diverse workplace such as Connor Partners that supports its employees is an indication that businesses are becoming increasingly aware that human resource management is the key to a happier workplace and consequently better business performance.

...businesses want to demonstrate more socially responsible behaviour towards employees...
14.1 Stakeholders in the human resource management process

Stakeholders are any individual or group that has a common interest in or is affected by the actions of an organisation.

Stakeholders have a common interest in the survival and success of the business. However, not all their interests are shared — conflict can arise due to differences and competing interests (see figure 14.1).

**GOVERNMENTS**

- Parliament passes legislation introduced by government and reviewed by upper house (Senate).
- Government departments and agencies then implement government policies.
- Fair Work Commission helps make agreements and resolve disputes. It determines annual safety net increases and has divisions in the Federal Court, that judge breaches of industrial law.

**EMPLOYERS**

- Employers, for legal purposes, are those who exercise control over employees, have responsibility for the payment of wages and/or salaries and have the power to dismiss employees. They handle human resource management issues on a...
daily basis. Some spend over half their work day on matters related to this area, including involvement in developing programs that focus on improving business performance. Employers’ responsibilities are increasing, as recent legislation today encourages them to negotiate agreements and resolve disputes at the individual workplace. However, employers have been widely criticised in many management surveys for failing to tackle issues in managing employees effectively. A recent survey of more than 7600 people found ‘people management’ to be the most serious failing of Australian leaders, and was cited 2.5 times more frequently than any other management failing. Improving management training in Australia is therefore important in improving human resource management.

Under recent legislation, employers have gained more power to make agreements relevant to the individual workplace or enterprise. Not all employers support government policy enough to engage in full confrontation with unions and employees, as the costs of such confrontation may be very high, with prolonged industrial disputes.

**Employees**

**Employees** are workers under the control of an employer. This control includes the workplace location, the way that the work is to be performed and the extent to which supervision will be exercised. Employees today are, on average, more highly educated than in the past. They become bored very quickly and demand more challenging, interesting work, involvement in decision-making processes and autonomy at their workplace. Many feel driven to build their career through a succession of jobs in a range of different organisations.

Following periods of extensive downsizing in recent years, employees no longer trust one business to look after their needs. As a result, the practice of ‘churning’ — moving frequently from one job to another in different organisations — is increasing, particularly in service industries. Businesses hoping to retain and motivate skilled staff need to put extra effort into developing staff career and training plans, rewards and opportunities for greater employee involvement. Around one-third of employees are also keen to get more work–life balance, to spend more time with their families.

The structure of work has changed over the last decade and affects employees’ access to work. For example, many older workers, women and younger inexperienced people struggle to obtain full-time jobs, particularly in the knowledge-based service sector. These people have become our ‘flexible’, casual workforce. Australia has experienced close to full employment for a long time, despite a global economic downturn.

Labour shortages are looming due to the ageing population structure in Australia, so prospects for these groups are improving. Extending the working life of the population, by preventing employees from accessing the pension or superannuation, has been discussed in the media and by politicians of the major parties, indicating it is a serious policy consideration. Favourable research supporting the value of older staff should also contribute to more employment opportunities for this group.

Many unions have responded to worker fears and have made some employment issues — such as job security and limitation on the use of casuals — a priority in negotiating agreements. A significant number of employees do, nevertheless, enjoy the flexibility of job sharing, and part-time and casual work to manage family commitments.

**Employer associations**

**Employer associations** were originally created by employers as a counter-party to unions, to represent employers in the making of awards through the conciliation and arbitration system established in 1904. They assisted employers in formulating...
policies and processed logs of claims served on their members by unions. Their main role today is to act on behalf of employers (especially small businesses) in collective bargaining sessions and before industrial tribunals, courts, commissions and committees. They:

- provide advice (especially to small businesses) on such matters as awards, unfair dismissals and discrimination issues
- make submissions to safety net wage cases
- negotiate agreements
- lobby governments and other organisations with the views and interests of employers, industries and trade.

Unlike unions, employer associations represent employers on a broader range of issues; human resource and industrial relations matters make up just one aspect of their role.

Employer associations may function as professional bodies, such as the Australian Medical Association, or as marketing bodies, for example, dairy cooperatives and Meat and Livestock Australia. Others are associations with an industrial relations function within their services, such as the Australian Chamber of Commerce and Industry (ACCI), and the Australian Industry Group (Ai Group) representing the Australian Chamber of Manufactures and the Metal Trades Industry Association (see the following Snapshot).

The Australian Industry Group (AiG)

The Australian Industry Group (AiG) is Australia’s peak industry association and represents more than 60,000 businesses. It encompasses a number of different industry sectors including manufacturing, engineering, transport, IT, telecommunications and construction.

The focus of the AiG is to ensure that business views are represented to all levels of government. This includes matters relating to work health and safety, workplace relations, human resource management and workers’ compensation.

Presently the AiG is engaged in a number of important business issues such as:
- the introduction of the federal government’s Paid Parental Leave Scheme
- Workplace Gender Equality Agency (WGEA) review of reporting requirements
- harassment, discrimination and diversity in the workplace
- work health and safety guidelines, including the role of Safe Work Australia
- human resource processes including unfair dismissal and redundancy

The change of government at the 2013 federal election will result in a number of challenges for which the AiG will consult with its members. In a recent address, the Chief Executive, Innes Willox, outlined some of these challenges and how they may impact directly upon members and workplace relations. This included:

- any major changes recommended by the Productivity Commission in respect to the Fair Work Act 2009 will not be introduced until after the next election in 2016
- the burden imposed by the Paid Parental Leave Scheme that will be funded via a tax on business profits
- workplace laws that place a greater emphasis on productivity
- greater recognition for Individual Flexibility Arrangements between employers and employees
- union access to the workplace.

**Snapshot questions**

1. Describe the role of the Ai Group.
2. Examine the current focus areas of the Ai Group.
3. Evaluate the importance of surveys conducted by such associations.
4. Justify the importance of employer associations for society.
Trade unions

Trade unions are organisations formed by employees in an industry, trade or occupation to represent them in efforts to improve wages and the working conditions of their members. The key factors and stages in their development in Australia are summarised in figure 14.3.

The system for resolving industrial disputes, established in 1904 in Australia, gave unions a powerful role in human resources. It provided unions with an official bargaining position in the making of industrial agreements. Through test cases, unions won major improvements in terms and conditions of employment. These established key principles that flowed on to other workers.

The concept of unions was brought from Great Britain during the 1800s.

Gold rushes create a time of prosperity, which leads to formation of unions and demands for shorter hours. Stonemasons win first 8-hour day in 1856. Other unions call for 8-hour day.

Late 1800s — unions organise on broader scale, on waterfront, in mining, manufacturing and shearing. They form a framework in Trades and Labor Councils from 1871.

Recession develops and major strikes break out in 1890s. Unions defeated by combined power of colonial governments, employers, the military, police and non-union workers (referred to by unionists as ‘scabs’).

Unions decide to take a political vote to survive, and form Labor Party in 1891. Labor Party comes to power in 1901, after Federation.

Constitution is established. Conciliation and Arbitration Act 1904 enshrines power of unions and employer associations.

1907 — famous Harvester case establishes principle of basic wage for a family. This leads to other awards, establishing principle of comparative wage justice (where wage gains are spread across the wage system to other workers).

By 1926, 55 per cent of the workforce was unionised and, in 1927, ACTU was established. Further test cases establish principles including sick leave, long service leave, 40-hour week and, in 1969, equal pay for equal work.

White collar unions boom in the 1970s, fostered by ‘closed shop’ arrangements (compulsory union membership imposed by certain unions in particular industries). These are now some of the largest unions in Australia.

Unions use power to lobby on political, social and environmental issues.

Union membership falls rapidly from the 1990s — a global pattern in high-income countries.

FIGURE 14.3 The development of trade unions in Australia since 1800
Union membership peaked at 51 per cent in 1976, falling to 46 per cent of all employees in 1986. It has fallen dramatically since, as seen in figure 14.4, reaching the current level of 18 per cent of the workforce, where it has remained steady for the last few years. In addition:

- 20 per cent of full-time and 14 per cent of part-time employees belong to a trade union
- 43 per cent of government workers compared with 13 per cent of private industry workers are trade union members
- the highest levels of trade union membership are in education and training (38 per cent) and the industries with the lowest levels of union membership are rental, hiring and real estate services, and professional, scientific and technical services with 3 per cent
- 68 per cent of workers have never belonged to a trade union.

Having contributed so much to winning employee rights over the last decades, unions are now under pressure globally as membership declines to historically low levels. In response, unions are expanding their range of services and becoming more active in recruiting to regain membership numbers. As well as providing representation in disputes, the range of services offered by a union to members might now include free or discounted legal services, superannuation schemes, cheap home loans, training programs through TAFE, insurance, cheap holiday units to rent, income protection against illness or accident, occupational health and safety advice, and many more.

The major reasons for the decline in union membership are shown in figure 14.5.

**BizFACT**

The peak trade union body is the Australian Council of Trade Unions (ACTU). Some of the larger unions include:

- Australian Services Union (ASU)
- Australian Workers’ Union (AWU)
- Australian Manufacturing Workers’ Union (AMWU)
- Construction, Forestry, Mining and Energy Union (CFMEU)
- Finance Sector Union (FSU)
- Maritime Union of Australia (MUA)
- Transport Workers’ Union of Australia (TWU)
- Textile, Clothing and Footwear Union of Australia (TCFUA)
The TWU has been in existence for more than 100 years and today represents more than 90,000 working men, women and owner-operators in Australia across a range of industries including mining, oil, gas, public transport and waste management.

The main role of the TWU, like most unions, is to promote the interests of its members in securing better pay, conditions and, due to the nature of the work of its members, safety.

Through its national presence the TWU aims to exert political and industrial influence in workplaces and to lobby levels of government through media organisations so that its members are treated fairly and work in safer places of employment.

More recently the TWU has been involved in the industrial unrest at Qantas. In the turmoil that seems to be apparent in Australia’s aviation industry, working conditions are under threat. Employees, many of them members of the TWU, have seen colleagues losing their jobs, creating an insecure workplace lacking in industrial harmony.

TWU members have been proactive in protecting worker rights and conditions in an attempt to provide a more secure workplace and see their actions at Qantas as attempting to preserve Australian jobs both now and in the future.

**Snapshot questions**

1. **Outline** the role of the TWU.
2. **Explain** how the TWU represents the views of its members.
3. **Evaluate** how effective the TWU has been in securing jobs at Qantas.
4. **Do unions such as the TWU have a role in today’s workplace? Discuss.**

**Governments and government organisations**

Governments are important stakeholders in the human resource management process. Over time, they have significantly affected the industrial relations system as a result of their key roles, as follows:

- **Legislator.** Our elected representatives pass laws in parliaments (state and federal), which provide the legal framework for industrial relations. Legislation has also led to the growth of the judicial system, and the institutions and processes used by employers and employees to conduct bargaining and resolve disputes.

- **Employer.** Federal and state governments employ almost one-third of Australian workers, as teachers, nurses, clerks, police officers, postal workers, transport workers and in other roles. They are often regarded as pacesetters in terms of responsible industrial relations policies, having introduced practices such as maternity leave, flexitime and affirmative action for women that were eventually adopted in the private sector.

- **Responsible economic manager.** Governments operating at the macro level are keen to ensure non-inflationary, stable economic growth and a high standard of living for all Australians. At times there may be conflict between governments’ economic goals, which impact on industrial relations. For example, a decision to cut spending through reductions in the size of the public service in order to reduce a budget deficit may conflict with its desire to maintain employment. The decision could also spark widespread industrial unrest.

- **Administrator of government policies on industrial relations.** Through the departments and agencies established, governments are able to implement the
legislation they enact. This is achieved through publishing information and guidelines providing advice to the government and the public and investigating breaches of legislation.

- **Representative of Australia in the international arena, in foreign affairs, trade and international labour matters.** Australia is a foundation member of the International Labour Organization and has been represented on its governing body. As a result of its membership of such organisations, the government generally implements legislation based on the treaties and conventions it signs with international organisations. Social justice legislation passed in relation to discrimination, and human rights originated in these treaties and conventions.

**Figure 14.6** Governments (both state and federal) perform many roles that impact on the human resources process; for example, the roles of legislator, employer, economic manager, policy administrator and representative of Australia on the international stage.

Governments have attempted to increase their power to regulate the industrial relations system through use of the External Affairs and Corporations powers (among others) given under the Constitution of Australia. Recent government policy has focused on reducing the powers of industrial tribunals and encouraging decentralised bargaining in the workplace (enterprise).

Since and the introduction of the Fair Work Australia Act, all the states, except Western Australia, referred their industrial relations powers to the Commonwealth. The aim of the federal government was to create a national system, which would simplify industrial relations so that employers were not forced to negotiate under multiple jurisdictions and to stop employees and unions from ‘shopping around for the best deal’. These arrangements were intended to reduce business costs through creating greater certainty and efficiency in dealing with industrial matters.

**Statutes**

**Statutes** are laws made by federal and state parliaments; for example, laws relating to employment conditions.
the Constitution awards the Commonwealth Government limited powers to make laws about industrial issues and allows the states to make laws about matters not covered under the Constitution, known as residual powers.

These statutes provide the framework for awards and agreements, and the resolution of disputes and require employers to:
• meet work health and safety requirements
• maintain workers’ compensation insurance
• provide all employees with superannuation, annual leave and long-service leave
• ensure employment practices in the workplace are free from discrimination on the basis of age, sex, physical or mental disability, marital status, family responsibility, pregnancy, union membership, political opinion, race or social origin
• give each new employee, covered by the national industrial relations system, a Fair Work Information Statement. This statement provides basic information about employee rights.

**FIGURE 14.7** The functions of government (state or federal) in workplace relations

**TABLE 14.1** Federal legislation

<table>
<thead>
<tr>
<th>Law or test case</th>
<th>Date</th>
<th>Features</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conciliation and Arbitration Act</td>
<td>1904</td>
<td>Gave the Conciliation and Arbitration Commission power to prevent and settle industrial disputes extending beyond the limits of the state.</td>
</tr>
<tr>
<td>Harvester case</td>
<td>1907</td>
<td>Established the basic wage for full-time male worker with wife and two children.</td>
</tr>
<tr>
<td>Equal Pay case</td>
<td>1969</td>
<td>Principle of equal pay for equal work established for women.</td>
</tr>
<tr>
<td>Trade Practices Act</td>
<td>1974</td>
<td>Secondary boycotts (provisions) made illegal. Jurisdiction for this later moved to Australian Industrial Relations Commission, as ILO (International Labour Organization) report suggested it interfered with the right to strike.</td>
</tr>
<tr>
<td>Racial Discrimination Act</td>
<td>1975</td>
<td>Discrimination in employment on the basis of race, colour, national or ethnic origin prohibited.</td>
</tr>
<tr>
<td>Maternity Leave case</td>
<td>1979</td>
<td>Test case on maternity leave won by ACTU.</td>
</tr>
<tr>
<td>Sex Discrimination Act</td>
<td>1984</td>
<td>Prohibited sexual harassment and discrimination on basis of sex, marital status and pregnancy.</td>
</tr>
<tr>
<td>Affirmative Action (Equal Opportunity for Women) Act</td>
<td>1986</td>
<td>Required all private sector employers and all higher education institutions to implement affirmative action programs for the employment of women and to submit annual reports on their progress.</td>
</tr>
</tbody>
</table>

(continued)
TOPIC 4  •  Human resources

Since January 2010, Australia has shifted from a dual federal and state industrial relations system to a national industrial relations framework. This move recognises the efficiency of a more standardised system to business, particularly national and foreign owned businesses that previously had to manage employees operating under different state and national systems.

This system, implemented under the *Fair Work Act* 2009, is administered by the federal government. It covers all employees of constitutional corporations in all states and most private employees formerly covered under state awards and enterprise agreements. The system gives employers and employees the same workplace rights and obligations, regardless of the state they work in.

Key elements of the framework include:

- A national framework for industrial relations covering most private employees of all states except Western Australia
- Ten National Employment Standards (NES) developed to provide basic protections to employees
- Collective bargaining and good faith bargaining required by all parties
- Modern awards for specific industries and occupations
- Enterprise bargaining continued
- Annual National Wage Case sets minimum wage
- Protection from unfair dismissal
- Fair Work Commission administers the *Fair Work Act* 2009 and the Fair Work Ombudsman is responsible for promoting unified, supportive and productive workplace relations that comply with the Fair Work laws.

The 122 modern awards cover most employees in a wide range of industries, and replace thousands of previous state and federal awards. Together with the NES and the national minimum wage order, they make up a safety net for employees covered by the national workplace relations system. They do not replace enterprise awards, which are made with a specific enterprise.

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**TABLE 14.1 (continued)**

<table>
<thead>
<tr>
<th>Law or test case</th>
<th>Date</th>
<th>Features</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industrial Relations Act</td>
<td>1988</td>
<td>Award restructuring introduced under the structural efficiency principle (SEP).</td>
</tr>
<tr>
<td>Parental Leave test case</td>
<td>1990</td>
<td>Federally covered male employees given opportunity to take leave to mind newborn children, etc.</td>
</tr>
<tr>
<td>Industrial Relations Reform Act</td>
<td>1993</td>
<td>Improved safety net provisions for employees, through the award system and minimum entitlements. Improved arrangements for direct bargaining through both certified enterprise agreements (between employers and unions) and enterprise flexibility agreements (non-union individual agreements). Protection against unfair dismissal.</td>
</tr>
<tr>
<td>Workplace Relations Act</td>
<td>1996</td>
<td>Revised framework for enterprise bargaining, allowing for collective and individual agreements, with or without union involvement. Tighter restrictions on industrial action. Limited arbitration role for AIRC.</td>
</tr>
</tbody>
</table>

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**BizWORD**

A constitutional corporation is one that falls under section 51(xx) of the Constitution of Australia — identified as foreign corporations and trading or financial corporations formed within the limits of the Commonwealth.

A modern award is an industry or occupation-based award which covers all private sector employers and employees who perform work that falls within their scope. They replace all existing national system awards (except those applying to a single enterprise). They do not cover employees earning higher incomes.
Now we’ve got a national competition policy and a national corporations policy, it’s time for a national industrial relations system too! Any legislation that helps us cope with prolonged industrial action is great.

It is a worry that today you can have faceless men in a Melbourne building making decisions about wages for any location in Australia.

Business in Australia has a very free industrial environment. Its ability to choose whether it wants to negotiate with employees or lock them out is unique in the world.

**FIGURE 14.8** Views of some employers supporting reform of the industrial relations system

**Industrial tribunals and courts**

Industrial tribunals exist at the federal and state levels to enforce laws established by governments. The Fair Work Commission today plays a role in ensuring that the bargaining process and any associated industrial action occur according to law.

The Fair Work Commission follows in the footsteps of the longstanding Australian Industrial Relations Commission (AIRC), formerly the Australian Conciliation and Arbitration Commission. Its primary functions include settling disputes through conciliation, supervising the making of agreements or awards and **award simplification**, hearing appeals and handling unfair dismissal cases. The Fair Work Commission assists in resolving disputes involving employers, employees, unions and employer associations who are covered by the national workplace relations system. Through these functions and specific cases, the Fair Work Commission determines questions about future rights of employees and employers.

Much of the Fair Work Commission’s work is conducted by individual members or groups of members who are responsible for specific industries or disputes, and are skilled in mediation, conciliation and arbitration. The Fair Work Commission members come from a diverse range of employment backgrounds and must have knowledge or experience in one or more of the fields of workplace relations, economics, social policy, business, industry or commerce.

**BizWORD**

*Awards are legally enforceable, formal agreements made collectively between employers and employees and their representatives at the industry level. They are determined by an industrial court or tribunal and set out minimum wages and conditions of employees.*

*Award simplification is the process of reducing the number of matters in each award and eliminating inefficient work practices.*
BizFACT

A full panel (bench) of at least three Fair Work members, including a Deputy President, is needed to:

- hear matters of significant national interest such as test cases on matters concerning family leave, superannuation and public holidays, and establish principles about the making and varying of awards
- certify multiple business agreements
- hear appeals against orders, or cancel and suspend awards and orders
- arbitrate after a bargaining period is terminated.

BizWORD

Judicial power refers to the power of courts to interpret and apply laws.

A panel of seven senior members, the Fair Work Commission’s Expert Panel, is responsible for hearing annual wage cases and setting minimum wages for employees in the national workplace relations system.

Breaches of the Fair Work Commission’s orders can lead to fines of up to $6600 for individual workers or $33,000 for unions.

Federal Court

The Federal Court of Australia is a judicial court. Under the Constitution, only courts have the judicial power to determine disputes about existing rights and to make decisions about these matters. The Federal Court has a division that enforces industrial relations legislation by administering court actions that arise under Australian industrial laws. It handles cases relating to industrial action and breaches of industrial laws, interprets industrial legislation, and is able to impose penalties for the breach of an award or order, and discrimination or victimisation under industrial and human rights legislation. It also has the power to approve the disamalgamation (splitting up) of unions, declare unauthorised action taken during a dispute and hear cases under the Corporations Act 2001 (Cwlth).

Other government agencies

A number of other federal and state government agencies are also stakeholders in the human resources process. For example, the roles of the Australian Human Rights Commission (HREOC), the Workplace Gender Equity Agency (WGEA) and state organisations such as the Anti-Discrimination Board are to implement particular areas of government legislation.

In the area of occupational/work health and safety, the federal National Occupational Health and Safety Commission Act 1985 established the National Occupational Health and Safety Commission, now Safe Work Australia. Safe Work Australia began operating as an independent statutory agency in 2009. Its primary responsibility is to improve occupational health and safety, and workers’ compensation arrangements across Australia.

Recognising the need to standardise and harmonise work health and safety systems around Australia, the federal government developed, in collaboration with...
each state government through the Australian Chamber of Commerce and Industry (ACCI) and the Australian Council of Trade Unions (ACTU), a new framework for a national occupational and work health and safety system.

**Society**

In 1948, the General Assembly of the United Nations, consisting then of 56 countries, passed the Universal Declaration of Human Rights, recognising the importance of work to people's lives, and the need for fair and just conditions and rights for those at work (see figure 14.10).

**Article 23**
1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24**
1. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.


**Figure 14.10** Articles 23 and 24 from the Universal Declaration of Human Rights

One of the most significant issues for any voter is their job. If there are threats to employment or conditions at work, whether as a result of planned legislation, economic conditions, pressure arising from global competition or adverse social impacts, voters make their views clearly known. The relationship between employers and employees has often been a battleground, as reflected in frequent disputes and changes in legislation in Australia over the last decades.

As global competition increases, the pressure on businesses to become leaner, the need for more efficient operations, global business consolidation and rationalisation of production has increased. Multinational corporations increasingly use contractors to supply or manufacture key components or services, creating opportunities globally for suppliers with the most cost-effective operations. Often the process of relocating production offshore, or shifting production regularly to lower cost locations, leads to dislocation and structural unemployment in the communities left behind. For other communities, there is constant pressure to 'do more with less', to work longer hours and to accept hard working conditions to retain jobs.

Community demands for safety and wellbeing at work have increased over recent decades, as has the pressure to eliminate discrimination against female, indigenous and disabled members of the working community.

For businesses, it means an ongoing battle between the need for the business to find ways to reduce its biggest cost — labour — as pressure increases from global competition, and the needs of employees, particularly those with dependent families.

**Summary**

- The major stakeholders in the human resources process are employers, employees, employer associations, trade unions, government and government agencies, and industrial tribunals and courts.
Each stakeholder has perspectives that may conflict or be shared with those of other stakeholders, leading to conflict or cooperation.

Stakeholders are increasingly operating at a variety of scales and developing global networks in response to the globalisation of business.

Membership of trade unions has declined dramatically over the last decades at a global level in response to many factors, including the shift to less hazardous work in the increasingly dominant service sector.

To simplify industrial relations and improve efficiency, a national system of industrial relations has been created since 2007 under the Labor government.

Government statutes provide the framework for employment conditions.

Since January 2010, Australia has shifted from a dual federal and state industrial relations system to a national industrial relations framework.

The system is implemented under the Fair Work Act 2009.

Industrial tribunals and courts enforce the employment laws.

The Fair Work Commission is the national industrial tribunal that replaces the Australian Industrial Relations Commission. Its powers have been expanded to allow it to hear and settle disputes, supervise agreement making and award simplification.

Other government agencies are also stakeholders in the human resources process including the Australian Human Rights Commission (HREOC).

Society has a number of expectations regarding employment conditions.

Revision

1. Identify the major stakeholders in the human resource management process.
2. Describe the major objectives of employers and trade unions in the human resource management process.
3. In small groups, use the brainstorm technique to identify the advantages and disadvantages of employers being given greater power to make agreements for a specific individual, workplace or enterprise.
4. Summarise the major factors changing the nature of work today.
5. With employees being more educated today, evaluate the need for unions.
7. ‘Since January 2010, Australia has shifted from a dual federal and state industrial relations system to a national industrial relations framework.’ Explain.
9. Study figure 14.8 and select the comment you most agree with. Justify your selection.
10. Describe the role of the Fair Work Commission.
11. Explain the impact of increased global competition on (a) employers and (b) employers.

Extension

1. Evaluate the potential success of global links developed by unions.
2. Visit the Fair Work Ombudsman weblink in your eBookPLUS and assess the value of this website in providing information about workplace rights and rules.
3. After researching online, explain the issue of shifting to a national system of occupational health and safety. It has not been a popular decision in every state.
14.2 Legal influences — the current legal framework

The employment contract creates obligations for both employer and employee, and all businesses operate within a legal framework of common law and statute law — that is, law passed by federal and state parliaments in Acts.

Legislation covers the nature of employment contracts and agreements; dispute-settling methods (as a result of our international agreements); protection of human rights in employment; and employer responsibilities for tax payments on behalf of employees. Employee welfare is provided for through work health and safety legislation and specific legislation such as the Superannuation Guarantee, under which all employers are obliged (either under awards or the legislation) to pay superannuation contributions for employees, whether or not they are on awards.

Changing community and worker expectations on social justice (equal employment opportunity, anti-discrimination), safety and environmental issues are increasingly reflected in legislation and work practices.

Following the election of the Rudd Labor government in 2007, a new legislative framework for industrial relations was enacted through the Fair Work Act 2009.

Unregistered individual common law contracts of employment, casual work and independent contracting remain common options for individual employment arrangements, with many employees indicating they are offered employment under these conditions on a ‘take it or leave it’ arrangement. These arrangements shift the responsibility of organising employment conditions, such as sick and carers leave, onto the employee. This has led to community concerns about the ‘financialisation’ and ‘privatisation of risk’ occurring, as responsibility for support is shifted from governments and employers to employees. ‘Flexibility’ works for employers, but less so for employees.

We have, nevertheless, shifted from a strongly centralised industrial relations system in the 1980s to a decentralised and more fragmented system today, based increasingly on bargaining at the workplace (enterprise) level.

Successive Australian federal governments since the 1980s have supported a decentralised view of industrial relations. The Fair Work legislation referred to above was aimed at ensuring that the government’s role in determining the details of employment contracts would be limited to creating the legal framework that facilitated the negotiation of enterprise agreements, the National Employment Standards, minimum wage hearings and awards.

In announcing his government’s industrial relations policy, the Prime Minister Mr Abbott said he would prefer to seek a mandate from the electorate before making any major changes to Fair Work laws. Therefore any significant policies or changes to existing laws would be deferred until 2016.

This has resulted in much conjecture about the future role of the existing Fair Work laws under a Liberal–National government. Prior to the election in 2013 the Liberal Party did however release a policy document that addressed a number of workplace and industrial issues and gave some insight into their approach to industrial relations. The policy document began ‘Workplaces are important to our economy and society. Higher living standards, better pay and more jobs all depend upon having fair, productive and effective workplaces.’
Despite major changes being held over for the time being, the policy articulated a number of pertinent industrial issues that would be examined in the immediate period. These include:

1. seeking to improve the Fair Work legal framework through a review of the operation and impact of the Fair Work laws by the Productivity Commission.

2. the introduction of a paid parental leave scheme that will give the child’s primary carer six months leave based upon their full replacement wage/salary or the national minimum wage (whichever is more) as well as paid superannuation.

3. changes to union right of entry provisions to redress the government’s belief that current arrangements are unreasonable and favour unions.

4. encouraging a greater use of the Individual Flexibility Arrangements (IFA) in enterprise agreements giving workers and employers a greater opportunity to agree on working conditions that suit their workplace needs, such as leaving early to coach their child’s sporting team. It must, however, still pass the ‘better off overall test’ which ensures that the worker is not disadvantaged by any change to employment conditions.

5. ensuring that work health and safety conditions around the issue of bullying at work is complied with. The worker must first seek assistance from an independent regulatory agency before more formal action is taken. However, any reinforcement of the regulation is also extended to union officials and their behaviour towards workers and employers.

6. promoting enterprise bargaining in the workplace and actively encouraging dialogue between workers, their representatives and employers, particularly if industrial action occurs. Industrial action should be seen as a last resort option.

7. where an enterprise agreement is to be approved by the Fair Work Commission it must be satisfied that the issue of ‘productivity improvements’ has been discussed.


BizWORD

The Productivity Commission is the Australian Government’s independent research and advisory body in respect to a variety of economic, social and environmental issues affecting the welfare of Australians. Its function is to help governments make more effective policies in the long term interest of the Australian community.

BizWORD

An employment contract is a legally binding, formal agreement between employer and employee.

The employment contract

The most basic relationship in employment and the workplace is between employer and employee. An employment contract is a legally binding, formal agreement between employer and employee. Every employee has a contract with an employer. A written contract gives more protection to both parties than a verbal contract, as disputes often occur over contracts if working arrangements are not clear and it is one person’s word against another. Usually employment contracts will be of two forms: contracts of indefinite duration and contracts of a fixed term.

Contracts of an indefinite duration are the most common type of employment contract and allow for the employee to remain employed by the business until either the employee or the employer gives notice that they wish to terminate the employment. The relevant laws or the contract itself determines the period of notice.

Contracts of a fixed term are ones that expressly define a date or upon completion of a specific task; for example, the employee is engaged for a period of 12 months and the contract does not exist beyond that period, or the employee’s period of work will cease to exist at the completion of a project and the relationship comes to an end.

A written contract encourages the parties to clarify the key duties and responsibilities of a job (see figure 14.11).
Dear Blake
This letter confirms your appointment to the Overboard Surf Store as its new Manager. Your employment commences on 25 July 2014 under the following conditions:

1. Your conditions of employment as full-time Manager are established in the Overboard Enterprise Agreement.
2. You will carry out all duties as a manager (as attached) within the store, together with any other duties as may reasonably be directed and requested by the employer.
3. Your wages will be subject to review by the company on the basis of individual performance assessment undertaken on a six monthly basis. Your annual salary will commence at $45,000 per annum.
4. During the first month of probationary employment, your employment may be terminated by either party giving immediate notice.
5. You will be given half a day’s paid absence per week for six weeks to complete our management course.

Please complete the acceptance of this offer on the attached form. Our store’s policies and Enterprise Agreement are attached for your information. Please note the termination provisions.

We look forward to a rewarding relationship in the future and welcome you to our organisation.

Yours faithfully,

I Tuncay
Irem Tuncay
General Manager
Overboard Surf Company

FIGURE 14.11 An example of an employment contract

The contract does not need to be written, but it is valid and legally enforceable when:
• the parties involved intend to create a legal relationship
• one party offers and the other accepts the offer
• both parties obtain a benefit
• both parties have the capacity to contract; for example, they are old enough to make the contract
• consent is genuine and not pressured
• the offer does not contravene any public interest.

Employment contracts need not be overly complex, but a correctly drafted employment contract will be of benefit to both parties in the long term. Attention to detail at the outset ensures that expensive litigation and negative public relations is avoided. A well-written employment contract ensures that the employment relationship commences on the right footing and should contain the essential terms shown in figure 14.12. Independent contractors also have an employment contract, although it is a little different from the conventional employer-employee contact (see the BizFACT on the right).

BizFACT
Independent contractors are typically self-employed and have a contract for services (between a principal and a contractor) as opposed to the contract of service that employers have with employees on individual contracts of employment. Independent contractors do not have the same rights as employees, have control over their work, are responsible for their own tax payments and may work for a number of businesses. By using independent contractors, firms bypass many of the requirements of a contract of employment, such as sick leave entitlements and maternity leave provisions.

In the event of a dispute between a business and a contractor, a ‘control test’ is used by the courts in cases where the extent of the employer/employee relationship is unclear. If an independent contractor is working for a company and the company clearly had the right of continuous, dominant and detailed control over the contractor, the company could be seen as acting as an employer. Further evidence of the employer–employee relationship can be found in regular payments of salary or wages, regular and specific hours of work, and deduction of PAYG tax.

FIGURE 14.12 Key features of employment contracts

Key influences on human resource management • CHAPTER 14 19
Apart from statutes, the employment contract and other aspects of human resources are governed by common law, awards and agreements.

**Visions of Avalon versus contract realities**

When George Haros accepted an offer from Linfox to be its Business Manager at Avalon Airport, leaving a secure and long-term relationship elsewhere, he contended that a range of representations had been made to him with respect to the security of the role (at least three years), the longevity of the role (as long as the current GM/MD remained in post) and the exclusivity of the role (only he and the GM/MD would discharge the business management/commercial function). He argued in the Federal Court that all of these representations were misleading and deceptive and contrary to what was then the provisions of the *Trade Practices Act 1974* (now replaced by the *Competition and Consumer Act 2010*). After some four months employment, he was retrenched after his position was determined to be ‘redundant’.

His claims were rejected at first instance and on appeal. The Full Bench found on the facts that Haros:

- was himself a qualified lawyer with experience in employment law
- had negotiated the terms of and had signed a written contract which provided for a probation period and termination on three months’ notice
- had confirmed that contract to be the ‘entire agreement’ between the parties, superseding any previous ‘negotiations, representations, warranties or commitments . . .’ (*Haros v. Linfox Australia* [2012] FCAFC 42).

On that basis, it was held that:

Mr Haros did not seek, and was not given, employment for a fixed term; he accepted the position on terms that were negotiated freely; he was under no disability in negotiation, but was an astute lawyer with relevant experience in employment law; he reviewed the draft contract; he did not demur to any of the terms proposed by Linfox; he proposed additional terms which were accepted; and he signed the contract, thereby representing to Linfox that he approved its content or was willing to take the chance of being bound by those contents . . . He was not misled or deceived, so that he was not induced by any such representations to accept Linfox’s offer of employment.

The Court also found that although Linfox had frequently used language such as ‘potential’ and ‘opportunity’ in describing the role, these terms did not, in this context, equate to ‘a promise of any certainty’.

**Snapshot questions**

1. **Outline** the guarantees that Mr Haros believed were given to him regarding the nature of his employment.
2. **Identify** what law Mr Haros believed the company was breaking.
3. **Explain** how the matter was dealt with by the Federal Court.

**Common law**

The **common law** is developed by courts and tribunals. Unlike statutes, it is not made by a parliament. Under common law, judges make decisions based on the facts of a case, guided by precedent (decisions made in the past). The body of common law (‘case law’) is therefore developed from decisions made over time by judges.

Under common law, both parties — employers and employees — have basic obligations in any employment relationship, regardless of whether it is in a formal or informal contract. The obligations of each party are reflected in the rights of the other party.
Employer obligations and rights
Employer obligations include the following:
• Providing work. Employers are not allowed to ‘stand down’ employees if there is no work. They are not generally required to provide work if there is none; however, they must pay the correct wages.
• Payment of income and expenses. Employers are required to pay the income (including wages, commission, fees) stipulated in the award, enterprise agreement or contract, and reimburse employees for expenses legitimately incurred as a result of performing their work.
Employers also have rights in the workplace. These include:
• Employees will work with care and responsibility, especially in respect to work health and safety.
• Employees will carry out their work according to their agreement/award, including good customer relations and accountability for money or property.
• Being notified according to agreement/award of an employee’s intention to take their leave entitlements.
• Receiving formal advice of a worker’s intention to leave the business in accordance with the award/award.
• Meeting requirements of industrial relations legislation. This includes:
  – providing a workplace and work practices, such as equity policies and promotion that are free from discrimination, as required by the sex discrimination, anti-discrimination and equal employment opportunity legislation of the federal and state governments
  – ensuring that workers are protected against unfair dismissal, where this legislation applies. Employers only have the right to dismiss employees who do not obey lawful instructions (insubordination); neglect their duties; are guilty of theft or dishonesty; exhibit wilful or serious misconduct; fail to meet the conditions of the employment contract; and fail to perform satisfactorily over time.
• Duty of care. Employers are legally bound, under the federal and state Occupational/Workplace Health and Safety Acts, to provide reasonable care for the safety of the employees by:
  – providing a safe system of work without risks to health
  – providing and maintaining premises that do not unreasonably expose an employee to risk of injury
  – providing resources, information, training and supervision necessary to ensure the health and safety of workers
  – protecting workers against risks arising out of their work activities.

Employee obligations and rights
All employees are obliged to observe the following:
• Carry out duties in a way that is beneficial to the business.
• Ensure that they maintain confidentiality and not use information such as sales figures in a way that is detrimental to the operation of the business.
• Account for all money that comes into the business.
• Take reasonable care and act safely in the workplace.
• Follow written and verbal procedures and policies.
• Be honest, fair and work with integrity in all dealings with both colleagues and customers.
• Obey lawful commands that are considered reasonable even if they may not be part of their primary responsibilities.
• Complete forms related to taxation and its deduction from income.
• Give appropriate notice of termination of employment in accordance with the relevant award.
Employees also have certain rights when carrying out their work. These include:

- being paid for all the time they work, including overtime where applicable
- receiving the minimum set out in the award or enterprise agreement
- having all pay recorded by the employer (some awards/agreements state that employees must receive a pay slip)
- receiving extra pay such as loading for casuals and penalty rates for work outside of usual hours
- receiving allowances for tools and uniforms if applicable
- having access to paid and unpaid leave entitlements.

**Minimum employment standards**

Ten National Employment Standards have been developed in consultation with business, unions and the community. They must be provided by employers and state minimum conditions for employees. They have been planned to provide a greater safety net for employees, particularly for the most vulnerable and low-paid employees in the workforce. They provide the basis from which modern awards and enterprise agreements are constructed.

<table>
<thead>
<tr>
<th>National Employment Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>Maximum weekly hours of work</strong> — 38 hours per week, plus reasonable additional hours</td>
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<tr>
<td>2. <strong>Requests for flexible working arrangements</strong> — parents or carers of children under 18 are allowed to request a change in working arrangements to assist with the child’s care.</td>
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<tr>
<td>3. <strong>Parental leave and related entitlements</strong> — up to 12 months unpaid leave for every employee, plus a right to request an additional 12 months unpaid leave, and other forms of leave</td>
</tr>
<tr>
<td>4. <strong>Annual leave</strong> — four weeks paid leave per year, plus an additional week for certain shift workers</td>
</tr>
<tr>
<td>5. <strong>Personal/carer’s leave and compassionate leave</strong> — 10 days paid personal/carer’s leave, two days unpaid carer’s leave as required, and two days compassionate leave (unpaid for casuals) as required.</td>
</tr>
<tr>
<td>6. <strong>Community service leave</strong> — unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service</td>
</tr>
<tr>
<td>7. <strong>Long service leave</strong> — a transitional entitlement for employees who had certain LSL entitlements before 1/1/10 pending the development of a uniform national long service leave standard.</td>
</tr>
<tr>
<td>8. <strong>Public holidays</strong> — a paid day off on a public holiday, except where reasonably requested to work</td>
</tr>
<tr>
<td>9. <strong>Notice of termination and redundancy pay</strong> — up to four weeks notice of termination (five weeks if the employee is over 45 and has at least two years of continuous service) and up to 16 weeks redundancy pay, both based on length of service</td>
</tr>
<tr>
<td>10. <strong>Provision of a Fair Work Information Statement</strong> — employers must provide this statement to all new employees about major employment matters and bodies.</td>
</tr>
</tbody>
</table>
Minimum wage rates

The minimum wage rate in Australia is an employee's base rate of pay for the number of ordinary hours that they have worked and is generally determined by a modern award, enterprise agreement or the national minimum wage. The minimum wage rate is reviewed by a specialist Minimum Wage Panel of the Fair Work Commission each year and will take effect from the first pay period after 1 July of that year. Both employees and employers cannot agree upon a pay rate that is less than the minimum wage.

Awards

An award is a determination that explains the legally enforceable minimum terms and conditions that apply to a business or industry. ‘Modern awards’ are a key feature of the current industrial relations system that sought to simplify some 2400 older existing awards into industry or occupation-based categories. This was undertaken to reduce the confusion surrounding proper minimum employment entitlements. Examples of awards include the Fast Food Industry Award 2010 and the Hair and Beauty Industry Award 2010.

Currently 122 modern awards apply to all employees covered by the national workplace relations system, except for some managers or higher income earners that are not covered by a modern award. The contents of modern awards are as follows:
• base pay rates
• conditions and requirements for different types of employment (for example, full-time, part-time or casual)
• overtime and penalty rates
• allowances (such as travel allowances)
• leave and leave loading
• hours of work (for example, rosters, making changes to working hours)
• requirements for annual wage or salary arrangements
• superannuation entitlement
• conditions and procedures for consultation, representation and settling disputes
• outworkers
• redundancy conditions.

The conditions in the modern award apply on top of the minimum conditions in the National Employment Standards (NES). Awards are used as the basis for the negotiation of enterprise bargaining. Modern awards also have a ‘flexibility term’ that allows employers and employees to negotiate changes to some of the conditions in the modern award. These are called Individual Flexibility Arrangements (IFA). They allow an employer and an employee to come to an agreement that varies the modern award or enterprise agreement in order to address individual circumstances. The arrangement must not undermine minimum employee entitlements and must leave the employee better off (usually assessed financially) on the IFA compared to the award or enterprise agreement.

The IFA can only address the following areas:
• arrangements for when work is performed, such as working hours
• overtime rates
• penalty rates
• allowances, and
• leave loading.

For example, Ross is a full-time butcher at Gus’s Meat Emporium Pty Ltd. His enterprise agreement at Gus’s includes an IFA that allows a variation of work hours. Ross wants to coach his daughter’s soccer team every Tuesday and Thursday afternoon. Ross requests an IFA with his employer that allows him to start and
finish an hour early on Tuesdays and Thursdays without the usual penalty rates that would apply for starting earlier. Ross is better off because he wants to coach his daughter's team and his IFA allows him to do this. His employer does not lose because Ross still works the same hours.

The process for making an award (as shown in figure 14.16) requires lodgement of a dispute (‘paper’ or real) by a union or employer association, as the Constitution allows for dispute settlement only at the federal level.

**Figure 14.15** Award coverage is high in hospitality, retail and community services.

**Figure 14.16** The agreement-making process

**BizFACT**

The Fair Work Commission permits an official to:

- investigate suspected breaches of the Fair Work Act 2009 and other workplace laws
- investigate breaches relating to textile, clothing and footwear industry outworkers
- hold a meeting with employees
- exercise rights under occupational health and safety laws.
Enterprise agreements

Enterprise agreements are collective agreements made at a workplace (enterprise) level between an employer and a group of employees about terms and conditions of employment. They offer broader terms and conditions than a modern award, and are an alternative to a modern award.

Under the Fair Work Act 2009, there are three types of enterprise agreements:

- **Single-enterprise agreements**: made between a single employer and a group of employees. They can involve more than one employer in limited cases (e.g. where two or more employers are engaged in a joint venture).
- **Multi-enterprise agreements**: made between two or more employers and groups of their employees. This may occur if they share common funding, operate collaboratively and have a common regulatory system, such as a group of hospitals.
- **Greenfields agreements**: single-enterprise and multi-enterprise agreements relating to a genuine new enterprise of the employer(s) that are made before any employees to be covered by the agreement are employed. Greenfields agreements are made with one or more relevant unions.

The key features of enterprise agreements are:

- they may cover rates of pay, penalty rates and overtime, allowances, hours of work, personal and annual leave, any matters related to the relationship between the employer and the employees, plus their representative organisations involved, and how the agreement will operate, including a nominal expiry date.
- they must be approved by the Fair Work Commission, who must be satisfied that the agreement:
  - has been made with the genuine agreement of those involved
  - passes a ‘better off overall test’ (BOOT) compared to the modern award
  - does not include any unlawful terms or designated outworker terms
  - covers a representative group of employees
  - covers matters that may be included in an enterprise agreement
  - has a specified nominal expiry date (within four years of the Fair Work Commission's approval)
  - includes a dispute settlement procedure, including an option for disputes to be brought before an independent person, such as the Fair Work Commission, for arbitration if the parties agree to it
  - includes a flexibility clause and a consultation clause, allowing for variations if required
  - provides opportunities for employees to be represented by a bargaining representative and to bargain in good faith during the negotiation of an agreement.

To ensure that the parties bargain in good faith, there are strict rules relating to the enterprise bargaining process. They must make a serious attempt to negotiate the issues in a timely and fair manner, and genuinely make an effort to consider all proposals tabled.

Other employment contracts

As the nature of work changes, greater variety is occurring in the types and features of employment contracts available.

Individual common law employment contracts

These individual contracts of service cover employees not on federal agreements or specific state agreements, particularly for those earning over the limit of award wages.

Individual contracts are more common in the private sector, particularly in non-union enterprises, in partly or wholly owned foreign firms, in the wholesale
trade, and in property and business services. They are also more common at the professional and managerial level and apply to those who earn more than $100,000.

Such contracts may be written or verbal. Many are informal and offer much less protection than other agreements. Although around half vary significantly from their related awards, they are generally required to provide conditions that equate with minimum provisions of related awards; if they do not, they are in breach of the law.

**Independent contractors**

Independent contractors, often known as consultants or freelancers, undertake work for others; however, they do not have the same legal status as an employee. This is a growing area of employment comprising 9 per cent of the workforce.

Independent contractors generally undertake a contract, service or project for another business, and work for multiple clients. Contractors tend to have a set term or specific project for their contract, control their own work and may delegate some of their work to others. They generally submit an invoice on completion of a task, stage or project.

The Fair Work Commission provides a clear set of criteria, developed through past test cases, to determine whether someone is a contractor or employee. A contractor carries most of the risk on a job undertaken, including covering their own superannuation, tax, insurances and leave. This is why many employers prefer to rely on independent contractors as it allows employment risks such as sickness to be shifted to the person undertaking the work.

**Contracts for casual work**

Since 1990, casual employment has increased from 16 per cent of the workforce to 30 per cent in 2013. Casual employees have contracts with employers for short-term, irregular or seasonal work. Their work period may vary, they are paid on an hourly or daily basis, and are not entitled to paid leave. Most casuals are female or young people, and often students. Many employers prefer casual staff as it reduces costs (e.g., recruitment dismissals and other on-costs). They often receive a 20–25 per cent loading (extra pay) to compensate them for their lack of entitlements and job security. If they are employed regularly, or for a long period of time, they may be eligible for some benefits such as superannuation and long-service leave.
Many casual employees find they miss out on training and promotion, experience fluctuating income, and have difficulty obtaining credit. They are also more likely to experience workplace accidents and are less committed to the organisations that employ them.

Part-time contracts
The trend towards part-time work is increasing in Australia, with 29 per cent of all employees now employed on a part-time basis. During the global financial crisis employers reduced work hours for some employees in response to the downturn. This trend has continued with the rise of two income households and the desire for a greater work–life balance. Around 25 per cent of part-time employees are underemployed and would like more work. Forty-three per cent of women work part-time compared to 13 per cent of men.

Part-time employees have a continuing employment contract and work less than 38 hours per week. Unlike casual employees, they do have access to the employment entitlements offered to full-time employees, but on a pro rata basis (in proportion to the percentage of time they work compared to a full-time employee).

All this legal stuff is giving me a headache

Fifi, Moshe and Ozkan, old high school mates, are having a coffee in a local shopping centre, while discussing issues related to their jobs. Moshe works as a casual employee for a video store and is studying full-time at university. Fifi is a supervisor at the local bank, and Ozkan runs the local pet shop and boarding kennels.

Ozkan: All this legal stuff is giving me a headache!
Fifi: What legal stuff?
Ozkan: I have to make sure all my staff are being treated as it says in the award or we will be fined again.
Fifi: Why is it such a problem?
Ozkan: Have you seen an award? It goes on for pages, with lots of details about hours, rates for juniors, leave arrangements, shift length (which got us into trouble last time), consultation procedures and arrangements for managing change (which I must admit I ignored last time). I’ve also got to worry about occupational health and safety all the time, like slips and trips. What kind of work arrangements have you got?
Fifi: I’m on an individual agreement. I think it’s called a common law agreement. It’s really just a letter and a handshake. I was told to take it or leave it, so I took it. It’s great because I’m paid more than the other supervisors. That’s because I’m prepared to work long hours and the customers like my style, apparently.
Ozkan: How much did you pay the customers to tell the bank that?
Fifi: What do the other supervisors think?
Ozkan: I bet the others would love to know that. They don’t really know I’m paid more for my individual agreement. It’s not on the internet, unlike an award or enterprise agreement. Some of them seem to think I get more, but I haven’t told them how much I’m getting.
Fifi: Well, they don’t really know I’m paid more for my individual agreement. It’s not on the internet, unlike an award or enterprise agreement. Some of them seem to think I get more, but I haven’t told them how much I’m getting.
Ozkan: Do you think any others get paid more?
Fifi: No, someone in management told me I’m the highest paid.
Ozkan: Do you think any deserve more?
Fifi: There is one guy who does a great job, but his English is not quite where it needs to be, so he is not paid the extra amount.
Moshe: That sounds like a bit of discrimination to me. I bet if he were a union member the union would sort that out.
• I wouldn’t have the time or resources to manage everyone on individual contracts anyway, and the staff would probably not get on as well if they were all being paid differently.

<table>
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<th>Agreement</th>
<th>Main features</th>
<th>Advantages</th>
<th>Disadvantages</th>
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<tbody>
<tr>
<td>Collective agreement</td>
<td>Legally binding document stating minimum terms and conditions of employment</td>
<td>Can be tailored to fit needs of employee(s) and employer</td>
<td></td>
</tr>
<tr>
<td>Enterprise agreement</td>
<td></td>
<td></td>
<td>No effort required by employer</td>
</tr>
<tr>
<td>Contract for employment</td>
<td>Independent contractors</td>
<td></td>
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<tr>
<td>Individual common law employment contract</td>
<td>Informal agreement or letter of contract</td>
<td></td>
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</tr>
<tr>
<td>Casual employment</td>
<td>25 per cent loading</td>
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Summary

• From 2007, under the Labor government, most Australian states and territories formed a national system for industrial relations to improve efficiency through more uniform laws and regulations.
• Australia had a centralised system of human resources until 1991 when enterprise bargaining was introduced.
• All employees are covered by an employment contract, even if it is not written.
• A written contract provides more comprehensive protection than a verbal contract.
• Independent contractors are self-employed and do not have the same rights as employees.
• Workplace relations are governed by common law, statutes made by parliament through legislation, and awards and agreements supervised by industrial tribunals.
• All employees and employers have legal rights and responsibilities.
• Employers must pay income and work expenses, comply with industrial laws and provide a safe workplace for employees.
• Employees must obey lawful and reasonable demands made by the employer, use care and skill in their work, and act in good faith and in the interests of the employer.
• Under the national system, from 2010, ten minimum employment standards were established to provide a safety net for employees, particularly the low paid.
• Replacing many functions formerly conducted by the Australian Industrial Relations Commission, the Fair Work Commission was set up to manage awards and agreements, hear and help resolve industrial disputes, determine annual minimum wage cases, and supervise award restructuring.
• Employee wages and conditions are primarily determined by awards, enterprise agreements and minimum employment standards.
• From 2010, minimum wage rates for ordinary hours worked have been determined by:
  – award or agreement that covers the employee
  – the national wage minimum for employees not covered by awards or agreements and reviewed annually by the Fair Work Commission.
• Awards are legally binding documents containing the minimum terms and conditions of employment.
• Enterprise agreements are collective agreements made at the workplace (enterprise) level between an employer and a group of employees about terms and conditions of employment.
• Individual contracts of service exist when an employer and an individual employee negotiate a contract covering pay and conditions.
• Independent contractors, often known as consultants or freelancers, undertake work for others but do not have the same legal status as an employee.
• Over the past decade there has been a steady increase in casual and permanent–part-time employment contracts.

Revision

1 Distinguish between a centralised and a decentralised industrial relations system.
2 Define the term ‘employment contract’.
3 State the conditions that need to exist for an employment contract to be valid and legally enforceable.
4 Explain how common law is used to determine employment conditions.
5. Complete the table below to summarise the obligations of employers and employees in an employment relationship. The first one has been started for you.

<table>
<thead>
<tr>
<th>Obligations in an employment contract under common law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers</td>
</tr>
<tr>
<td>Employees</td>
</tr>
<tr>
<td>• Provide work: cannot ‘stand down’ employees if there is no work</td>
</tr>
</tbody>
</table>

6. Justify the requirement to ‘act in good faith’ as an employee.

7. Clarify the purpose of the National Employment Standards.

8. Select what you consider to be the two most important National Employment Standards. Account for why you think they were included.

9. Outline how minimum wage rates are determined.

10. Use the Fair Work Commission weblink in your eBookPLUS to examine the current minimum wage rates. In July 2011, the national minimum wage was $589.30 per week (before tax), or $15.50 per hour. Compare this with the current rate and account for the difference.

11. Apart from wage rates, identify seven factors contained in an award.

12. Describe the process that occurs if an employee reports a breach of an award.

13. (a) Define the term ‘enterprise agreement’ (b) Explain why they are sometimes referred to as collective agreements.

14. Create a PowerPoint presentation that compares the major types of agreements.

15. ‘Employee wages and conditions are primarily determined by awards, agreements and minimum national standards.’ Explain.

16. Describe the main features of (a) individual contracts and (b) independent contractors.

**Extension**

1. More than half of all newly hired employees do not discuss their conditions of employment with their employer before starting work. Many of these are young or less educated people.
   (a) Create a short script with your classmates to help a young person ask a prospective employer about their conditions of employment.
   (b) Identify the major items that should be in an employment contract. Next to each, explain why these are necessary.
   (c) Use the Fair Work Commission weblink in your eBookPLUS to investigate pay and conditions.
   (d) Identify the major issues you should watch out for.
   (e) Analyse the risks of failing to discuss conditions of work with a new employer.
   (f) Explain how membership of a trade union may help you avoid these risks.

2. Visit the Federal Department of Employment and Fair Work Commission weblinks in your eBookPLUS to answer the following questions.
   (a) Identify the key features provided on each website.
   (b) Evaluate each website from the perspective of an employee or an employer.

3. Contrast the different types of employment contracts.

**Workplace health and safety (WHS)**

Growing community and worker awareness of safety and environmental issues, along with ballooning compensation costs in recent decades, have prompted both federal and state governments to improve work health and safety (WHS). In 1985, the Commonwealth Government, concerned at the high levels of injury, accidents and disease in the workplace, introduced the National Occupational Health and Safety Commission Act 1985.
Safe Work Australia, formerly WorkSafe, was established to conduct research and develop national standards, codes of practice and common approaches to WHS legislation, which are endorsed by state governments. However, due to constitutional limitations, the ability to enact and enforce WHS legislation has always been passed to the states. Common law supports legislation developed by the states, by requiring that employers provide competent staff and a reasonably safe system of work. Since then, Safe Work Australia has worked with state governments to harmonise WHS laws. This is intended to lead to a national system of work health and safety, and workers’ compensation, which will improve productivity by reducing the compliance costs of businesses and improve the quality of work health and safety conditions for all Australians.

Legislation on WHS covers employees, employers and the self-employed. In New South Wales, under the Work Health and Safety (WHS) Act 2011, the following are required:

- **Employers** must ensure the health, safety and welfare at work of all employees by providing a safe system of work; ensuring that plant and substances are used, handled, stored and transported safely; giving employees the necessary information about the plant and substances, and training and supervision in their work; maintaining the site in a safe condition; and ensuring that the goods they design, make, supply, install or repair will not injure or damage the health of others.
- All employers must take out workers’ compensation insurance, or face imprisonment or a $55,000 fine. The compensation scheme generates its funds via the premiums paid by employers, and provides medical and financial support to injured workers. The premium paid will depend on the industry that the business is in, the amount of wages paid to workers, the costs of any claims made by injured workers and the dust diseases levy.
- Employers must take steps to ensure that people on-site who are not employees are not exposed to risks arising from work being undertaken.
- Employees are required to take reasonable care for the health and safety of others, to cooperate with employers and comply with WHS requirements.
- Employees who engage in bullying, skylarking or interfering with machinery or any other behaviour that puts other employees at risk are breaching their duties and could be fined.
- Health and safety committees must be established at workplaces with more than 20 employees if requested by a majority of employees or if directed by WorkCover NSW.
- WorkCover NSW inspectors may inspect the workplace, collect information, and issue improvement and prohibition notices under the Factories, Shops and Industries Act 1962 (NSW). This may, in some cases, mean that work ceases.
- WorkCover NSW must be notified of any deaths or serious injuries in the workplace, and any plans to carry out dangerous work.
- Corporations may be fined up to $550,000 and $825,000 if repeat offenders (in New South Wales) and individuals, $10,000 and $82,500 respectively for breaches.

WorkCover NSW recommends employers use a six-step approach to occupational health and safety to prevent accidents, disease, injuries and work-related ill health (see figure 14.19).
1. Develop a WHS policy and related programs
2. Set up a consultation mechanism with employees, through meetings, workshops, suggestion boxes, surveys and noticeboards. Ensure input is gained from all staff.
3. Establish a training strategy for new and existing staff at all levels. This may include emergency procedure training, or specific hazard training.
4. Establish a hazard identification and workplace assessment process. This should aim to identify hazards through regular safety audits, workplace inspections, accident investigations, injury and illness record assessment, complaints handling observation and staff input.
5. Develop and implement risk control. This will involve minimising, rectifying, eliminating and reviewing workplace risks.
6. Promote, maintain and improve these strategies. Key to successful programs is regular feedback and advice from staff, and evaluation of records.

FIGURE 14.19 A six-step approach to WHS

SNAPSHOT

Work health and safety in NSW jails

Corrective Services New South Wales (CSNSW) have recently indicated that after successful trials in both its Lithgow and Cessnock jails, smoking bans will be introduced in all New South Wales prisons within 18 months.

The plan will be modelled on the successful implementation of similar programs in other states of Australia and countries across the world.

New Zealand jails have been smoke free since July 2013 and Victoria, Queensland and Western Australia currently have a smoking ban on all prison buildings. It is expected that South Australia and Tasmania will have smoke-free jails in 2015.

CSNSW has worked with all stakeholders but especially with prison officers and prisoners to address issues related to nicotine dependence, provision of nicotine replacement therapies and Quit support to assist with the adaptation to a smoke-free environment.

The CSNSW Commissioner Mr Peter Sevrin said that the policy is based upon his concerns that smoking in prisons is a serious workplace health and safety issue. Approximately 80 per cent of male and female prisoners in New South Wales smoke and are allowed to do so in their cells or in designated smoking areas outside. This increases the risk of second-hand smoking for both staff and inmates.

Snapshot questions
1. State where Corrective Services NSW (CSNSW) trialled its smoking bans.
2. Identify other states and countries that have implemented smoking bans in their prisons.
3. Explain how CSNSW has assisted groups with the implementation of smoke-free jails.
4. Justify why smoking should be considered a work health and safety issue.
Unions also play an active role in WHS. The Australian Council of Trade Unions (ACTU) conducts its own surveys; for example, a recent study of around 10,000 employees, about employment security and working hours, found that 49 per cent of employees suffered health problems because of their working arrangements, including stress (76 per cent) and continual fatigue (72 per cent), and 25 per cent experienced accidents or near misses.

In best practice businesses, management undertakes regular safety audits, benchmarks their performance and implements comprehensive safety programs. Policy statements, safety signs and reminders are visible, and there is regular ongoing training for staff who are aware of safety rules and prepared for emergencies.

**Workers’ compensation**

State legislation covers employees for **workers’ compensation** matters, unless they are Commonwealth Government employees. In New South Wales, work health and safety laws and workers’ compensation matters are administered by WorkCover NSW — a statutory body responsible for achieving safe workplaces, effective return to work and security for injured workers. It also appoints licensed insurers to administer workers’ compensation insurance policies.

All employers must:

- take out a policy with a licensed insurer. Under recent legislation, there has been a strong focus on getting injured employees back to work as soon as possible.
- keep time and wages records, a register of injuries, and complete accident and internal investigation forms, or face a penalty of $55,000 or six months jail
- notify insurers of significant injuries within 48 hours
- establish, in consultation with the insurer and the employee’s doctor, an injury management plan and a return-to-work plan for all injured workers, when fit for ‘suitable duties’. Failure to display and comply with the plan (which may include employing a rehabilitation coordinator) may result in increased premiums for the employer, or loss of benefits for the employee (if they don’t comply).
- pass on compensation monies to the person entitled as soon as possible.

Premiums are closely linked to the number, frequency and size of claims, so it is in the employer’s interest to focus on achieving high standards for WHS.

Employees must notify their employer as soon as possible of an injury or work-related illness. Compensation (financial benefit) is provided to employees (and/or their dependants) suffering injuries or illnesses (including psychological illnesses) substantially developed from their work.

The workers’ compensation system supports injured workers through providing the benefits and assistance needed to recover and return to safe, ongoing work, if that is possible.

Benefits are payable if employees experience total or partial incapacity to perform work, there is a need for medical, hospital or rehabilitation treatment; or if there is permanent or partial loss of use of parts of the body. This includes facial disfigurement and damage to body organs, including bowel injuries. A lump sum payment and weekly payment to dependants are payable if a worker dies as a result of the injury. If an employee on a journey to or from work substantially increases the risk by deviating from or interrupting the journey, benefits may not be payable.

An injured employee may claim compensation, a lump sum payment or sue for common law damages for negligence. Compensation today is subject to thresholds and caps on claims. It is paid for:

- loss of wages for time off work
- medical and rehabilitation expenses, and the cost of associated travel and modifications to the home or vehicle

**BizFACT**

It is an offence to dismiss an employee or alter an employee’s job to his or her detriment because the employee has pursued a work health and safety matter. Managers must visibly and actively support supervisors in solving WHS issues.

**BizWORD**

Workers’ compensation provides a range of benefits to an employee suffering from an injury or disease related to their work. It is also provided to families of injured employees when the injury/disease was caused by, or related to, their work.
- permanent impairment or loss of use of a part of the body
- pain and suffering if the damage is assessed as being over $10,000.

Legal assistance may be provided to support a claim. Benefits may not be payable if employees have deliberately injured themselves, or are solely responsible for the injury through their wilful misbehaviour or misconduct. Permanent disablement or death in these circumstances does, however, allow the payment of benefits.

Since 2000, legislative amendments have been successively introduced, some in response to a massive blow-out in the value of compensation awarded. For most employees, ‘provisional liability payments’ are made for up to 12 weeks after an injury, and claims for medical expenses compensation up to $5,000 are accepted generally on the basis of verbal or written notification. Formal claims are generally made for matters extending beyond this period or for medical costs greater than $5,000, and should be made within six months of the date of injury or accident, unless the claim relates to serious or permanent injury, death or disablement. In such cases the time limit is extended.

Eligibility for lump sum payments and the calculation of these payments under statutory law is now based on the principle of thresholds for degree of body ‘permanent impairment’ (loss of use, rather than disability). Through the workers’ compensation system, injured workers may be entitled to weekly payments, lump sum payments for permanent impairment (and pain and suffering), payment of medical bills, the provision of legal support to pursue a claim and intensive rehabilitation assistance.

If a worker suffers an injury in the workplace, the employer, injured worker, insurer and treatment provider each have responsibilities to ensure that the injured worker is provided with benefits and assistance to recover and return to work.

Weekly payments are structured in such a way that they are consistent with the policy of assisting employees back to work. To facilitate this there is a higher payment in the first 13 weeks. Most workers return to work at this time and it also serves to provide workers with an incentive to return to work.

Workers’ payments will cease after 2.5 years, unless there is total incapacity for work. Payments will then cease for those with total incapacity after 5 years, unless there is 20 per cent whole person impairment. Previously, payments continued until the person was able to return to work or until their retirement.

Workers will also receive payments from day one (95 per cent), with a further drop to 80 per cent at 14 weeks (although they retain 95 per cent if working at least 15 hours a week). Payments remain at 80 per cent (or 95 per cent) until they cut out altogether.

The maximum penalty for a false claim under the NSW Workers Compensation Act is $5,500 or 12 months’ imprisonment, and for insurers who delay commencing payments penalties up to $50,000 apply.

Visit the WorkCover NSW weblink in your eBookPLUS.
Common law redress

Employees may take action against an employer when the employer or another employee has been negligent or breached their duty, if the employee has a permanent body impairment of more than 15 per cent and if the injury occurred at least six months prior to the claim. Common law action has been taken for serious diseases such as those caused by asbestos (see the following Snapshot). Such claims are heard in the district or supreme courts (depending on the size of the claim), and once an employee has successfully achieved a settlement, there are no further payments. If employees are unsuccessful in their actions, they will continue to receive workers’ compensation as required under statutory law.

Legal advice must be considered before seeking damages obtained under common law redress. Employees injured may not claim both damages at common law and lump sum compensation for permanent impairment under statutory law.

Compensation for asbestos victims — James Hardie Industries

The James Hardie Industries asbestos case has been called Australia’s largest corporate scandal.

Hardie has been Australia’s largest asbestos manufacturer. Asbestos is a building material present in one-third of homes and buildings built before 1970. Asbestos-related diseases such as mesothelioma and other asbestos-related lung diseases are expected to affect 30,000 Australians in the future. Seven thousand, five hundred Australians have already died from mesothelioma.

The James Hardie asbestos compensation issue has been controversial.

Two members of Hardie’s senior management resigned in 2004, including its CEO, under pressure from a commission of inquiry, which found it had not fully told the truth to the New South Wales Supreme Court, and its management had been less than honest with the Australian Stock Exchange and the community on the issue of asbestos. It had not put enough money into a compensation fund to compensate future claims, and its chief financial officer was prepared to be deceitful where asbestos was concerned. Claims alleged that Hardie management had deliberately restructured operations to a Netherlands base to avoid their obligations for compensation of victims of asbestos. The two members of senior management who resigned are alleged to have received executive payouts totalling $10 million.

Under pressure from victims’ lawyers, the ACTU and other groups, James Hardie signed a landmark agreement in December 2004, providing asbestos sufferers with compensation valued at over $4 billion, over a 40-year period.

James Hardie’s then CEO, Meredith Hellicar, hailed the agreement as a ‘compassionate’ outcome, which is ‘fair and equitable for all parties’ and she hoped it ‘convinces the Australian community that we are seriously committed to that responsibility’. The company placed payments into a special purpose fund for current and future victims, at 35 per cent of its free cash flow. A key feature of the agreement is recognition by all parties that ongoing James Hardie viability is essential to long-term benefits for its victims.

When this agreement was later shown to leave the victims underfunded by around $1 billion, further action was taken against the non-executive directors by ASIC. The action failed in the NSW Court of Appeal in December 2010.

Snapshot questions

1. Explain why management may have behaved in such an unethical manner for so long.
2. Do you think the Hardie executives who resigned as a result of the commission of inquiry into their management practices should have been paid $10 million? Justify your response.
3. Identify the reasons for the capping of annual payments at 35 per cent of the company’s free cash flow.
Summary

- Work health and safety (WHS) legislation is in the process of being made uniform around Australia to improve business productivity.
- The relevant act in New South Wales is the Work Health and Safety (WHS) Act 2011.
- Employers must provide a safe system of work, and ensure employees are trained and supervised in their work.
- All employers must take out workers’ compensation insurance.
- Employees are also responsible for taking reasonable care for the health and safety of others.
- In New South Wales, WorkCover NSW is responsible for administering WHS matters, including workplace inspections, prohibition and improvement notices, and matters related to workers’ compensation cases.
- Common law redress can be sought where the employer or another employee has been negligent or breached their duty, leading to serious injury or death.

Revision

1. Look at figure 14.18, page 000, and identify some safety concerns associated with the work.
2. Identify the likely WHS risks faced by people in the following jobs: auto mechanic, teacher, ship refueller, scientist, process worker in a textile factory, hairdresser, miner, bank officer, police officer, truck driver, airline pilot.
3. Investigate and discuss the most common factors contributing to accidents at work.
4. Construct a table listing employer and employee responsibilities for workplace safety.
5. Management may use a range of strategies to evaluate the effectiveness of WHS programs; for example, safety tours of a plant, reviewing specific aspects on a random basis, risk assessments for changes in the workplace and specific job safety analysis. Propose some additional strategies you would use.
6. The industries in which accidents and injuries are most likely to occur are manufacturing, transport and storage, agriculture, forestry and fishing. Investigate safety risks in these industries.
7. Male employees who are either young or aged between 45 and 49 are more likely to experience injuries and accidents at work. Propose reasons for the high number of accidents within these two groups.
8. Substance abuse is becoming a problem in many workplaces in which employees experience stress. Discuss whether employers have the right to drug test employees. Justify your answer.
9. Identify the organisation responsible for managing workers’ compensation.
10. Identify the cost of failing to take out workers’ compensation if you are an employer.
11. Explain why legal limits on compensation were introduced from 2000.
12. Describe the main ways in which injured employees are assisted today under workers’ compensation.
13. Describe a situation in which you may seek common law redress.

Extension

1. A high-volume, internet-based financial services business operates 24 hours a day. Some of its 100 staff work a rotating night shift, while others take turns to be ‘on call’. The majority of staff operate from 7.30 am to 6–7.00 pm, although official working hours are 9 am to 5 pm.
   (a) Using this example, identify the factors that could lead to high levels of stress.
   (b) Discuss how high levels of staff stress could affect the business.
(c) Explain why substance abuse could be a problem in this business. Recommend to the business some points to deal with substance abuse. Give reasons for your recommendations.

2 Use the WorkCover NSW weblink in your eBookPLUS to investigate recent issues and updates related to workers’ compensation matters.

Anti-discrimination

Discrimination occurs when a policy or a practice disadvantages a person or a group because of a personal characteristic that is irrelevant to the performance of the work. It includes harassment (offending behaviour or intimidation) and vilification (a public act which is discriminatory and incites hatred).

Anti-discrimination legislation has been enacted to protect employees from direct and indirect discrimination (see figure 14.21) in recruitment, selection, training, promotion, remuneration, termination and opportunities to access any other employment benefits or practices. To prevent discrimination and to avoid large fines, employers need to:

• comply with legislation
• audit all policies and practices to ensure they do not discriminate.

Employers and managers working in human resources need to be familiar with the following legislation:

• Human Rights and Equal Opportunity Commission Act 1986 (Cwlth)
• Affirmative Action (Equal Employment Opportunity for Women) Act 1986 (Cwlth)
• Sex Discrimination Act 1984 (Cwlth) and the Anti-Discrimination Act 1977 (NSW).

The agencies available to support the legislation are the Australian Human Rights Commission, the Workplace Gender Equality Agency and the Anti-Discrimination Board (NSW).

Under discrimination laws it is illegal to take adverse action in employment on the grounds of a person’s:

• race, sex, sexual preference, colour or age
• physical or mental disability
• religious faith or political opinion
• social origin or national extraction
• marital status and carer responsibilities
• pregnancy or potential pregnancy.

Protection has been further enhanced under the Fair Work Act. It allows freedom of association for members or non-members of a union and protection in a wider range of employment aspects. This may include dismissing an employee, damaging
their ability to do their job, changing an employee’s job to their disadvantage, treating one employee differently to other employees, refusing to employ a potential employee, and not offering a potential employee all the terms and conditions normally in a job. People who suffer discrimination may take a range of actions internally, formally or informally (see figure 14.22).

Figure 14.22 Options available in resolving a complaint of discrimination

**BizFACT**

Typical outcomes from a complaint may include:
- a formal apology
- counselling
- official warnings
- mediation or conciliation
- disciplinary action.

Outcomes will be influenced by the evidence, previous incidents, the wishes of the person experiencing discrimination, and the severity and frequency of the discrimination or harassment.

Strategies used increasingly by businesses to eliminate discrimination include:
- committing to a workplace free from discrimination
- writing and communicating policies to prevent discrimination and harassment, including a code of conduct
- making sure all policies and procedures are clearly documented and accessible to employees, offer informal and formal options, and guarantee timely responses, confidentiality and objectivity
- training managers and staff in cultural diversity issues and ways to prevent or deal with discrimination and harassment, primarily using face-to-face and interactive training programs
- appointing a grievance officer and specifying grievance procedures involving issues such as sexual/racial harassment.
• regularly evaluating record keeping, implementation and effectiveness of policies, workplace culture and action taken to resolve complaints.

All employers are required to take reasonable steps to eliminate discrimination. Whether reasonable steps have been taken is considered on a case-by-case basis, as a large corporation is clearly capable of a different level of action than a small business. Employer associations and anti-discrimination agencies can help businesses develop a strategy that ensures consistency and fairness in handling of complaints.

**Bosses hate working mums**

Pregnancy has overtaken disability as the top discrimination complaint in Australian workplaces.

And more people believe their family responsibilities result in them being treated differently by their bosses.

The Fair Work Ombudsman has revealed more complaints from women of poor treatment due to their pregnancy in 2012–13, topping the former key gripe of discrimination due to physical or mental disability.

It’s the first time pregnancy has formed the majority of complaints.

Workers made 235 complaints to the agency, with 28 per cent of them from pregnant women, 21 per cent from those with physical or mental disability, and 11 per cent from those who felt their family or carer responsibilities led to them being treated differently.

The commission investigated 76 matters, took three to court and executed enforceable orders in another three.

One of them included ordering a retail business to pay a pregnant Melbourne woman $2000 in compensation after she was told her hours were being drastically cut, and if she didn’t like it, she could quit…

Australian Council of Trade Unions president Ged Kearney said it was a concerning trend, but ‘sadly, it’s not a surprise’.

The union runs a pregnancy discrimination hotline, and had more than 500 women report pregnancy discrimination to them in one 24-hour block.

It included being sacked, being passed over for promotion, being denied training or receiving inappropriate comments after they reported they were expecting.

‘It really is astounding, the number of women who contact us’, Ms Kearney said. But she said there were far more women who did not come forward…

Ms Kearney said it was ‘mind boggling’ a boss would not want to keep a productive, intelligent, longstanding employee simply because she was a mother.

**SNAPSHOT**

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**Source:** Daily Telegraph, 6 November 2013.

**Snapshot questions**

1. State the top discrimination complaint according to information provided by the Fair Work Ombudsman.
2. Summarise some of the other discrimination complaints received by the Fair Work Ombudsman.
3. Outline the case of the retail business prosecuted by the Fair Work Ombudsman.
4. Explain why the president of the Australian Council of Trade Unions was not surprised by the rise in complaints by pregnant women.
5. Identify other examples of discrimination reported by pregnant women in the workplace.
6. Describe the ‘mind boggling’ behaviour that confuses the ACTU president.

**BizFACT**

An employer may be held liable if any of the following discriminates against or harasses an employee: an employee or a group of employees, agents, contract worker, partner, director, supervisor, manager, or trade union representative.
Equal employment opportunity

Equal employment opportunity (EEO) refers to equitable policies and practices in recruitment, selection, training and promotion. EEO ensures that the best person for the job is chosen, the business gains the person with skills and abilities most appropriate to its needs, and a more positive work environment is promoted.

The level of equity in a business is reflected in the extent to which women and minority groups have access to different occupations and positions within the business. It is also reflected in the grievances expressed or legal action undertaken on the grounds of discrimination or sex-based harassment.

Employers with more than 100 employees, and all higher education institutions, are obliged to develop an affirmative action program in consultation with employees, and to provide a progress report to the Workplace Gender Equality Agency (WGEA).

The Equal Opportunity for Women in the Workplace Act 1999 has been replaced by the Workplace Gender Equality Act 2012 and aims to promote and improve gender equality and outcomes for both women and men in the workplace.

The Workplace Gender Equality Agency (WGEA) has been created to reflect this new focus and achieves this by:
- advising and assisting employers with the promotion of gender equality in the workplace
- reviewing compliance with the legislation
- providing research findings and educational programs to improve gender equality outcomes
- establishing a workplace profile and analysing the issues in the specific workplace
- reporting on the actions taken by the employer to address priority issues
- describing the action plans for the following period and evaluating the strategies used.

Businesses are then assessed as complying or not complying with requirements. The aim of the program is to remove discriminatory employment barriers and take action to promote equal opportunity for women in the workplace.

Businesses also need to comply with the discrimination provisions in the Fair Work Act, which includes broader provisions relating to most areas of employment. The Fair Work Commission must now take action (including making orders) to ensure that no existing or proposed award or enterprise agreement discriminates on a wide variety of grounds.

The Workplace Gender Equality Agency recommends that businesses focus on six areas to improve equity within their business: recruitment, promotion and separation; access to all occupations and areas; equitable total remuneration; training and career development; work and life balance; sexual harassment and working relationships.

The aim of gender equality in the workplace is to achieve equal outcomes for both women and men. In order to achieve this, workplaces:
- must provide equal pay and conditions for women and men for work of equal or similar value
- should remove anything that prevents the full participation of women in the workforce
- must facilitate access to all jobs and industries, including leadership roles for women and men
- must eliminate discrimination on the basis of gender, particularly in relation to personal responsibilities including family and caring for both women and men.

Gender equality in the workplace is important as it encourages stronger applicants, especially women, entices more highly educated (often female) applicants, reduces costs associated with staff turnover, and encourages varied perspectives and views which results in stronger business performance, both internally and nationally.
ExxonMobil — an EEO employer

ExxonMobil Australia is a group of companies engaged in the exploration and production of oil and gas, petroleum refining and supply of fuels (including natural gas), as well as other chemical products. These companies are subsidiaries of ExxonMobil Corporation, one of the world's leading petroleum and petrochemical companies. ExxonMobil is committed to a workplace environment that encourages the highest quality employees to achieve their potential while ensuring the achievement of their own business goals. Their employment policies and development programs are designed accordingly as they are committed to being an employer of choice. ExxonMobil values the strengths of a diverse workforce, drawing its staff from a range of backgrounds that reflect the communities in which they operate.

ExxonMobil has structured policies to create a positive and productive workplace where workers are treated with courtesy and respect. There is a genuine attempt to create a workplace that is free of harassment and where employees are encouraged to report any breaches of policies without fear of retaliation. These policies are communicated to employees through regular training sessions, and via management and employee discussions.

ExxonMobil also has a global commitment to promoting opportunities for women. In recognition of its efforts, ExxonMobil Australia has been named an Employer of Choice for Women by the Workplace Gender Equality Agency (WGEA) each year since 2001.

The Employer of Choice for Women citation is an important acknowledgement of organisations that recognise and advance the role of women in the workplace.

At ExxonMobil a supportive workplace is reflected in the following initiatives:

• 15 weeks paid parental leave for the primary caregiver (often women)
• prioritised access to high quality, flexible (days can be swapped at short notice) and competitively priced childcare services within close proximity to the company's head office. This is credited with the company's high return to work rate of 96 per cent of staff and lower rates of absenteeism.
• the recently introduced return-to-work leave, offering employees an additional week of paid leave in recognition that parents often exhaust their long service and annual leave while on parental leave.

Snapshot questions

1. Outline the types of production in which ExxonMobil is involved.
2. Outline ExxonMobil's workplace initiatives and how they measure their success.
3. Explain how ExxonMobil demonstrates EEO principles in its workplaces.
4. Describe the advantages to the business and society of being an EEO employer.
5. Discuss why the WGEA citation is important for companies such as ExxonMobil.

Summary

• Discrimination occurs when a policy or a practice disadvantages a person at work because of a personal characteristic that is irrelevant to the performance of their work.
• All employers must implement anti-discrimination legislation, as well as audit all policies and practices to avoid large fines, legal orders and damages, and loss of reputation.
• Anti-discrimination legislation is supported by government agencies, including the Australian Human Rights Commission, the Workplace Gender Equality Agency and the Anti-Discrimination Board (NSW).
• Equal employment opportunity refers to equitable policies and practices in recruitment, selection, training and promotion.
• Affirmative action refers to measures taken to eliminate direct and indirect discrimination, and for implementing positive steps to overcome the current and historical causes of lack of equal employment opportunity for women.
• There is significant gender inequity in management roles in Australia.
• All employers with more than 100 employees, and all higher education authorities, must report annually, unless exempted, on equal opportunity programs they develop in consultation with employees and progress achieved.
• Businesses that do not comply are likely to be named in parliament, and excluded from government contracts and industry assistance grants.
• Strategies commonly used to resolve a complaint of discrimination include an apology, counselling, official warning, mediation, conciliation or disciplinary action.
• Developing a code of practice and making equal opportunity awareness a criterion in promotion and performance appraisal are two of the practical strategies that can be used to improve affirmative action and gender equity.

Revision
1 Define the term ‘discrimination’.
2 Identify the grounds under which a discrimination complaint may be made.
3 Look at figure 14.21 on page 000, and distinguish between direct and indirect discrimination.
4 Recall a range of possible outcomes for a discrimination complaint.
5 Explain why most employers are keen to avoid such complaints.
6 Select the strategy you consider to be the most effective in eliminating discrimination in business (see pages 000–0). Justify your selection.
7 State the consequences for employers who do not comply with the legislation.

Extension
1 Tamara has recently applied for a promotion. Tamara informs her manager that she is pregnant and will be taking parental leave in three months. Tamara fails in her application for promotion. Although she is highly qualified for the job, Tamara’s manager advises her that she was not promoted because she will be able to do the job for only a short time before she goes on parental leave.
   Tamara comes to see you, an adviser at the Australian Human Rights Commission. Explain, in detail, the advice you would give Tamara. To help, use the Australian Human Rights Commission weblink in your eBookPLUS.
2 Evaluate the legal requirement for large employers to provide a regular equal opportunity report.
3 Create a script in which you support a group of women experiencing sexual discrimination at work. Propose strategies to resolve the problem.

14.3 Economic influences
The economic cycle
The demand for labour (employees) is determined by the demand for goods and services within the economy. If labour shortages develop during periods of economic growth, such as during a peak or during the expansion phase in the business cycle shown in figure 14.23, employers compete for employees by offering higher wages. Unions may use their stronger bargaining power to demand significant wage increases, which may then put upward pressure on costs and prices, creating inflation. During downturns in the economic cycle, as indicated in a trough or as
starts to occur in the recession phase of the business cycle, the demand for goods and
services falls. Businesses are forced to reduce the size of their workforce (downsize)
and limit their capacity to provide significant wage increases.

![The business cycle](image)

**FIGURE 14.23** The business cycle.

**Structural change**

Structural change occurring in the economy has led to a rapid employment
growth in the services sector, which accounts for 86 per cent of total employment.

Employment is growing in property, business, retailing, trades, tourism,
educational services, hospitality, and community and personal services. Some of
these industries have been traditionally dominated by women. As each sector
grows, recruitment, selection and remuneration become important industrial
issues. With an ageing population, flexible staffing arrangements, retention and
mentoring increase in importance. Effective training and staff empowerment are
also critical to business success in such customer service-based industries.

In manufacturing, removal of protective tariffs and quotas has increased business
exposure to international competition. The subsequent fall in employment in
manufacturing has been hastened by rapid technological change.

![As the economy undergoes structural change, opportunities in some industries are created, leading to job creation. For example, tourism is a rapidly growing industry. Unfortunately, jobs are lost in industries that can no longer compete.](image)

**FIGURE 14.24** As the economy undergoes structural change, opportunities in some industries are created, leading to job creation. For example, tourism is a rapidly growing industry. Unfortunately, jobs are lost in industries that can no longer compete.
Managing diversity at a global business — IBM

A diverse workplace encompasses people of different ethnicity, gender, age and culture. Managing such a workplace, however, presents challenges for employers as they pursue the opportunities that flow from such diversity.

Businesses such as IBM now realise that diversity in the workplace encourages new ideas and cost savings, and helps it understand its market better. IBM provides a range of business and IT services including technical support, storage solutions, outsourcing and training. It operates in 170 countries across the world and its employees speak more than 70 languages. For some time now IBM has come to appreciate that its diversity represents one of its greatest strengths.

It is a preferred employer for women due to its inclusive policies such as flexible work arrangements and management mentoring programs. It also recognises that people with disabilities have a valuable contribution to make to the workplace and to this end have modified work spaces and provided specialist equipment to assist staff. It also encourages the contribution of mature age workers as well as gay, lesbian, bisexual and transgender employees.

It is, however, IBM's efforts in managing people from different cultures and religions that is a highlight. It has policies that allow people to trade holidays such as public holidays like the Queen's Birthday with more culturally significant days such as Yom Kippur.

IBM's wide reaching workforce also brings with it new ideas and talents that combine to assist its customers. The opportunity to work in different countries and with people of different cultures is seen as a positive by many of its staff. IBM conducts training to ensure that workers are aware of and sensitive to cultural differences presented in the host country. Its Shades of Blue training program addresses issues related to communication, behaviour, gender roles and language in a global workplace.

IBM's human resource managers promote diversity in the workplace and important social policies such as multiculturalism are embraced. IBM sees itself as having the opportunity through its policies and procedures to break down prejudice and discrimination in the workplace.

Snapshot questions

1. Clarify why IBM can be considered an example of a global business.
2. Outline the range of culturally diverse programs at IBM.
3. Identify the strategies IBM has used to manage cultural diversity in its workplace.
4. Explain the aims of cultural diversity programs such as those employed at companies like IBM.

Globalisation

Globalisation of business has increased the level of international competition. Australian businesses compete every day with ‘local’ subsidiaries of transnational corporations. Many restructure, outsource non-core functions or subcontract production in order to compete effectively. Corporations, both domestic and transnational, are increasingly prepared to relocate production units in other cities, states or countries where dispute levels, labour and regulatory costs are much lower. In such an environment, there is an increased need to attract and retain motivated and effective core staff, and make continuous improvements in productivity, costs, innovation, quality and customer service. Enterprise bargaining has allowed many employers to trade-off restrictive/inefficient work practices for wage increases in industrial agreements. Business profitability has improved significantly.
Training in the management of multicultural workforces, with differing approaches to power, authority and the role of groups/individuals, is increasing with the globalisation of business.

There is also an increasing role for international organisations, such as the International Labour Organization and trade blocs (for example, the European Union and the World Trade Organization), to promote trade between countries that adhere to social justice principles (such as bans on child labour).

### 14.4 Technological influences

As outlined in topic 1, technological change is the major source of improvements in productivity, communication and competition between businesses. It is causing the nature of production and services to change, and new jobs to be created, while others are made redundant. Many businesses are re-engineering and restructuring as networks, often offshore, make increasing use of ‘virtual teams’ using video technology. A suite of electronic communications options allow firms to operate ‘anywhere, anytime’ and to harness staff through telecommuting. This has provided a major opportunity for businesses to access employees at home, increasingly those in developing nations who would otherwise be disadvantaged through traffic congestion or distance from the business office. Use of new communications technology does increase the need for ongoing training programs and new protocols to ensure that work–life balance is maintained in an environment in which society often expects people to be ‘always on call’.

**BizFACT**

Communications technology can change the workplace structure. For example, a cleaning company that relies totally on mobile phone communication may be able to virtually eliminate its main office. However, they may need to increase its social activities, or plan special team meetings to promote commitment and communication to the business and its identity.

### 14.5 Social influences

**Changing work patterns**

Over the last two decades there has been a dramatic growth in part-time and casual work, largely due to growth in the finance, retail, hospitality and community service industries. Most part-time workers do not want to work additional hours and part-time work offers them flexibility in balancing their work and personal lives. Work patterns are changing and commentators refer to this trend as ‘labour fragmentation’.

In recent years there has been an obvious drift away from traditional full-time employment towards part-time employment. In 1979 only 16 per cent of the

![Figure 14.25](image-url) Is holiday time free of work issues and problems? Technological change underpins productivity improvements. However, it can result in an unprecedented invasiveness on personal time which has a negative effect on work–life balance.

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**Concept code:** BSH-089

**Practice HSC exam questions**

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workforce identified themselves as part-time employees, but by 2012 this had grown to 29 per cent. Part-time work is especially common amongst women.

Businesses in search of greater flexibility in the workplace are more likely to offer part-time options that are greeted favourably by workers in search of a better work–life balance. Other workers may be interested in undertaking additional education and training and/or want to ease themselves into retirement and are also keen to take advantage of such arrangements.

Other changes such as a ‘casualisation’ of the workforce are evident in changing work patterns and as businesses seek a more flexible workforce. The proportion of casual workers grew from 17 per cent in 1992 to approximately 35 per cent today.

Despite being popular in industries such as retail and hospitality, many casual workers would prefer to work additional hours. While casual workers are in search of more flexible work arrangements such as those provided by casual work, most would like to receive paid holiday or sick leave.

**Career flexibility and job mobility**

Career flexibility and job mobility have increased. Workers are taking more control over their own careers. Around 14–16 per cent of employees are considered job mobile, and only 44 per cent of full-time employees have worked for their current employer for more than five years. The most mobile employees are aged 20–24, Australian-born, or of English-speaking background, and found in retail or hospitality industries. Many leave full-time positions after developing specialist skills and experience to become independent contractors or consultants.

Creative and knowledge-based fields like education, design, writing and information technology provide the most flexibility in the workplace and many workers in these occupations, especially women, are seeking part-time, casual, flexible work day and work-from-home options. Both businesses and the government are recognising the need to address these demands and in doing so are providing increased options for employees.

**Increased participation rates for women**

The increase in the participation rate over the past three decades has been due to the increased participation by women and older people in the workforce. Since 1980, the participation rate of females aged 25–54 has increased by over 20 per cent, reflecting changing social expectations, increased education levels, improved access to child care and more flexible work arrangements.

The participation rate of people aged 55 and over has increased by 10 per cent as people have incentives to work longer, better employment opportunities, increased employment opportunities in the physically less demanding services sector, and better health and longer lives.

**Ageing of the workforce**

Ageing of the workforce is likely to see a significant shortage of skills in the community over the next few years. Flexible working arrangements, including job share, part-time and contracting, will be critical in utilising this ageing workforce, particularly women, who are concentrated in health, education, and society and culture. Businesses and government will need to respond by upskilling the population, creating incentives to encourage staff to postpone retirement and implementing appropriate human resource strategies to transfer skills to those remaining in the workforce. Removing discrimination in the recruitment of older workers, providing opportunities to update skills, and offering targeted health and safety programs will also be essential.
Early retirement

Early retirement from full-time work is popular today. The average age of retirement from full-time work has increased to an average age of 53 years (58 for males and 47 for females); however, participation in part-time work is much higher, suggesting older employees are using a gradual withdrawal approach to retirement. The most common reasons are eligibility for superannuation or for health reasons. A growing number of people are returning to work in a part-time capacity following retirement for financial reasons or to relieve boredom.

Living standards

Australians have one of the highest living standards in the world today. These high standards include occupational health and safety, regular wage increases, performance bonuses, fringe benefits, leave and superannuation benefits, which they remain keen to preserve. Australians are aware of the pressure from global competition on these hard-won benefits and our living standards. All political parties recognise the importance of these conditions to the average Australian at work, and are unlikely to challenge these rights in the future.

Companies who seek to undercut conditions through excessive outsourcing and casualisation of the workforce, or by shifting production or operations offshore to reduce costs and increase profits, will be challenged by unions keen to avoid erosion of our living standards. Casualised workers suffer from higher levels of stress due to difficulty in purchasing assets, including homes, and managing finances and debt with unstable or uncertain income.

Social expectations in terms of home ownership, holidays and ownership of consumer goods are an important factor in the rising participation of women in full-time and part-time work, and in the rising retirement age for women.

Conflict between our desire for high living standards, achieved through our work–life balance, is evident in many surveys. We enjoy shopping on weekends and on holidays, which is reflected in liberalised trading hours.
Concerns are, however, frequently raised about the loss of weekends for families working flexible hours and shifts. The blurring of work and home lives, because of electronic communications such as email and mobile phones, is creating an expectation that employees and businesses will be ‘always on’. Others cite the lack of support for carers in our community. Governments have responded by implementing legislation to make workplaces more family friendly, through providing carer’s leave, job share, part-time and flexible working hours.

A recent report, *Shifting Risk: Work and Working Life in Australia*, prepared for the ACTU, indicates that there have been major concerns for Australians about their living standards and working life over the last few years. They are concerned about:

- increasing income inequality in Australia, as growth in real wages has lagged behind profit growth in recent years, and the widening gap between average male and female wages
- the casualisation of the workforce, with two million Australians now working part-time or casually, and the pressure this creates on family finances and life
- increasing pressure to manage the finances in their lives as governments retreat from welfare and encourage individual responsibility for retirement, healthcare, education and debt management
- a lack of work–life balance, with long working hours and loss of holidays and weekends with families.

Australians are keen to have ‘quality jobs’ that are safe, meaningful, secure and productive; where they are respected and consulted by their employer, and earn enough for a decent standard of living.

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**SNAPSHOT**

**More women wear the trousers — one in four fathers is now a Mr Mum**

The Australian family is shifting shape — one in four dual-income households now have a woman as the main breadwinner.

This means more than half a million households have the biggest share of family income brought in by a female — 140,000 more households than a decade ago, research shows.

The number of families with both parents working has also climbed dramatically, with 58 per cent of families having both mum and dad in the workforce, the AMP/NATSEM Income and Wealth Report found.

In the 1980s, just 40 per cent of families featured two working parents.

The rise of the female breadwinner ‘is a pretty big change we are seeing for Australian families’, NATSEM’s Rebecca Cassells said.

She said it was not known how many hours women were working to pull in the higher wage: ‘The wage gap is still there — it is around a 17 per cent difference.’

‘That has been the case for about 20 years and we haven’t seen it move much.’

Female breadwinner households bring in $2375 in weekly earnings, around $100 less than male breadwinner households.

Monalene Inandan is currently the major breadwinner for her family, a decision she and husband Tim made jointly for lifestyle and childcare reasons: ‘We made a decision not to put Zoe in daycare and it was just easier for me to go back to work full-time as I am a school teacher and we get school holidays.’

‘My husband looks after our daughter, who is 13 months, during the day and works part-time afternoon/night shift.’

‘When I get home we have an hour to spend together and then he goes off to work.’

14.6 Ethics and corporate social responsibility

A wide range of human resource issues arise in the workplace (see figure 14.27) and, if they are not handled in an ethical, legal or socially responsible manner, they can lead to poor morale, low productivity, heavy costs and industrial disputes. "Ethical business practices" are those practices that are socially responsible, morally right, honourable and fair.

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**Snapshot questions**

1. **Explain** how Australian families are ‘shifting shape’.
2. **Clarify** whether the financial contribution to households by women has changed over time.
3. **Identify** how families that rely upon women as ‘breadwinners’ fare compared to those that have males as the higher income earners.
4. **Explain** how some families are managing their households so that both parents are able to work.
5. **Assess** how family situations such as those described in the article impact upon Australian people’s living standards.

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"...more than half a million households have the biggest share of family income brought in by a female."
management should be committed to an ethical workplace culture

customers eventually find out which businesses are acting responsibly and which are not.

An ethical framework must be developed for the workplace, in collaboration with the major stakeholders. This framework may include a code of conduct and a code of ethics. Key principles may include ensuring equity in workplace processes, legal compliance and commitment to customers.

The benefits accruing from ethical practices are becoming increasingly evident from research and include the following:

- Staff retention and absenteeism rates improve as staff feel more valued and motivated.
- Business costs (such as recruitment and training) are reduced and business performance is enhanced.
- There are significant marketing and business opportunities — best practice employers enjoy regular publicity in the media, in journals and on the internet.

**BizWORD**

A code of conduct is a statement of acceptable and unacceptable behaviours in a business.

A code of ethics is a statement of a firm’s values and principles.

**BizWORD**

Best practice refers to business practices that are regarded as the best or of the highest standard in the industry.

**Working conditions**

An ethical employer can be expected to achieve safe and fair working conditions that improve the welfare of employees. This is achieved through:

- compliance with social justice and industrial legislation covering areas of work health and safety, anti-discrimination and equity in all aspects of human resources.

- providing a safe and healthy working environment, safe working practices and equipment, appropriate supervision and training in safety and health, without which, workplace incidents may occur (see the following Snapshot)

- creating challenging, interesting and meaningful work to stimulate intrinsic rewards for staff.
Key influences on human resource management

improving communication, and fostering teamwork and empowerment of staff
providing study leave and training opportunities to reduce skills obsolescence and improve access to management positions
offering equitable and open rewards and benefits subject to clear criteria
offering flexible working hours and conditions that promote a balance between work and life
a strategic plan supported by management that incorporates specific ethical responsibilities
implementing change through collaboration with staff
establishing a code of practice for customers, employees and suppliers
evaluating and benchmarking its performance to ensure it is operating at best practice.

Pizza with the works?

A case was brought to a local court in Sydney in which a 19-year-old pizza deliverer charged his employer with assault. The pizza store manager allegedly:
- locked him in the freezer for almost half an hour, ignoring his pleas to be released because of his asthma
- tied the teenager to the bonnet of his car while he drove it back and forwards
- sprayed a fire extinguisher under the door of a toilet cubicle where the teenager was hiding
- hit the teenager in the head, jammed his ankle in a door and cut his face with a wristwatch during a scuffle.

In court, the 27-year-old manager defended his actions, claiming they were part of the teenager’s ‘initiation’ into the company. The manager was found guilty on four counts of criminal assault. He was fined $650 and placed on a 12-month $500 good behaviour bond.

Snapshot questions
1. Identify the ethical and legal issues arising from the treatment of the pizza deliverer.
2. As a class, discuss:
   (a) the adequacy of the penalty
   (b) why some employees engage in ‘initiation’ ceremonies.

Working conditions have come under focus over the last two decades as businesses have increasingly responded to global competition and sought to develop practices that improve efficiency and save on labour costs, which are generally around 60 per cent of most businesses’ costs.

This pressure to become competitive has been reflected in the rapid growth of ‘precarious employment’ — employment that is predominantly casual and part-time — in which employees lack job security; are unable to obtain credit; often work multiple jobs and long shifts; and have no leave entitlements. Many are poor and suffer ‘travel poverty’, commuting long distances to work and on heavily congested highways.

BizWORD
A code of practice is a statement of the principles used by a business in its operations. It generally refers to practices that are seen as ethical or socially responsible.

BizFACT
Investments that are acknowledged as ‘ethical’, have also experienced success, particularly when large occupational investment groups pressure their pension funds to invest in ethical businesses.
Exploitation of adult workers through outworking and subcontracting locally and offshore is often raised as a major ethical issue. Many are concerned about the nature and extent of child labour globally, and what they see as a constant ‘race to the bottom’ to secure the cheapest cost of labour. Businesses argue that many jobs involve a high level of skill and education and only those jobs that are unskilled and offer a major labour cost differential are shifted offshore. They argue that shareholder pressure for ongoing profits requires them to constantly search for more efficient approaches to managing their most costly resource — employees. These factors are behind businesses’ decision to shift offshore.

Businesses are sensitive to consumer concerns due to the success of consumer lobby groups and actions, and media scrutiny. Ethical businesses have responded by demonstrating corporate social responsibility through such strategies as regularly undertaking audits of their factories abroad, and by working with agencies to support ethical practices in their local and offshore operations. In the clothing industry, traditionally renowned for ‘sweatshops’, businesses seek accreditation from agencies such as Ethical Clothing Australia and Fair Wear Foundation.

### Cool clothes for Fair Work

Marina is a journalist writing about Ethical Clothing Australia for a new TV fashion program and website. Steph, Fina, Georgie, Matt and Rocco are friends interviewed by Marina, while out at a club.

**Marina:** Do you know where your clothes are made?

**Steph, Matt:** No idea!

**Georgie:** I made my own! Aussie Aussie Aussie, Oi Oi Oi!

**Marina:** Do you know any labels made in Australia?

**Steph:** Aussiebum?

**Marina:** Yes, and Bardot, Cue, Lisa Ho, Collette Dinnegan, M&BM. We have heard that sales of Aussiebum went up hugely when the story about that other major ‘Aussie’ business moving its production offshore appeared. They sacked nearly 2000 staff in the move.

**Marina:** As future fashion designers, are you aware of how and where our clothes are made?

**Rocco:** (Pulling at Fina’s label) I’ll check out your label Fina! Aha! Made in Vietnam.

**Fina:** It’s cheap, and it’s all I can afford right now. I should really be thinking about why it is so cheap. I guess even a child could have made this overseas. Now you make me feel guilty.

**Rocco:** Well, I know that around 70 per cent of American clothes are made in China, and I think it is around 50 per cent here.

**Marina:** Do you think we can assume all the clothes made here are made ethically too?

**Fina:** I have some friends who run a business here; they design the clothes and then get a contractor to make them. They only do small runs, so they don’t get their stuff made overseas.

**Marina:** Do they know about the conditions worked by the garment workers?

**Fina:** I don’t know how much they ask.
Marina: How many of you are aware that many of the clothes made here are subcontracted to garment workers working at home often earning only $3 per hour?
Steph: Yeh, I know. I have a friend whose mother does it at home; she works around 15 hours a day. She has to stay home because her mum is unwell, so it’s all she can do. She has bad eyesight now and her hands are a mess from the constant strain on her fingers.
Matt: There are sweatshops everywhere, but what can we do about it?
Steph: Well, she could join the union. I’ve told her but she does not want to cause trouble.
Marina: Are you aware of the Ethical Clothing Australia (ECA) program? It is encouraging businesses who use ethical clothing practices to use labelled swing tags on the clothes. All they have to do is get accredited. ECA helps ‘map’ your supply chain and verifies that all workers within it are receiving their legal entitlements. This means anyone who wants to buy from companies who treat employees fairly can see from the swing tag. Big companies such as David Jones are supporting it, and so are the Textile Clothing and Footwear Union of Australia (TCFUA) and the Australian Retailers Association (ARA). If companies see that consumers are supporting ethical companies, here and overseas, and that they are getting government contracts and media attention, others will follow. Would you stay in touch with our website on this in future? What will you all do when you finish your course?
Georgie: Well, I’ll be hassling the company I work for to do that or do it myself. I certainly will be asking about it when I buy clothes in future. I don’t want to be buying things made by kids, and I want anyone who makes my clothes to get a fair deal.
Steph, Fina, Matt and Rocco: We will be following what your website and the ECA suggest too.

Snapshot questions
1. Identify the major concerns consumers have about the fashion industry.
2. Create and conduct a short survey of those around you to investigate:
   a. general views about labour practices in the clothing industry
   b. the level of support for more ethical practices in the clothing industry.
3. Summarise your conclusions and share them with the class.

Summary
• Economic factors have a major impact on the demand for labour and the pressure on wage growth. This affects the role of human resource management in planning to acquire or reduce staff, and in negotiating awards and agreements.
• Globalisation has increased competitive pressures on businesses, with many increasingly recruiting or outsourcing functions offshore.
• Technological change allows many employees to work from home or offshore, and assists business in providing 24-hour support.
• The workforce is increasingly more flexible in working arrangements, with a recent dramatic increase in part-time and casual work.
• The community is increasingly concerned that this flexibility is leading to difficulties for families in balancing their work and life responsibilities.
• Major social factors affecting the workforce today include increasing feminisation and ageing of the workforce.
• Global organisations are increasingly focused on promoting trade between countries and organisations that support ethical employment practices.
• Ethical business practices are those practices that are socially responsible, morally right, honourable and fair.
• Many businesses are realising the benefits of a more committed workforce and good public reputation achieved through embracing the ethical principles of corporate social responsibility.

BizFACT
Australian households spend an average of $19 billion a year on clothing and footwear.
Revision

1 The influences on human resource management include legal, economic, social, technological and ethical influences. Read the following scenarios, which each describe a change in workplace employment practices. Identify the type of influence that may have caused each change and discuss the likely impacts each may have.

(a) An agreement is introduced to allow continuous production and changes in work practices.
(b) Employees are more highly educated today, and seek greater challenges and rewards from work.
(c) Affirmative action awareness is made a criterion for promotion to management positions.
(d) Training in the management of employee complaints of discrimination is provided.
(e) A call centre operating out of Fiji is set up to handle customer service calls.
(f) Three hundred assembly line workers are being retrenched as their jobs are redundant. The human resource management manager may offer younger staff the opportunity to ‘up-skill’ for jobs in other areas of the business.
(g) Australian staff in the Vietnam office are being given cultural awareness training.
(h) Two employees work out of Australia and four work out of the UK in a ‘virtual team’. They hold regular video conferences to develop and improve product design.

2 Identify the correct terms with the appropriate definitions:

- multiskilling
- restructuring
- outsourcing
- productivity
- feminisation of workforce
- corporate social responsibility
- code of conduct

(a) Occurs when a firm changes its organisational structure and functions, often closing down sections or removing jobs that are no longer needed or too expensive for the business to operate.
(b) Involves employees learning new tasks, which allows them to carry out a wider range of tasks in the workplace.
(c) The efficiency of production of goods and services; officially output per unit of input per employee.
(d) The increasing participation of women in the workforce.
(e) Firms hire businesses or consultants to carry out tasks such as accounting or marketing for them on a contract basis.
(f) A statement of acceptable and unacceptable behaviours in a business.
(g) Employers making decisions that consider the welfare of employees and the community.

3 Describe three ways in which structural change is affecting the workforce.

4 Describe three impacts of globalisation on the management of human resources.

5 Demonstrate the (a) positive and (b) negative impact of technology on employees.

6 (a) For three minutes, identify your ideas about the meaning of and the perceptions associated with ‘changing work patterns’.
(b) Select a partner. For about five minutes share your ideas with your partner. Then have your partner share his or her ideas with you.
(c) In your pairs, create a table that records shared views about changing work patterns using the headings: Positive views, Neutral views and Negative views.
(d) Analyse these views and explain each. It is important that you can support each explanation with reliable evidence (not unsubstantiated claims).

7 ‘Having one of the highest living standards in the world has costs and benefits particularly in relation to working conditions.’ Jesse Hancock, consultant, HRM Direct. Discuss. In your answer refer to the report Shifting Risk: Work and Working Life in Australia.

8 In small groups, use the brainstorm technique to determine the human resource management issues that may arise due to economic, technological and social influences. Share your answer with the rest of the class.
9. Write a report for a business magazine entitled *Managing people ethically*.
   
   **Explain** all the reasons corporate social responsibility and ethical practice is important for business today. Give examples from the cases provided in this chapter.

10. Use the *Ethical Clothing Australia* weblink in your eBookPLUS to **investigate** companies who are accredited for ethical clothing practices.

11. Use the *Ethical Clothing Australia* weblink in your eBookPLUS to **investigate** and **discuss** what students at school can do to encourage ethical employment practices in the clothing industry.

**Extension**

1. Collect information from annual reports to **determine** how more businesses today are using a human resource management approach to managing people. To find the annual reports, go to the *Selected Company Websites* weblinks in your eBookPLUS. Using the information, **construct** three cartoons that show a human resource management approach to managing people and three cartoons that show where a human resource management approach is not being used.

2. Use the internet to **investigate** trends in gender equity in Australia. Visit sites such as the Workplace Gender Equality Agency (WGEA). **Construct** a report explaining why gender equity has not improved over the last two decades.

3. Rachel is a human resource consultant. Pretend you are Rachel and write a response to each letter. **Compare** your answers with your classmates.

   **Dear Rachel**
   I have just taken over my parents’ piggery. I have been away studying physics at uni and have no idea about managing a pig farm. There are eight staff members, and some of them have slackened off a lot over the last few months. Two had a big punch-up yesterday. I’m at my wit’s end. How do I start managing all these people? Can I just sack the ones who are the main problem? Who can help me?
   
   Peter

   **Dear Rachel**
   I recently got work in a large supermarket chain. They told me I had to do two days’ trial to see if I was any good at the job, and then they took me on probation for six months. They have not paid me for those two days, and I have only been paid twice. The owner often makes disgusting comments about me. He does the same thing with the other employees too. I really need this job, but I want to be paid on time and not be harassed by my boss. What do I do?
   
   Latife

   **Dear Rachel**
   The toy company I work for is outsourcing the production of electronic dogs to India. Luckily, I am being retrained, but some will lose their jobs. Why doesn’t the government stop this?
   
   Victoria

4. Write a report **analysing** the current state of labour practices in the global clothing industry and why these are a concern for society.

5. **Investigate** the reasons behind the demise of the Australian car industry. **Discuss** the implications of this for Australian workers.

6. Locate the annual report of an Australian company. **Construct** a report for the Board of Directors that evaluates its performance in respect to corporate social responsibility, particularly the management of its human resources.
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