

HEARSAY AH WITH YOUTH LAW AUSTRALIA

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In the second episode of AUSLSS' *Hearsay Ah!* Podcast series, Anastasia Coroneo and Khushaal Vyas from Youth Law Australia ('YLA') provided their valuable insights about the main issues faced by young people, especially international students, when working in Australia, namely **unfair contract terms**, **underpayment of wages**, **workplace bullying** and **sexual harassment**. This article delves into each of these issues, provides illustrations of how they may look in practice, and lists the resources available to address them.

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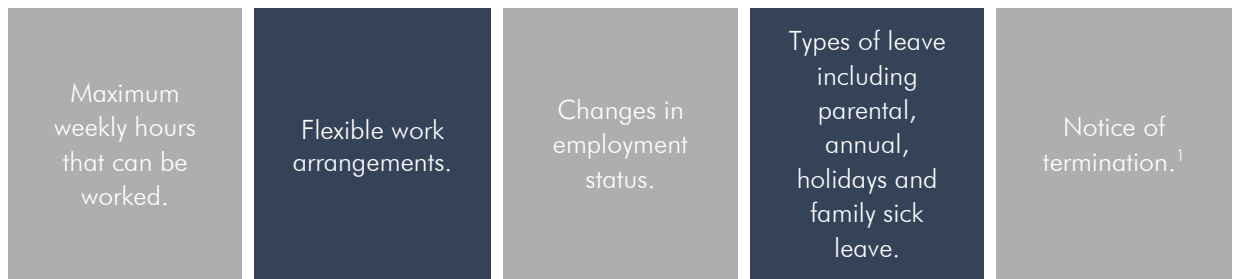
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UNFAIR CONTRACT TERMS

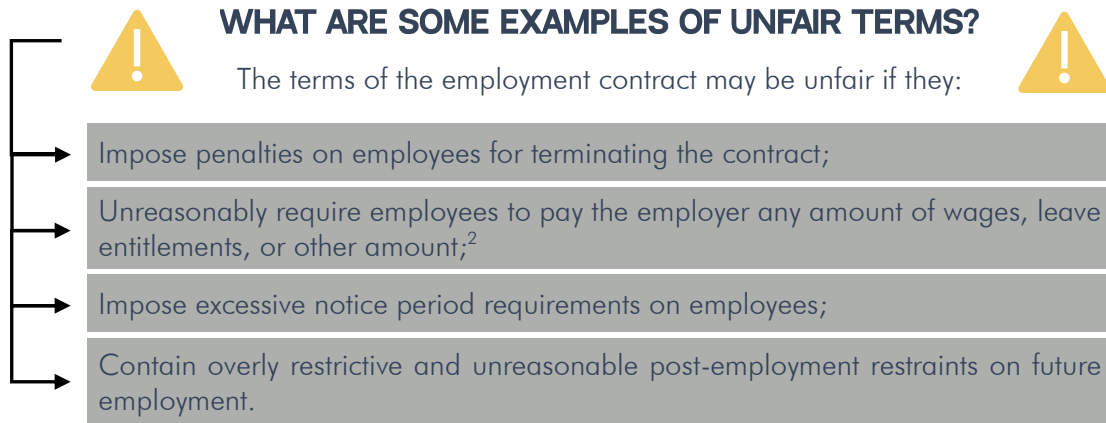


WHAT ARE UNFAIR CONTRACT TERMS?

An employment contract is a written or verbal agreement between an employer and employee, setting out the terms and conditions of employment. Every employment contract must meet the minimum legal standards as set out by the *Fair Work Act 2009* (Cth) and National Employment Standards. These standards apply to various aspects of every employment contract and include:



Employees should be aware that if any terms in their employment contract contravene these minimum standards, those terms would not be enforceable.



WHAT CAN YOU DO IF YOUR CONTRACT CONTAINS UNFAIR TERMS?

If you think that your contract may contain unfair terms, it is advisable to contact YLA, the nearest legal community centre, or any other legal services as soon as possible. There is a general misconception that YLA or community legal services should only be contacted when faced with a significant employment issue (e.g. when responding to a legal action initiated against them). However, as mentioned by Khushaal, it is often better to gain advice from organisations such as YLA about the validity of the contract terms before signing the contract. YLA can also provide legal advice on how the employee can form a new arrangement that better protects their rights.

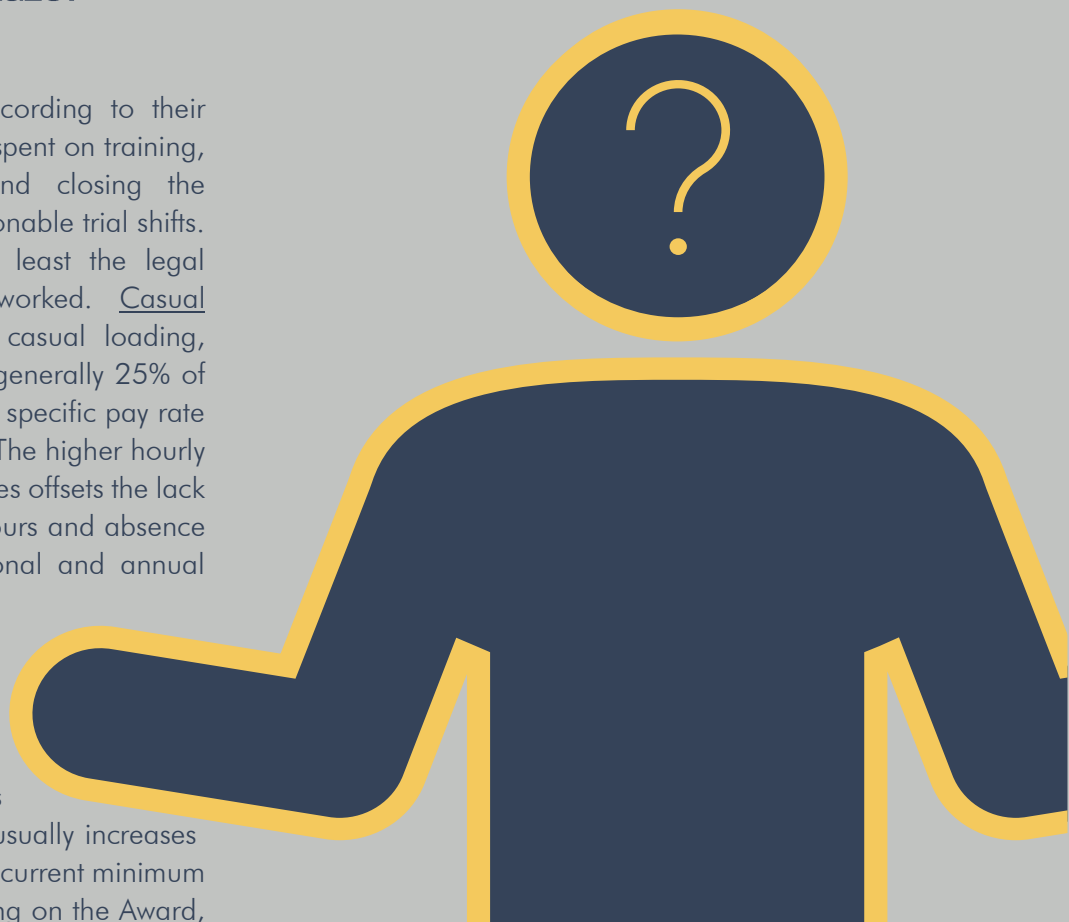
UNDERPAYMENT OF WAGES

WHAT AMOUNTS TO AN UNDERPAYMENT OF WAGES?

Employees must be paid according to their hours worked, including time spent on training, team meetings, opening and closing the business, and working unreasonable trial shifts. Employees must be paid at least the legal minimum rate for hours worked. Casual employees must be paid a casual loading, which is a higher pay rate – generally 25% of the minimum hourly rate, or a specific pay rate for being a casual employee. The higher hourly rate of pay for casual employees offsets the lack of any guaranteed working hours and absence of entitlements to paid personal and annual leave.

The national minimum wage for a full-time/part-time employee aged 21 or over is currently \$23.23/hour. This usually increases every year - you can check the current minimum rate here. However, depending on the Award, role classification and hours worked, the legal minimum rate may be higher than this. For workers under the age of 21, junior rates of pay are usually set out in the applicable Award or Enterprise Agreement as a percentage of the adult rate, with any casual loading to be paid on top.

As such, underpayment captures a range of circumstances where an employee has yet to be paid by their minimum wage, for casual loading, or simply for the total hours worked.



WHAT CAN YOU DO IF YOU HAVE BEEN UNDERPAID?

In the event of underpayment, YLA can provide you with the resources available to calculate the rates of payments. These resources are also available on the Fair Work Ombudsman's website, alongside a list of steps for employees to follow to resolve an underpayment issue.

WORKPLACE BULLYING

WHAT IS WORKPLACE BULLYING?

Workplace bullying involves circumstances in which a person or group of people repeatedly behave unreasonably towards another worker or group of workers, in a way that creates a risk to health and safety.³ It is sufficient for a risk to be posed to a worker's health and safety; it is not required for actual harm to health and safety to have been suffered.⁴



Examples of workplace bullying include but are not limited to:⁵

- Spreading malicious, rude, or inaccurate allegations about someone;
- Behaving aggressively towards others;
- Teasing or playing practical jokes;
- Verbal or physical abuse;
- Excluding someone from work-related events;
- Conducting an investigation in a grossly unfair manner;
- Unreasonable work demands.

Consequently, workplace bullying may inflict harm on the targeted individual. The consequences may differ based on individual traits and particular circumstances and may include:⁶

- Depression;
- Emotional distress, anxiety, panic attacks, or disruptions in sleep patterns;
- Physical ailments such as muscular tension, headaches, fatigue, nausea and digestive issues;
- Diminished self-esteem and self-confidence;
- Sense of isolation;
- Strained relationships with colleagues, family, and friends;
- Adverse effects on work performance, concentration, and decision-making skills;
- Suicidal thoughts.



WHAT CAN YOU DO IF YOU EXPERIENCE WORKPLACE BULLYING?

If you are experiencing workplace bullying, you should find out if the workplace has any policies or processes about dealing with bullying and harassment and follow those if you wish to make a complaint. It is a good idea to keep a written account of dates, times, and details of any incidents as examples of workplace bullying.

If bullying remains unaddressed by the workplace and you are still working there, the Fair Work Commission can make orders to Stop Bullying but cannot order any compensation. For more information about who can make an application to the Fair Work Commission to Stop Bullying, see: <https://www.fwc.gov.au/form/apply-stop-workplace-bullying-form-f72>

If you are being bullied because of a particular attribute that is legally protected under anti-discrimination laws, e.g. national or ethnic origin, disability, gender, pregnancy etc, or if you feel you have been punished in some way for making a complaint about how you are being treated at work, you should seek legal advice about your options to make a complaint to the Fair Work Commission, Australian Human Rights Commission or state-based anti-discrimination commissions listed below:

VICTORIA



**Victorian Equal Opportunity
& Human Rights Commission**

TASMANIA



**Equal Opportunity
Tasmania**

NEW SOUTH WALES



**Anti-Discrimination
New South Wales**

QUEENSLAND



**Queensland
Human Rights
Commission**

SOUTH AUSTRALIA



**Government of
South Australia
EQUAL OPPORTUNITY SA**

ACT



**ACT HUMAN RIGHTS
COMMISSION**

NT



**Northern Territory
Anti-Discrimination Commission**

Lastly, workplace bullying may also contravene health and safety laws. Employers must maintain a working environment safe from 'workplace injuries'.⁷ Such a requirement protects employees from sustaining physical and psychological injuries during employment. Affected workers should consider contacting WorkSafe to inquire about the applicability of the relevant work health and safety law.

- VIC: [WorkSafe Victoria](#)
- TAS: [WorkSafe Tasmania](#)
- NSW: [SafeWork New South Wales](#)
- QLD: [WorkSafe Queensland](#)
- SA: [SafeWork South Australia](#)
- ACT: [WorkSafe ACT](#)
- NT: [NT WorkSafe](#)



SEXUAL HARASSMENT

WHAT IS SEXUAL HARASSMENT?

If you have been sexually harassed in your workplace, YLA can confidentially discuss available options and offer further assistance, for example helping you to make a complaint to your employer or external agencies such as the Fair Work Commission, Australian Human Rights Commission or state-based anti-discrimination commissions as mentioned above.

Conduct that constitutes sexual harassment includes but is not limited to:

- Suggestive comments or jokes;
- Intrusive questions about a person's private life or physical appearance;
- Unwanted invitations to go on dates, requests or pressure for sex or written declarations of love;
- Inappropriate physical contact.⁸

Some forms of sexual harassment may also constitute workplace bullying if the behaviour is repeated or continuous.

WHAT CAN YOU DO IF YOU HAVE BEEN SEXUALLY HARASSED?

If you have been sexually harassed in your workplace, YLA can aid with escalating the issue to your employer. As explained by Anastasia, YLA was able to assist an employee who was sexually harassed with writing a complaint to their employer, which helped to draw the employer's attention to their legal responsibilities and initiate a swift investigation against the perpetrator.

Alternatively, YLA can assist with drafting sexual harassment complaints to be lodged with the Commission or anti-discrimination bodies, as mentioned above.

YLA Contact Information

- If you are under 25, or an advocate for a minor under the age of 18:
 - And need legal advice, [click here](#).
 - You may call YLA on 1800 950 570 between Tuesday – Thursday, 10 am to 4 pm (AEDT).
- If you are under 25, or an advocate for a minor under the age of 18, and you live in NSW, ACT or NT and have a question about your workplace, you can call YLA's Young Workers' Rights Service on 1800 953 673 between Monday – Friday, 9 am to 5 pm (AEDT).
- If you are a student at the University of Tasmania, you can call YLA on (03) 7032 8200 between Monday – Thursday, 9 am to 5 pm (AEDT).

REFERENCES

- ¹ See *Fair Work Act 2009* (Cth) pt 2–2 (*'Fair Work Act'*).
- ² *Ibid* s 325.
- ³ *Ibid* s 789FD(1).
- ⁴ Fair Work Commission, *Stop Bullying Benchbook* (2023) 22.
- ⁵ *Ibid* 21–2.
- ⁶ *Ibid* 21–2; House of Representatives Standing Committee on Education and Employment, Parliament of Australia, *Workplace Bullying: We Just Want It To Stop* (2012) 12–3.
- ⁷ Safe Work Australia, *Guide for Preventing and Responding to Workplace Bullying* (Guide, 1 May 2016) 8.
- ⁸ Fair Work Commission, *Sexual Harassment Disputes Benchbook* (2023) 25.

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