



The Right to Disconnect

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The Right to Disconnect

From August 26, 2025, an additional 5.4 million Australians working for small businesses will have the **“right to disconnect”**. This will include most real estate agencies.

What is the right to disconnect?

The right to disconnect is a legal workplace right in Australia, enshrined in the Fair Work Act 2009, that allows employees to refuse to monitor, read, or respond to work-related contact (such as phone calls, emails or messages) outside their standard working hours, provided their refusal isn't unreasonable. It is not a complete ban on contact, but rather a way to prevent the regular and systemic intrusion of work into their personal time. The new right does not make out-of-hours contact unlawful, but it does give employees the right to ignore it if their refusal isn't unreasonable.

The Fair Work Commission oversees the implementation and disputes related to this right. This includes contact (or attempted contact) from an employer or a third party. This right, aims to improve work-life balance and reduce burnout by preventing employees from being pressured into being constantly available for work.

This right became effective for larger businesses in August 2024 and expanded to include small businesses

with fewer than 15 employees in August 2025, following the Closing Loopholes Act. The right to disconnect protects against the constant pressure of work-related demands in the digital age, by allowing employees to enjoy personal time without the expectation to monitor, read, or respond to work communications.

What it means for employees?

The right to disconnect now gives employees the legal right to not monitor, read or respond to work-related emails, texts, calls, or message outside of their agreed working hours. Moreover, an employee is not required to answer out-of-hours contact if the refusal is reasonable.

An employee's refusal to respond is considered unreasonable if it falls into a category where the employer's needs outweigh the employee's right to disconnect.

An employee's refusal to engage with out-of-hours contact is considered unreasonable if:

- the contact is required by law
- the contact is related to a genuine and serious work emergency or critical outage that requires an immediate response
- there is sufficient compensation or payment for being available



What it means for employers?

For employers, the right to disconnect means they cannot expect employees to read, monitor, or respond to work-related communications outside their working hours unless it is reasonable to do so. Employers must be mindful of employee well-being, consider the reasonableness of the after-hours contact by assessing factors such as the reason for the contact, level of disruption and the employee's role before making contact. Employers need to foster a culture where after-hours contact is minimised, and expectations regarding availability are clearly communicated and managed.

Factors for determining unreasonableness?

An employee's refusal to engage with out-of-hours contact is generally protected unless that refusal is considered unreasonable in the circumstances. When determining if a refusal is unreasonable, The Fair Work Act lists specific factors for consideration:

- the reason for the contact
- the level of disruption the contact causes to the employee
- the employee's role, level of responsibility, and personal circumstances, for example; their caring responsibilities
- any compensation received for working extra hours or being on-call

How to implement the right to disconnect?

Employers are now encouraged to develop clear policies and guidelines that support the right to disconnect and help prevent employee burnout.

Employers should discuss what out-of-hours contact means and establish clear expectations with their managers and employees. Employers may also need to update their employment contracts and workplace policies and procedures to define expected out-of-hours contact and clarify any compensations for the roles requiring it.

This new legislation is interesting in the property industry, as much of the work of an agent is conducted out of what is regarded as normal hours. This is why it is essential to have workplace policies that address the issue and how agents will work within their expectations and also the requirements of their customers to receive the appropriate property-related services.

For further information regarding the right to disconnect, visit

www.fairwork.gov.au

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