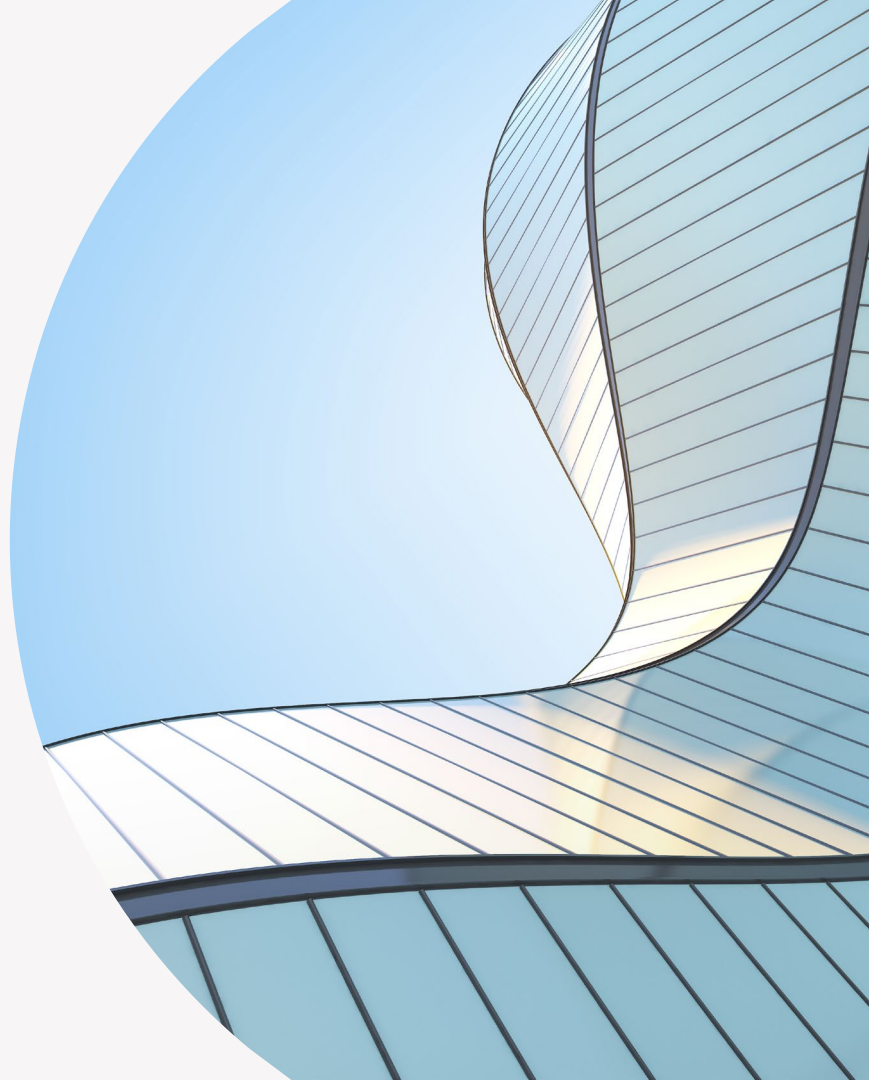


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Insurance Seminar Series

**Where employment law meets insurance risk:
What's driving EPL claims?**

Joydeep Kaur



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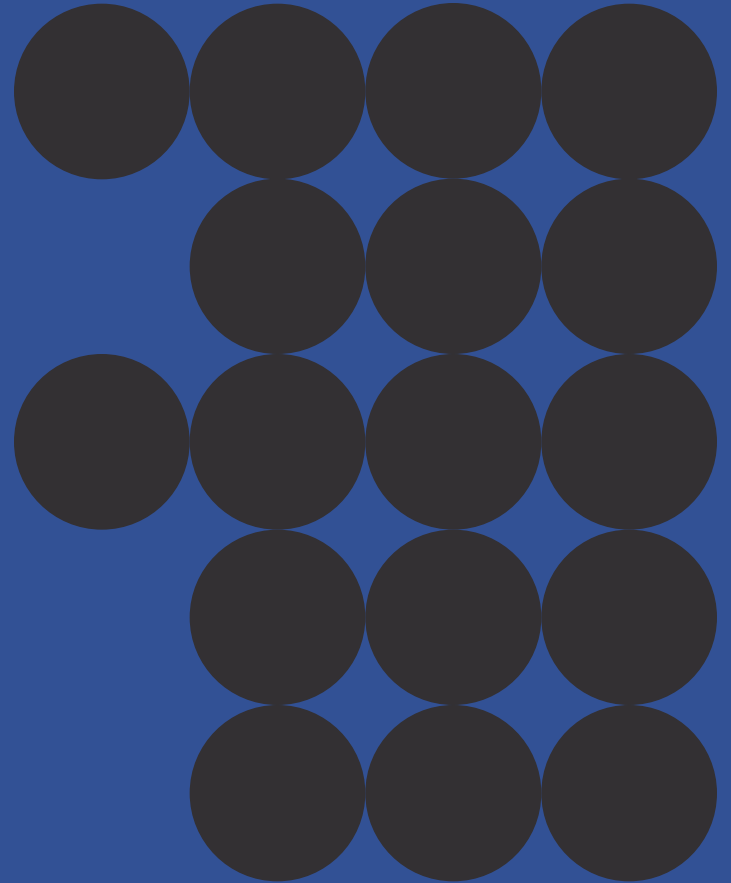
**Where employment
law meets insurance
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EPL Risk Landscape



Cost of EPL Claims

- Defence costs often exceed claim value
- Sometimes exceed settlement value
- Costs increase due to multiple legal risks involved at the same time.



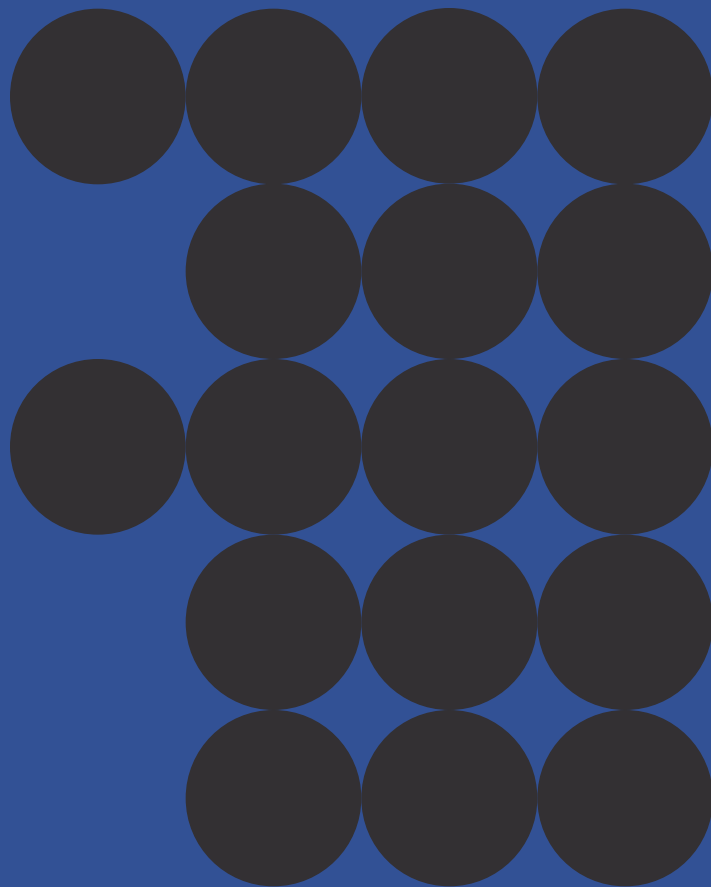
Claim Escalation Path



Many claims are effectively lost at an early stage.

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High-Risk Claim Categories



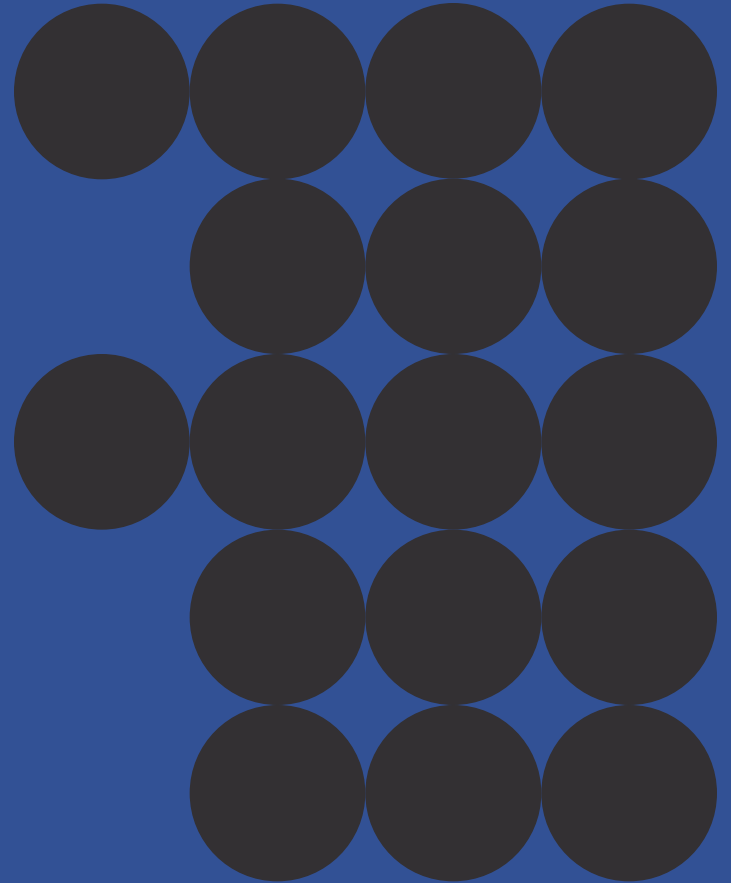
High- Risk Categories

- Psychosocial and stress-related claims
- Harassment and bullying claims
- Adverse action claims
- Discrimination claims



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Psychosocial Hazards



Common Claims

- Mishandled harassment complaint
- Mishandled bullying complaint
- Stressed or overworked employee

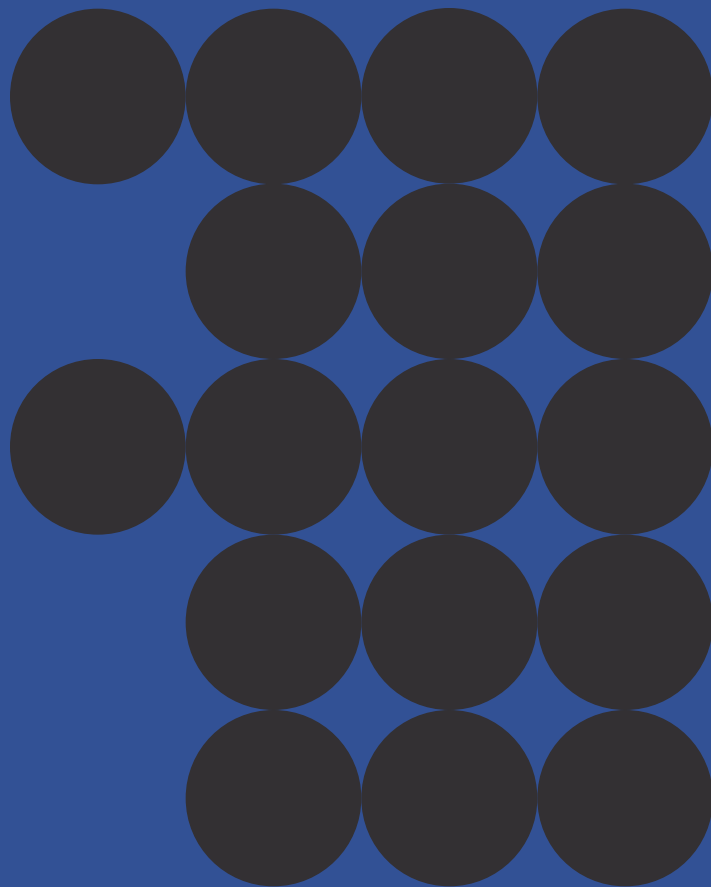
Common Issues

- Poor investigation
- Delayed response to complaints
- No risk assessment
- Poor documentation
- Managers not trained to recognise psychosocial risks



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Restructures



Helensburgh Coal v Bartley & Ors [2025] HCA 29

Key Facts:

- Employees worked at the Metropolitan (Helensburgh) Coal Mine in NSW
- 90 redundancies in June 2020 due to impact of COVID-19
- Work outsourced to contractors
- Union urged the employer to insource contractor work and some "insourcing" was agreed but not all contractor agreements were terminated

Outcome:

- Employer was unsuccessful - not a case of genuine redundancy
- Reasonableness must be assessed on all the circumstances, and there is no prohibition on considering contractor work as potential redeployment pursuant to s389(2) of the *Fair Work Act*
- "all the circumstances" in s389(2) is a deliberately broad test
- Redeployment into contractor work may be reasonable

Pilbrow v University of Melbourne [2024] FCA 1140

Key Facts:

- The employee (a lecturer) was employed by the University of Melbourne
- The University undertook a departmental restructure. Her position was made redundant, and after a redeployment process failed, her employment was terminated.
- Applicant alleged that redundancy was due to complaints she made
- Appeal of the FCFCOA decision
- Key issue on appeal - the identification of the relevant decision maker(s)

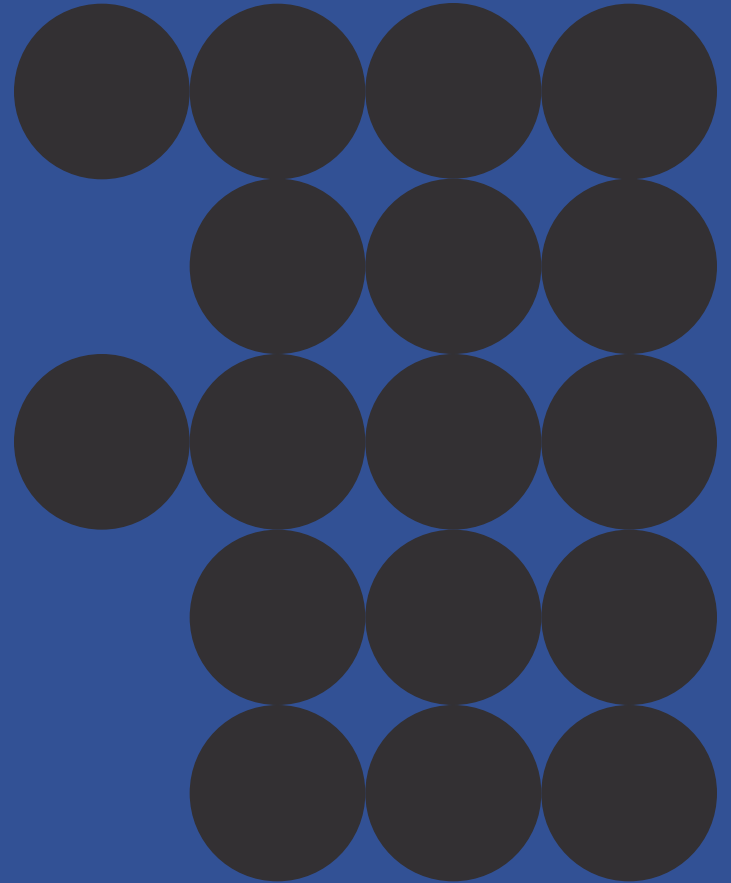
Outcome:

- The Court held that neither party had clearly identified which individuals made the decision
- Identifying the individuals involved in decision making critical to the successful reversal of the onus of proof placed upon the University
- The University did not provide sufficient evidence as to who made the decision in relation to the Applicant's conduct allegations
- Appeal partially allowed.

"by neglecting to call evidence about the state of mind of someone who is thought to have played some role in taking it, a respondent has failed to rebut the presumption cast against it"

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Performance Management



Roohizadegan v Technology One Ltd (No 6) [2025]

FCA

Key Facts:

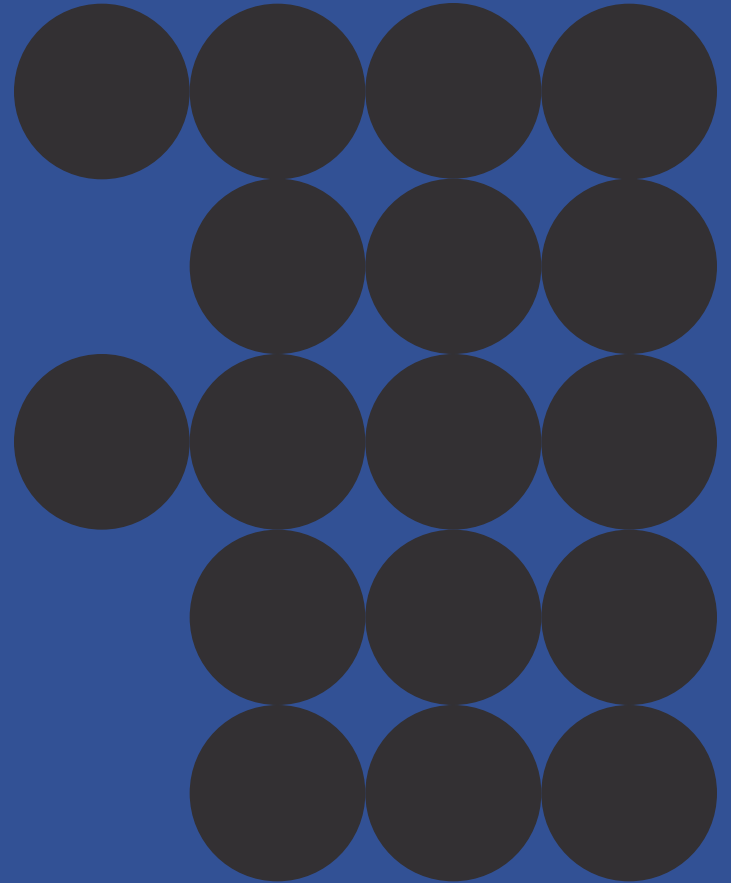
- Former senior manager worked at software company TechnologyOne for a decade from 2006 but claimed to be bullied from 2016 by senior executives.
- On May 18, 2016, the Applicant was invited to the Brisbane office to meet with the CEO
- The Applicant thought the meeting was to address his accusations of bullying but instead his employment was terminated due to performance concerns

Outcome:

- The Court held that the Applicant had failed to establish some of the workplace right claims as objective facts.
- For the balance of the workplace right claims that were established as objective facts, the Court held that Technology One had rebutted the presumption under s 361 of the *Fair Work Act*.
- The Court accepted that the reasons for the termination of employment were 'perfectly lawful', including because of the Applicant's 'well-established and documented poor economic performance', his 'persistent inability to accept decisions' of senior managers, an 'inability to integrate into organisational change', and a 'damning assessment of morale and employee relations' that had been made by the then human resources business partner.

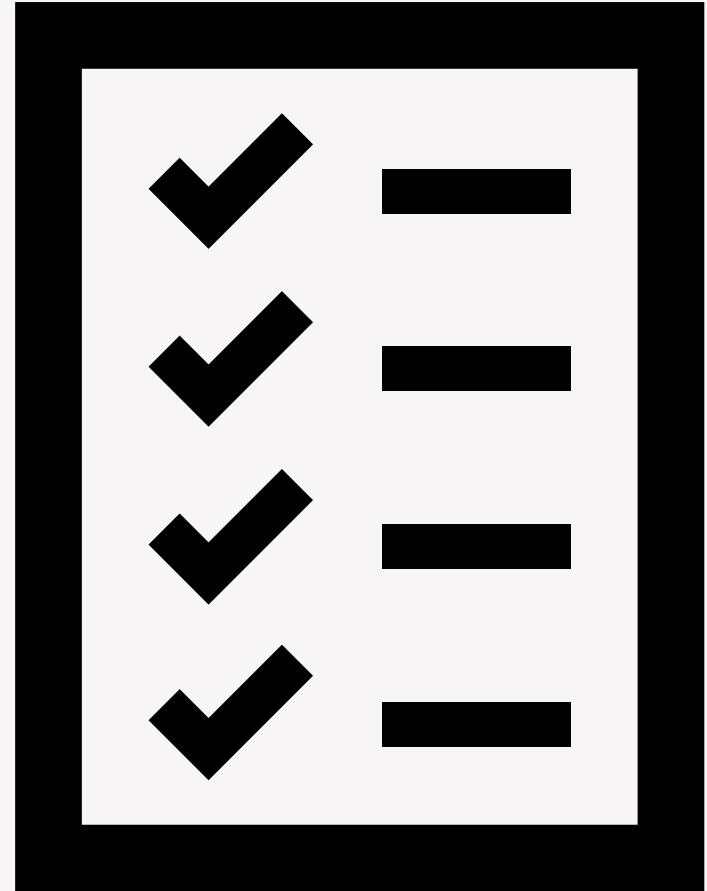
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Reducing EPL Risk



Reducing Risk

- Early investigation
- Appropriate escalation
- Early intervention
- Clear documentation
- Training for managers



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Thank you.

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