

The right to disconnect is coming to Australia—what does this mean for you?

July 30 2024, by John L. Hopkins



Credit: Ketut Subiyanto from Pexels

Next month, changes to the Australian Fair Work Act will give workers the [formal right](#) to disconnect from all work communication outside their usual work hours.

The main driver for introducing "right to disconnect" laws has been to protect the health and well-being of workers in an increasingly hyper-connected world.

But what exactly will the new laws mean for Australian businesses, managers and employees?

Right to disconnect origins

Right to disconnect laws were first introduced in [France](#) in 2017 in response to concern about the welfare of workers who were increasingly connected to their workplaces as a result of expanding [digital technologies](#).

France introduced a law requiring companies with more than 50 employees to negotiate agreements with staff on their rights to ignore their smartphones and other [electronic devices](#) after [work hours](#).

The [reaction](#) was mixed. Some praised the move for promoting work–life balance and reducing stress, while others raised concerns about its potential impact on productivity and competitiveness.

One critic at the time said, "The French may quickly discover that their most productive workers are routine 'lawbreakers' who stay connected during off-hours."

To learn more about this topic, [I reviewed 21 academic articles on the right to disconnect](#), from 15 different countries over the past seven years, and identified several themes that may help Australian managers.

The 'always on' culture

The growth of digital devices—including smartphones, laptops, tablets and smart watches—means many Australian workers have been working way beyond their contracted number of hours for many years.

A 2023 Australia Institute [study](#) estimated Australian workers on average were doing an extra 5.4 hours of unpaid work per week.

The unofficial encroachment of work duties into workers' personal time—also called "availability creep" or "time theft"—equates to an extra 281 hours' unpaid work per year.

This is estimated to be costing workers an average of AU\$11,055 annually. It has led to serious concerns for employee health and welfare, [work-life balance](#) and workplace exploitation.

The post-pandemic rise of flexible work arrangements in Australia, while offering many [lifestyle and health benefits](#), may also contribute to our "always on" culture and expectations to be constantly available and contactable.

This [digital presenteeism](#) has been found to affect the health of workers in different ways, including causing headaches, eyestrain, insomnia, back pain, anxiety and burnout.

Protecting workers

Another key theme of the right to disconnect laws is how working time, work availability and rest times are observed.

[Portugal has even taken things a step further](#) than other countries, placing the responsibility for the right to disconnect on the employer, by implementing "refrain from contact" laws. This means companies with more than ten employees can be fined if they text or email staff outside

their contracted hours.

However, the new Australian law won't restrict managers from contacting employees whenever they wish, but it will give their employees a [legal right](#) to refuse to "monitor, read or respond to communications from an employer or third party made outside their working hours, unless refusal is unreasonable."

If an employee chooses not to respond, [disciplinary action](#) cannot be taken, nor can the employee be treated differently, such as through rostering or performance requirements, for deciding to disconnect.

This should encourage conversations about what represents reasonable contact. The Fair Work Commission says this must be based on the reason for contact, the employee's personal circumstances, the nature of the employee's role and responsibilities, and whether the employee is being compensated for being available outside ordinary work hours.

Making the change

In some countries, right to disconnect policies have been formally set in law, while others rely on self-regulation by employers instead.

France, for example, legislated out-of-hours' electronic communication between employers and employees through statutes and legislation, meaning government entities are required to enforce the right and a court is needed to interpret it.

Germany, on the other hand, does not formally legislate disconnection provisions, but many of its companies (including car manufacturers [Volkswagen and Daimler](#)) already have their own regulations in place.

In Australia, the right to disconnect will be a right under [general](#)

[protection laws](#). Disputes about an employee's response will need to be discussed and resolved at the workplace level but, if a resolution isn't possible, employees or employers can [take the case to the Fair Work Commission](#).

The commission can then make orders or deal with the dispute in other ways.

What to expect

The [new laws](#) come into effect 26 August.

They are an important step towards encouraging sensible conversations about the importance of rest, availability, and whether it is necessary to contact workers outside their normal hours.

Right to disconnect laws should challenge managers to create a work culture where employees feel comfortable disconnecting from work and understand the importance of maintaining a clear boundary between work and rest, where their rest periods are formally respected and preserved.

As an initiative for supporting improved digital well-being and work-life balance, in today's hyperconnected world, clearer boundaries between working time and rest are crucial.

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