

BRIEFING NOTE: RIGHT TO DISCONNECT

As of 26 August 2024, employees of non-small businesses (15 employees and over) have the right to refuse to monitor, read or respond to contact (or attempted contact) outside their working hours, unless doing so is unreasonable.

This includes contact (or attempted contact) from an employer or a third party.

The law will apply to all businesses as of 26 August 2025.

The Pastoral Award has been varied to include the right to disconnect in clause 6A.

What is contact?

Contact may be calls, emails, texts, social media and messaging services or in person.

What is unreasonable?

When working out whether an employee's refusal is unreasonable, the following factors must be considered:

- the reason for the contact
- how the contact is made and how disruptive it is to the employee
- how much the employee is compensated or paid extra for:
 - being available to perform work during the period they're contacted, or
 - working additional hours outside their ordinary hours of work
- the employee's role in the business and level of responsibility
- the employee's personal circumstances, including family or caring responsibilities.

Other matters may also be considered.

It is unreasonable for an employee to refuse to read, monitor or respond if the contact or attempted contact is required by law.

In farming and in the dairy industry this issue is unlikely to come up very often as all work is performed on farm.

Contact after hours to rearrange a shift which needs to be resolved overnight would not be unreasonable.

With respect to managers, the contract should specify that reasonable additional hours will be required to be worked and that managers are remunerated for this in the salary.

Employers and employees should have a conversation when the employment commences (or as soon as possible if the employment has already commenced) about out of hours contact and set expectations that suit the workplace and the employee's role.

The right to disconnect is a Workplace Right and employees may bring legal proceedings against an employer if they feel that they have been treated adversely.

The Fair Work Ombudsman has prepared a Right to Disconnect Fact Sheet to help employers and employees to understand this new initiative.

Go to the following link for further information <https://www.fwc.gov.au/documents/resources/right-to-disconnect-fact-sheet.pdf>