



GOVERNANCE RISK & OPERATIONS

Right to Disconnect: It Doesn't Ban Contact. It Protects the Refusal to Answer

Since 26 August 2025 it applies to small business employers in the national system too. If your association employs staff, check what it requires

The right to disconnect extended to small business employers from 26 August 2025, meaning associations that employ staff under the national workplace relations system, including those with fewer than fifteen employees, have now been covered for over a year, whether or not their internal policies have caught up with the change.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

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The Widely Misunderstood Scope Of This Right

Despite common media framing, this right does not prohibit an employer from contacting staff outside working hours at all. It is not unlawful for an association to send an out-of-hours email or message. The right sits specifically with the employee: they may refuse to monitor, read, or respond to that contact, unless the refusal is unreasonable, having regard to factors such as the reason for the contact, how disruptive it is, any compensation for being available, the employee's role and their personal circumstances. This is a meaningfully different legal position from an outright contact ban, and a board communicating this right internally should be precise about what it actually protects, rather than repeating the simplified, and inaccurate, version many people have absorbed from general media coverage.

The Specific Counting Rule Worth Knowing Precisely

Determining whether your association counts as a small business employer for this specific purpose has its own precise counting rules, distinct from other small business thresholds discussed elsewhere in this series. Employees of any associated entities of your association are included in the count, and casual employees are excluded unless engaged on a regular and systematic basis. An association sitting close to the fifteen-employee threshold should count carefully using these specific rules rather than assuming a headcount used for a different legal purpose automatically applies here too. This right also extends beyond direct employer contact. It covers work-related contact from third parties as well, a client or a member reaching a staff member's personal phone outside working hours on association business falls within the same protection.

How A Dispute Actually Gets Resolved

Where a disagreement arises about whether a particular refusal was reasonable, the parties must first attempt to resolve it at the workplace level before it can be referred to the Fair Work Commission. The Commission holds broad powers to resolve such a dispute, including issuing stop orders, but it cannot order the payment of money in resolving a right to disconnect dispute, although an employee may have other remedies, such as a general protections claim. Modern awards have also been varied to include specific right to disconnect terms relevant to different industries and occupations, and an association should check whether its own applicable award contains provisions relevant to how this right operates in its specific workplace.

- Confirm your association's employee count using the specific counting rules for this right, including associated entities and the regular and systematic casual test, rather than a headcount used for a different legal threshold.
- Communicate the right accurately to staff and managers, making clear this does not prohibit after-hours contact but gives employees a right to reasonably decline engaging with it.
- Check whether your applicable modern award contains a specific right to disconnect term relevant to your industry, since these vary by occupation and sector.
- Encourage workplace-level resolution of any disagreement about a specific refusal before it escalates, given this is the required first step before Fair Work Commission involvement.
- Review any internal expectation around after-hours availability, particularly for senior or on-call roles, ensuring these expectations are reasonable rather than assumed without question.

The right to disconnect now applies to every association that employs staff under the national workplace relations system, regardless of size. If your association is in Western Australia and is not a trading or financial corporation, check whether it is covered by the state system instead. Understanding what it does and does not protect allows a board to communicate it accurately, rather than either overstating it as a contact ban or understating an employee's right to reasonably switch off. This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

Annie Gibbins

Founder and CEO, Nexus Leadership

BOARDROOM ACTION WORKSHEET

Right to Disconnect: It Doesn't Ban Contact. It Protects the Refusal to Answer

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

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