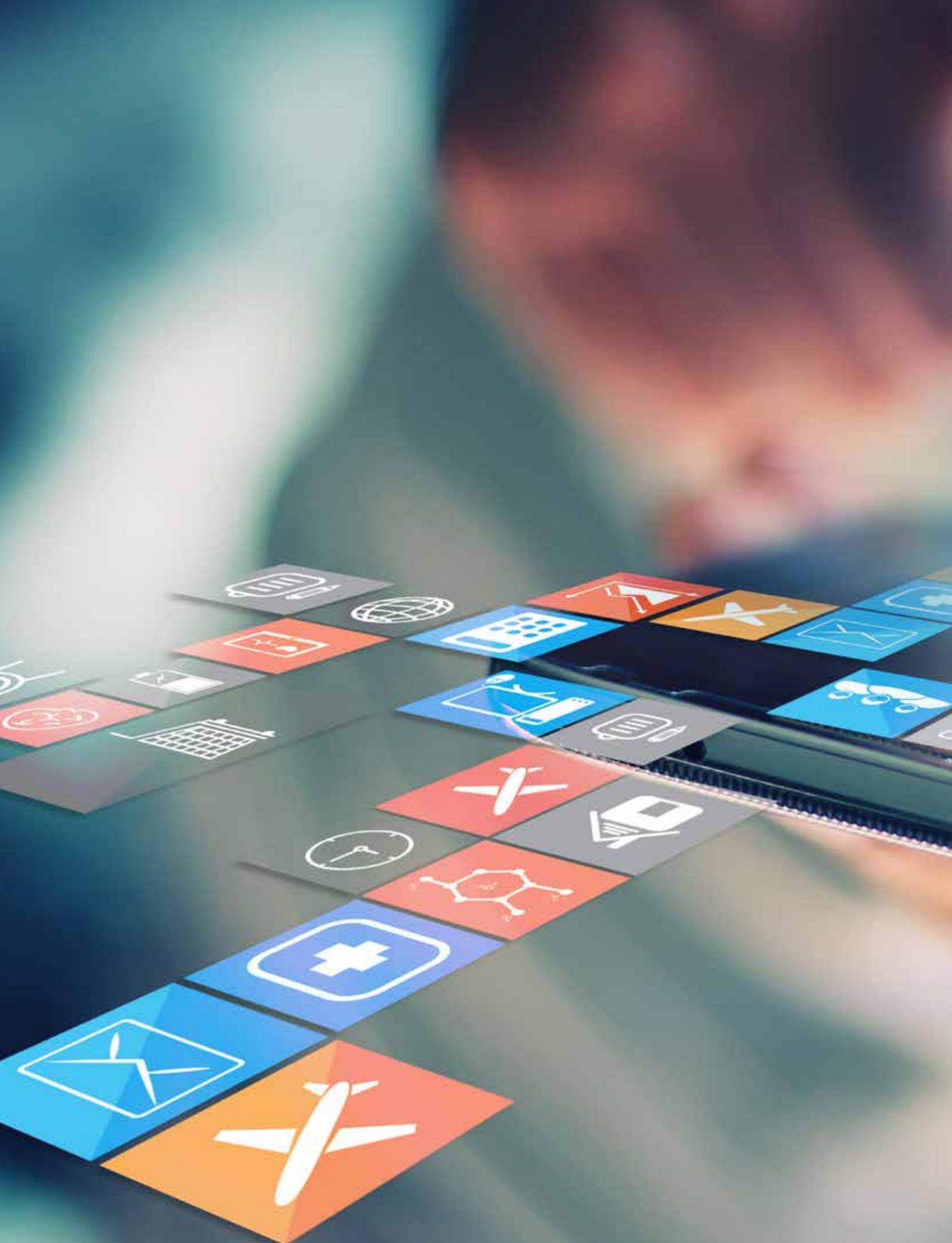


The 2016 *WorkplaceInfo* Social Media Index

An HR Professional's Guide to Making Australian Workplaces More Productive





INTRODUCTION

Social media. It's everywhere – including Australian workplaces. Love it or hate it, most HR professionals not only have to deal with it, they actually need it – whether it's for recruiting the right person, improving internal culture and communication, or highlighting the positive public profile of your organisation.

If you hate it, it's probably because you've come up against its negative side. You may be blocking access to sites such as Facebook because of its time-wasting potential, or because you're dealing with bullying using social media which, as our research uncovered, is occurring in one out of every four Australian organisations.

A tool for conflict

In the past five years, Australian HR professionals have increasingly had to manage issues that are being fuelled by social media – it has become another tool used by employees, employers and other workplace participants when they're in conflict.

Some of the cases which have been in the courts in these past few years have involved employees disparaging their employers¹, defamation², harassment³, bullying⁴ and threats⁵. Employees have been dismissed for making comments on social media which they thought were private⁶, for supporting and 'liking' Facebook complaints⁷, for excessive use of social media⁸ and for refusing to sign the company's social media policy⁹.

Where do you draw the line?

The wide range of workplace incidents involving social media suggests employers and employees are still working out what is acceptable behaviour towards others using social media tools and where the line is drawn between private and work-related conduct. Clearly, defamation, harassment, bullying and threats are never acceptable behaviour, but social media has allowed what may once have occurred privately, or only within an organisation's four walls, to become public and have wider consequences for the employees and organisations involved.

Employees are entitled to have personal opinions, including political ones, but employers sometimes have an interest in those opinions, for example where they relate to industrial matters.

Recruiters and employers increasingly view job applicants' social media profiles but there are concerns¹⁰ over whether this leaves an employer open to adverse action claims if employment is not offered to a person based on their race, religion, political opinion, sex, marital status, sexual orientation, age, family responsibilities, national extraction or social origin.

Reporting from Australian HR professionals

These are just some of the issues facing Australian HR professionals and their organisations and the 2016 WorkplaceInfo Social Media Index reports how they are dealing with them:

- We describe 8 major findings from 371 diverse organisations around how their employees use social media and how they deal with problems arising from this use.
- We explore some important legal issues relating to social media use that employers encounter
- We also explore new frontiers in recruitment using social media, and
- We hear about the dark side of social media from an expert in cyberbullying.

Read on to see how Australian organisations are dealing with social media today – you may be surprised.



Alison Williams

Managing Editor
WorkplaceInfo

8 MAJOR FINDINGS

FROM THE 2016 *WORKPLACEINFO* SOCIAL MEDIA INDEX

01 Social heaven – most Australian employees use social media at work

- **43%** of employers monitor their employee's internet use
- **Only just over half** of Australian organisations (56%) allow their employees to access social media on work-supplied devices
- **13%** of organisations block access to social media sites
- Others **allow employees to access social media sites** during breaks and before/after work
- **Not all have guidelines on what constitutes appropriate sites and usage.** Those that do have requirements such as signing a consent policy and needing authorisation for access
- **LinkedIn is the most popular site** which is freely available to employees on work devices, followed by Facebook. LinkedIn is used by more than half of respondents for advertising roles and by nearly half for reviewing candidates' profiles
- **Only 8% report not using LinkedIn at all**
- **Facebook is used by one-third of respondents for advertising roles**, but less than one in four use it for checking candidates' profiles
- **Instagram, Pinterest and other social media are yet to penetrate this space**

02 Many Australian organisations have social media policies and practices in place... but most lack policies specifically around social media contact lists

- **40% of organisations have a written social media policy** that is well-communicated and enforced
- **35%** either don't provide any training on their social media policy, or merely tell their staff to read the policy without training them on it
- **Only 20% have policies which cover the ownership of social media contact lists directly related to work in their organisations.** Medium-sized employers are particularly poor in this area

03 And most employment contracts specify who owns employees' intellectual property

- **More than 80% of employers** have employment contracts that state who owns intellectual property created by employees during their employment

04 What would Australian employers do if employees made disparaging comments about other employees on Facebook?

- **48% would talk to the perpetrator**
- **48% would take a more nuanced approach, including:**
 - » 24% would investigate
 - » A further 35% would instigate a formal disciplinary investigation
 - » 7% would issue a warning and ensure the victim received an apology
 - » Some say they would respond depending on the situation

05 What if employees are slandering someone outside the organisation via Facebook or Twitter?

- **16% would do nothing**, considering it is not their business, exposing their employer to reputational risk
- **37% of respondents would tell the employee to stop it**
- **46% would take a number of other actions, such as:**
 - » Investigate and warn if necessary
 - » Talk to them
 - » Make a situational assessment based on whether a link to the employer can be made

06 How do Australian employers handle employees posting inflammatory comments on a political website?

- **Employers clearly make a distinction** between slandering another person via social media and taking a political position on social media, however extreme
- Many employers (**44%**) said they would talk to the employee in this instance, but **22% would do nothing and consider it was not their business**

07 Experiencing the dark side of social media

- **23% of organisations have experienced bullying** of their employees via social media
- **38% of bullying** primarily involved employees making “inappropriate”, “derogatory” and “disparaging” comments about their co-workers
- **11% of employees’ comments** were directed towards their managers
- **11% of instances** involved harassment of an employee by someone external to the organisation
- **Harassment of employees by colleagues has included:** stalking, threats, releasing information about a co-worker, group bullying, posting of inflammatory material and posting of videos and photographs

08 Less than half of employers are using collaborative social tools

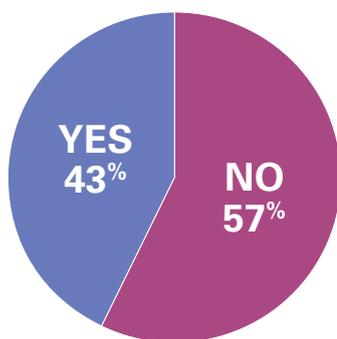
- **Only 39% of organisations** use collaborative social tools to organise their work groups and enhance organisational communication by connecting work colleagues

2016 WORKPLACEINFO SOCIAL MEDIA INDEX

The 2016 WorkplaceInfo Social Media Index reports on the responses of 371 Australian human resources professionals, along with a few business consultants, academics, executives, business owners and company directors to a survey conducted during February 2016. Here are highlights from the report.

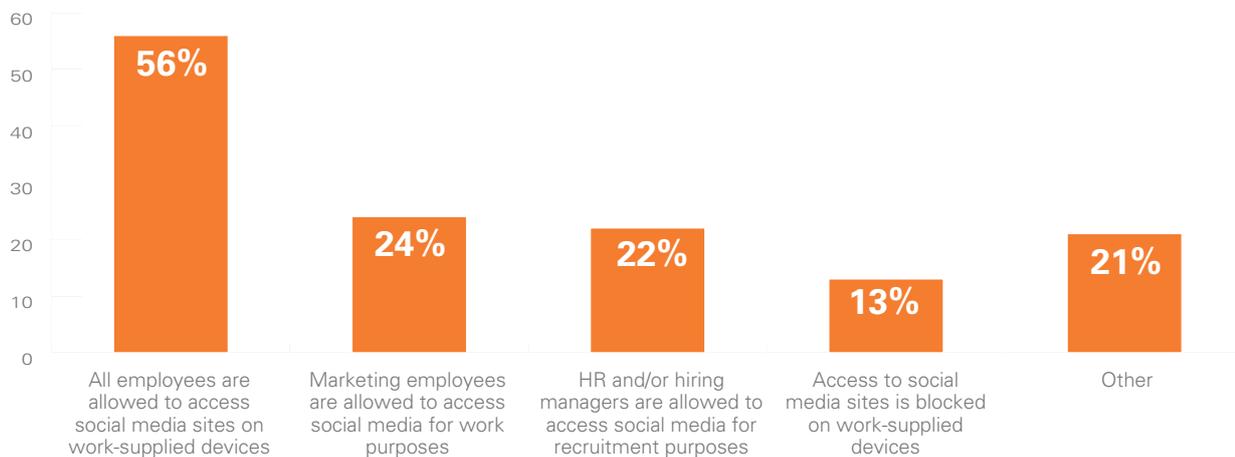
EMPLOYEE USE OF SOCIAL MEDIA – YOU CAN'T FIGHT IT

Do you monitor employee's internet use during work hours?



Forty-three percent of employers monitor their employee's internet use. Generally, employers have a right to monitor company-supplied computers and other technological devices, such as mobile phones, provided this is in accordance with any relevant policies or procedures. Other than where a magistrate has issued a covert surveillance authority, the surveillance must be carried out in accordance with a policy that refers to workplace surveillance of employees. Also, the employee must have been notified in advance of that policy and understand it.

Is social media use allowed in the workplace?



Over half of employers allow all their employees to access social media on work devices.

Where five or so years ago it was estimated that 20% of employers banned or blocked social media on work devices¹¹, our survey found this was now the case in only 13% of organisations. The decline is unsurprising

given the increased ubiquity of social media; however, employers have cause for concern over the scale of their employees' use of social media in the workplace: a 2015 study revealed 65% of Australians are being distracted from completing work because they are checking emails, browsing the web, and engaging with social media – an increase of 7% in only one year.¹²

Marketing staff are allowed unfettered access to social media in 24% of organisations, while HR-related staff are allowed access in 22 per cent. A further 21% of organisations allowed qualified access in the following ways:

Access during breaks and before/after work

- Most employers allow employees to access social media sites during breaks and before/after work. However, many respondents said they have guidelines on what constitutes appropriate sites and usage.
- One employer told WorkplaceInfo: "Employees are counselled if excessive use is detected, or inappropriate comments are made"
- Access to social media sites is not blocked during work hours. As one employer said: "Employees have the ability to access social media sites on work computers, but the policy is about appropriate use, not carrying out non-work use during work time, and not denigrating the company on social media sites."
- Many businesses also stipulate employees must use their own devices.

When social media is blocked or discouraged

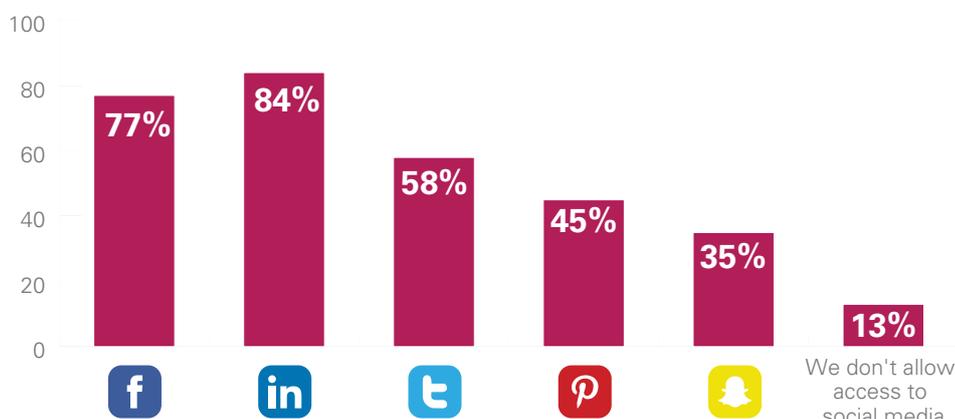
- Some employers have specific terms of use relating to social media, including:
 - » Requiring employees to sign a consent policy document acknowledging management could access work-supplied devices at any time

- » Requiring authorisation to access any social media sites
- » A complete ban on accessing social media sites on company-owned devices
- » Blocking sites such as Facebook and Twitter. One employer's policy specifically prohibited the private use of Facebook, and any business use of social media had to be authorised.
- Interestingly, some employers concede that, despite having a social media policy, they don't monitor compliance or enforce it.
- As one employer said, "It's generally not allowed, but people do it anyway."

Variable access

- Some employers don't have definitive guidelines on social media use, instead opting for a flexible approach depending on circumstances.
- One employer allows access to sites "to a certain degree" if employees are not busy.
- Some organisations only allow access to those employees who require social media to perform their role. Others are happy for employees to access social media if it enhances their ability to do their job: for example one employer bans access to social media, but allows its HR department to access sites to "review" employee activities.

Which sites can employees use freely?



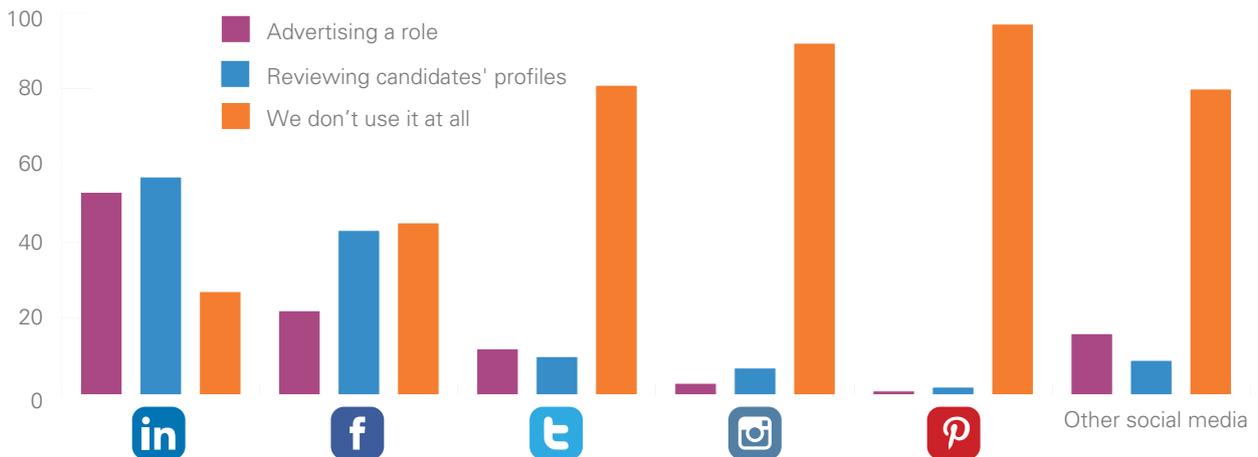
LinkedIn is the most popular site which is freely available to employees on work devices, followed by Facebook.

EMPLOYER USE OF SOCIAL MEDIA – ON THE INCREASE

Moving beyond which social media sites are allowed in Australian workplaces, we asked which sites were specifically used for recruitment.

The figures for LinkedIn are in line with other reports of social professional networks accounting for around 59% of hires¹³.

Which sites can employees use freely?

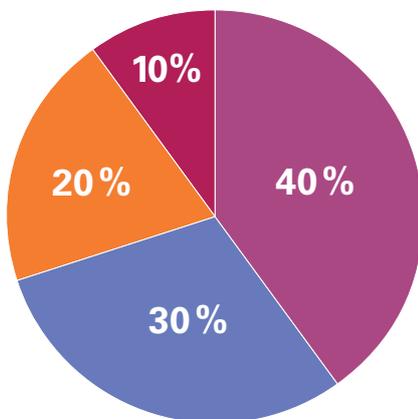


NB: Respondents could select more than one answer

More than half of respondents use LinkedIn to advertise roles and approximately half use it for reviewing candidates' profiles, with only 8% reporting they do not use it at all. One in every four employers uses Facebook to advertise roles, but less than one in four report that they use it to check candidates' profiles.

Ten per cent of HR professionals are using Twitter to advertise roles and 6% are using it to check profiles. **Instagram, Pinterest and other social media are yet to penetrate this space in Australia, despite reports that it is being used extensively overseas.**

Many employees have good social media policies and practices



The majority of respondents (40%) report they have a written social media policy that is well-communicated and enforced. Another 30% have a written policy but it is not consistently applied. Where respondents said they didn't know if they had a policy, 58% were in organisations with less than 100 employees.

- We have a written policy that is well-communicated and enforced
- We have a written policy, but it's not consistently applied
- We have guidelines in place, but they are not formally documented
- I don't know whether we have one or not

THE SCIENCE OF USING SOCIAL MEDIA FOR RECRUITMENT



LinkedIn profiles are rapidly replacing traditional CVs in the recruitment process, but Googling and 'Facebook-stalking' potential employees are seen as not only fraught with potential legal issues (just put 'Facebook' into the Workplacelife search engine and read some of the stories that come up), but also not a particularly accurate way to assess a candidate's suitability.

However, an Australian-based recruiting tool has turned this conventional wisdom on its head,

using evidence-based parameters and software algorithms to analyse potential candidates' social media profiles to tell both employers and candidates whether they will be a good fit for the organisation.

Fiona McLean, founder of the Social Index and a former HR director with companies such as AMP, discovered a growing need for being able to assess senior candidates for cultural fit when she was working with a recruitment company in London, and she realised that social media profiles could be used in a safe way to provide that information.

"Recruitment processes are currently broadly designed around CV fact checking, retrospective scenario analysis, structured reference checking and personality profiling or other role-based testing," McLean says. "However, they don't deal with culture fit. This has led to informal

processes such as Googling or 'soft referencing', which can be risky in terms of lack of transparency and inconsistent and potentially biased decision-making.

"Social media offers opportunities to connect with candidates for streamlined recruitment processes, but effective use of it for due diligence on culture fit hasn't evolved at the same pace. Used wisely, structured, consistent and relevant analysis of social media can bring more science to talent decision-making processes."

HOW IT WORKS

Candidates who reach an advanced stage in the interview process and who agree to the process allow The Social Index to view their social media accounts such as LinkedIn, Facebook and Twitter (they don't hand over their passwords, in the same way that many smartphone apps work, so the tool does not have access to their accounts).

"Collecting any data, even that which is publically available such as social media, is best done through a transparent,



permission based approach," according to McLean. "This consent about the data collection, what is reviewed and how its collected, can all fit within a desired candidate experience especially if this is communicated upfront.

"Companies need to understand reputation risk of hiring any new talent, especially in regulated industries, and social media analysis when used appropriately, and at the relevant time such as at final stage of the processes, can be very helpful in confirming the reason to hire."

The Social Index works by applying sophisticated algorithms that provide a profile report, looking at numbers and types of connections, when they post and what sentiment is associated with their postings, in an effort to determine whether a candidate is a cultural fit for the organisation.

McLean argues that including seemingly non-work-related tools such as Facebook is critical because of the crossover between employees' social media activities. "There is significant value in demonstrating industry and role relevance as differentiation through an aggregated view of a candidate's digital footprint," she says.

"The best talent decisions are made when the selection and screening criteria are established upfront and this applies equally to social media profile reviews as it does for any other element of the hiring process such as psychological testing or even the qualifications for the role.

"With clear parameters in place about important and relevant workplace criteria to use, social media can be helpful in making better decisions by giving you relevant insights into skills, interests, relevant networks and productivity indicators.

"Social media provides a platform for candidates to choose how they want to be represented and understanding this in the context of the role, and without the anxiety often seen in job interviews, it can complement the rest of your recruitment insights, to just as likely help select candidate as not."

She adds that "Context for data in hiring decisions is very important and the role of social media analysis is no different. For example, having visibility of the articles, publications, networks amongst other

role related criteria can help select in candidates where this information may not be easily captured in a 'traditional' CV and interview process.

"When appropriately setup, a relevant, consistent and timely analytical framework can help eliminate criteria that is not relevant to the performance of the role and opens you and your business up to discriminatory decision making."

A CASE IN POINT

McLean cites a recent engagement where a boutique consultancy had a critical lead role to fill in order to finalise a complex project and saw this an opportunity to bring someone into the business in a more permanent capacity to provide support for other project work.

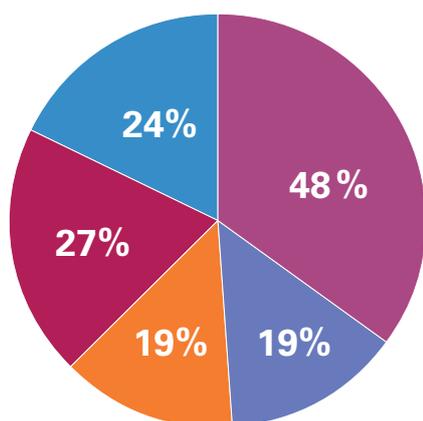
The primary focus of role was delivering the technical solutions, but the overall success of the project, and client experience, would be depend on the candidates 'soft' skills around communication, problem solving and putting structure around ambiguity to help the technical team deliver the solution. The business was also very collaborative and team focused, so the candidate would need to 'fit' their business as well.

Their standard candidate interview process had always been focused heavily on the technical needs for the role, while the wider work/life experience had not been actively discussed. "The Social Index report was able to confirm the technical skills through a review of skills related data from LinkedIn; however it was the Facebook and Twitter data that greatly assisted in the review process," McLean says. "It highlighted mutual interests, activities in local community issues, as well as a much broader range of experience in commercial and project based roles across key industries."

Since the report only aggregated data rather than highlighting specific posts, McLean says, "The candidate was comfortable that only relevant data from their digital footprint was provided and we were able to confidently discuss their other interests that highlighted a strong fit for the role, business and importantly the team dynamic."

The consultancy has now implemented The Social Index reports as part of their recruitment process.

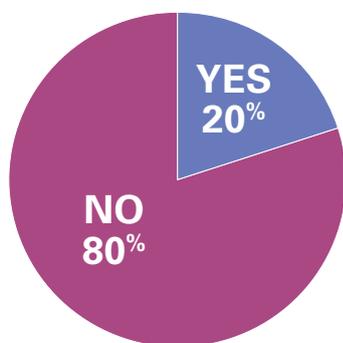
Not enough employees train on their social media policy



35% of employers include training on their social media policy as part of their induction process, but only 14% send email reminders about the policy or send an email when an incident related to social media occurs. Another 35% either don't provide any training on the policy, or merely tell their staff to read the policy without training or testing on it. This is important because numerous Fair Work Commission decisions have found that having a policy is not enough: managers and employees must not only be aware of the policy but should be trained in what it means and who it affects – this can involve retraining when a policy is changed.

- 48% We include it as part of our induction process
- 19% We send out emails reminding staff about the policy
- 19% We send out an email when there is an incident related to social media
- 27% We tell staff to read the policy, but we don't provide training or testing on it
- 24% We don't provide any training

And most don't have a policy on who owns social media contact lists



Only 20% of organisations have policies which cover the ownership of social media contact lists (ownership of Twitter accounts, LinkedIn contacts, etc.) directly related to work in their organisations.

Particularly poor in this area are employers with 101-200 employees (medium sized employers) with only 2% with a policy and those with 2001-10,000 employees with only 5% – the latter is surprising for such large organisations.

Better performers are those with 501-200 employees (26%) and those with 201-500 employees (22%) and 2-20 employees (also 22%).

Unsurprisingly, government organisations are far more likely to have a policy in this area – 63% have a policy, but only 20% of business-to-business organisations. Surprisingly, only 14% of business-to-consumer organisations have a policy – even though many of these organisations are likely to be using social media for marketing. This could be problematic for them, as we explain below. Businesses who are working in both the business and consumer spaces also score very low on this issue, at 18%.

WHY IS THIS A PROBLEM?

The risk of employees using client lists and other databases to poach customers from their old employer to their new one (or their own new business) has long been a problem for employers. While trying to poach contacts established via LinkedIn is no different to using other databases, there are some additional complications:

- Employees are often encouraged to seek business contacts and new clients via LinkedIn, which can then lead to a dispute over which party actually “owns” the contacts and posted content.
- When employees change employers, they update their LinkedIn profiles and LinkedIn automatically sends a message to their contacts notifying them of the change. Standard clauses prohibiting the solicitation of clients/contacts do not cover this scenario.

A LAWYER'S TAKE ON THE LEGALITIES OF SOCIAL MEDIA



Kyle Scott, a senior associate with Australian Business Lawyers & Advisors, has seen a steady increase in the number of social media cases his firm handles. Most of these cases are unfair dismissal applications before the Fair Work Commission (FWC) and revolve around whether an employee has been fairly dismissed for conduct on social media.

He divides the cases he sees into four main categories:

1. EXCESSIVE USE OF SOCIAL MEDIA DURING WORK HOURS

This occurs when an employee spends so much time on Facebook or Twitter that it impedes their ability to do their job.

Ordinarily in such cases the employee is reminded of the required performance standards and warned to meet them. Termination would usually only follow if the conduct continues. Scott points out that “in one case an employee uploaded his own web chat software to the employer’s IT system, which meant the employer had a record of all the time he spent – his usage was so excessive they proceeded straight to termination”.

2. INAPPROPRIATE USE OF SOCIAL MEDIA OUTSIDE OF WORK

This is more common, says Scott, and involves employees posting inappropriate comments on social media platforms about a colleague, or their manager, or the company more broadly. The employer has a legitimate interest in this conduct ceasing. In many cases it would amount to bullying or harassment outside of work. “In my view, this type of conduct on social media should be treated the same way as if the person made the inappropriate comments to the person’s face,” he says.

However, employers should not just take a blanket approach to these issues, Scott cautions – you must investigate and not just terminate straight away. The first question you must ask is: “Do I have evidence that the employee actually posted the comment?” Even if they deny it, you still need to at least put the allegation to them.

Many of the cases will turn on the particular facts, such as what the Facebook privacy settings are on that person’s account, who saw the comment, who reported it, and how many friends they have on social media who are also colleagues.

Depending on the seriousness of the comments, it may be a termination offence. In many cases it won’t be – and this is where it is important to have policies in place which provide guidelines and expectations about employee behaviour.

3. NON-WORK RELATED USE

Employers are generally able to regulate out-of-hours conduct in the following situations:

- where there is some connection to the workplace
- where there is no connection, but there is a serious risk of reputational damage to the business.

A good example of the second situation is the case of SBS journalist Scott McIntyre, who in 2015 tweeted some negative comments about Anzac Day. He wasn’t at work, it was outside working hours and the comments had no real connection to the workplace at all, but his employer decided to terminate his contract. (NB: This case is still being litigated.)

For the ordinary employee it may not be immediately discernible from social media where the person works or who their employer is, but for those with higher profiles such as media personalities, if they are expressing their own personal views on Twitter they need to be careful. People will connect them to where they work and if the employer considers there is some reputational damage then it has a legitimate right to protect its reputation. It was on this basis that SBS terminated McIntyre’s employment.

“Even if you have disclaimers all over a personal social media account that these are personal views and not those of the employer, you still need to be careful,” says Scott.

Issues around employer reputation predate social media – a benchmark case involved a brewery concerned about its public reputation around responsible service and use of alcohol. It implemented a policy of zero tolerance of alcohol misuse, including outside work, because of the effect it would have on their reputation and their attempts to promote responsible drinking.

An employee was caught drink-driving on a weekend: he told his employer; he did not need car for work; it did not affect his ability to do job; and it occurred outside of work. However the brewery terminated his employment and the decision was upheld by a tribunal. It held the employer was taking steps to protect its reputation and the policy was known by the employee who breached it.

4. BREACH OF CONFIDENTIALITY

The least common category includes social media posts which breach confidentiality. These cases do not often end up in court but they involve instances where employees are terminated because they disclosed highly confidential information on social media. Examples include photos of people working at their desks with confidential data open on their computer screens or documents in view.

Taking pictures of employment contracts or other confidential documents and posting them on social media can also lead an employee into trouble, says Scott. Such cases usually would not justify termination but might require performance management.

SOME GENERAL ADVICE

Scott cautions employers to also be aware of the following issues:

Authorised use: Employers need to ensure that employees who are using social media on behalf of the organisation have the proper authorisation to do so and guidelines for use.

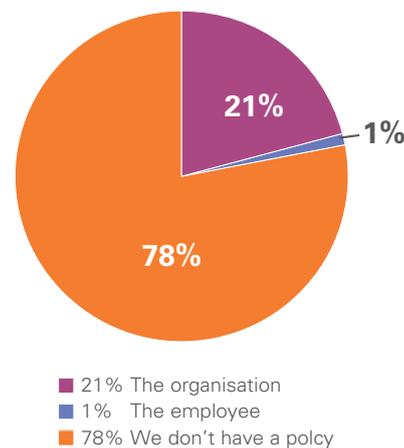
Not every organisation needs a policy: In a traditional, say, manufacturing, workplace where employees don't use computers as part of their job and are not necessarily using social media for work, there may not be a need for a social media policy.

Small and micro-businesses may not need a policy because they are able to personally manage their employees, so Scott says, "I won't say every Australian employer should have a social media policy, but it certainly can't hurt to have one. And it should also be customised and tailored to your particular business and employees and the types of issues there."

- The LinkedIn account will generally be in the employee's own name, and thus viewed as "personal" to the employee. The employer will not usually have access details.
- Similar issues may also arise in relation to Twitter and other social media.

For these reasons, where an employee is likely to be operating a social media account as part of his/her job, it is wise for the employment contract to contain provisions that refer specifically to social media accounts.

Who owns these lists?



When we broke down who owned the social media contacts lists, the organisation owns them in 21% of cases.

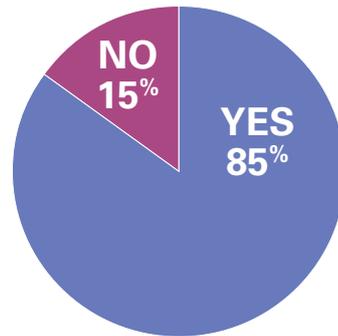
We could find no significant pattern in the size of the organisation and whether they were more likely to have the organisation own the list, OR whether they even have a policy. This suggests that the issue has not yet permeated the collective corporate consciousness, but in our view, it needs to be addressed.

Does your social media policy cover:

- Use during work hours: issues are productivity, inappropriate behaviour (eg cyberbullying) and privacy (none on work computers, but see employees must be informed)?
- Use outside working hours: potential for damage to the business, breaches of the employment contract and conduct incompatible with the employee's duties under the contract?
- Use of social media sites on employee's own devices: similar issues to those for use outside working hours?
- How employees can use the sites?
- List specific inappropriate uses of social media?
- State that no expectation of privacy arises?
- Set out the consequences of a breach of the policy including potential dismissal?
- Make it clear that employees cannot say whatever they like on sites like Facebook if it could cause damage in the ways described?
- Clarify that the organisation retains ownership of social media accounts/databases used for work, even if it is operated in the employee's name and he/she also uses it for personal reasons?
- Specify what types of information and content are the employer's property (eg confidential information, client and contact lists), and set out a procedure to follow if an employee resigns or is dismissed?
- Update other related policies, eg recruitment, discrimination and IT?

If not ... you are vulnerable to: damage to your employer brand and reputation, misuse of intellectual property, disclosure of confidential information, defamation and misrepresentation.

Do your contracts state who owns employees' intellectual property?

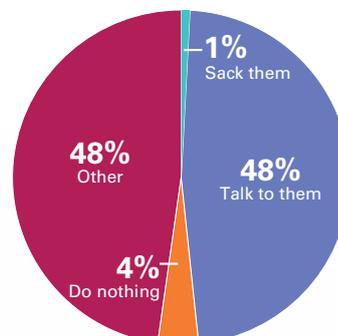


Given that employees are now creating work using social media, for example tweeting about the organisations' activities, we were interested to see if employers were formally establishing who owned any intellectual property created in this way. In fact, the great majority of employers specify in their employment contracts who owns the intellectual property created by employees during their employment.

HOW DO YOU HANDLE SOCIAL MEDIA INCIDENTS?

We next asked some hypothetical questions about social media in the workplace and got the following answers:

An employee is making disparaging comments about another employee on Facebook: What do you do?



- 1% Sack them
- 48% Talk to them
- 4% Do nothing
- 48% Other

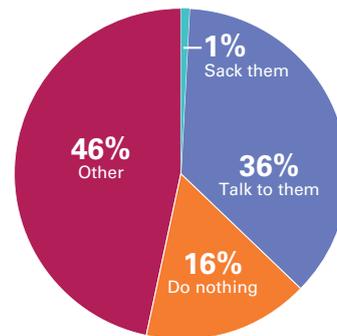
Around half of our respondents would talk to the perpetrator, with only 3% stating they would do nothing as it was not their business; 1% said outright they would sack the perpetrator.

This is good news – as moving straight to termination without an investigation is likely to trigger an application for unfair dismissal, depending on the size of the business and whether it is covered by unfair dismissal laws¹⁴.

However, another nearly 50% said they would do something else, and in most of these cases they described taking a more nuanced approach:

- A quarter of these (24%) said they would investigate.
- A further 35% said they would instigate a formal disciplinary investigation of a possible breach of code of conduct/policies, with termination a possibility.
- A number elaborated further on talking to the perpetrator, with 7% issuing a warning and ensuring the victim received an apology, and 2% directing the perpetrator to remove the offending comments.
- There is some concern that a number of respondents considered their response depended on the situation, so for example whether the comments were work-related (3%), whether the workers were publicly associated with the employer (2%) and who were the employees involved (3%). This contrasts with the 3% who would treat the comments as bullying/ harassment under the relevant policy.
- Employers should be cautioned against taking a too casual, situational approach to this kind of issue due to its potential to escalate into more serious workplace conflict. Employers who said they would instigate a formal investigation into a possible breach of policy and/or code of conduct are less likely to see this escalation or other performance management issues.

You have an employee slandering someone external via Facebook/Twitter: What do you do?



- 1% Sack them
- 36% Talk to them
- 16% Do nothing
- 46% Other

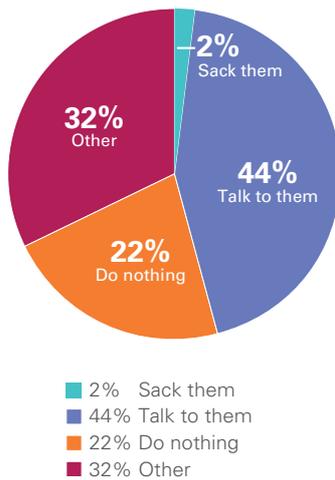
Sixteen per cent of respondents said they would do nothing, as it was not their business. **Doing nothing exposes the employer to reputational risk**, however it is important to note the Fair Work Commission has determined that the principle to apply to postings on Facebook is the same principle that is applied to “out of hours conduct”, that is, the conduct must be relevant to the employee’s employment relationship¹⁵.

While 37% of respondents said outright they would tell the employee to stop it, a better strategy is taken by the nearly half (46%) of respondents who said they would take actions which take into account the relevance to the employment relationship. These include:

- Investigate and warn if necessary (10%)
- Formal disciplinary investigation of breach of code of conduct/policies, with termination possible (25%)
- Talk to them (18%)
- Situational assessment, eg:
 - » If a link to the employer can be made, ask to the employee to stop/remove/ clarify opinions are their own (7%)
 - » If a link to the employer can be made, conduct formal disciplinary investigation (10%)
 - » Assess the impact of the comments on the business and act only if negative (7%)
 - » Depends on who brings it to management’s attention, what evidence is available (9%)



You have an employee posting inflammatory comments on a political website (either side of politics): What do you do?



Employers were more cautious in their approach they would take in this hypothetical situation – they clearly make a distinction between slandering another person via social media and taking a political position on social media, however extreme. This distinction is important as the Fair Work Commission has found that any policy which attempts to restrict employees’ freedom to express political opinions must be a reasonable and lawful direction¹⁶.

In a case which is still before the Fair Work Commission, a television journalist was sacked in 2015 for tweeting what he maintained was political opinion in relation to Anzac Day¹⁷. Although this ground was not able to be pursued on a technicality¹⁸, the issue remains one around which employers need to be cautious.

The majority of employers (44%) said they would talk to the employee in this instance, however nearly a quarter (22%) would do nothing and consider it was not their business. Two per cent would sack the employee, but again, moving straight to termination without an investigation is likely to trigger an application for unfair dismissal, depending on the size of the business and whether it is covered by unfair dismissal laws.

A third of respondents (32%) indicated their approach would take into account the link to the employer and the importance of investigation, including:

GOING UNDERGROUND: CYBERBULLIES AT WORK



Australian-first academic research has found an underground workplace cyberbullying culture has developed in the Australian public sector, where perpetrators now have the capacity to anonymously hurt or embarrass their target(s)

and follow them from work to home and job to job, often without fear of punishment.

QUT researcher, Dr Felicity Lawrence, recently completed three studies across more than 600 public servants around Australia and found evidence of workplace cyberbullying in all levels of government.

Lawrence found between half to 72% of research participants reported experiencing or observing task- and/or person-related cyberbullying in the previous six months, with 74% labelling their workplaces as highly stressful and nearly half reporting decreased productivity.

While both forms of workplace cyberbullying can involve supervisors, colleagues, and staff, external clients and stakeholders, task-related forms allows perpetrators to use workplace technologies to broadcast abusive content to undermine, hurt, or embarrass target(s). The challenges involved in quickly and completely removing online content increases the potential for reputation defamation and can cause the target to feel defenceless.

Person-related cyberbullying targets an individual’s personality, character, gender, religion, health, or background to demoralise and destabilise them.

Research participants also reported cyberbullying through work related phone calls and email, text messaging, instant message services and video conferencing.

VIRTUAL BULLYING SPILLING INTO REAL WORLD

Lawrence’s research also found that cyberbullying is potentially moving between online to offline behaviours, with the potential to escalate work exchanges. Respondents said that teams

who posted about a target on a group Facebook site sometimes manifested different, or new, behaviours when face-to-face with the target, resulting in intensified online gossiping.

“Without proper intervention levels, organisational research has found that low level forms of negative workplace behaviour will always escalate,” she says, “from discourtesy and disrespect that generates into online and offline intimidation, harassment and bullying, and sometimes ending in retaliation, cyber assault or physical aggression.”

Public sector employers are faced with developing specific cyberbullying intervention and prevention policies and practices. Research participants also reported existing workplace safeguards were often insufficient to quickly mitigate cyberbullying events, leading them to doubt their organisation’s ability to support and protect them.

This finding has serious duty of care implications for employers under work health and safety legislation (employees are entitled to work in an environment free from harassment and bullying) as nearly a third of participants reported job dissatisfaction. Participants also feared that their job or professional reputation was potentially threatened by abusive cyber content arising from internal and/or external clientele, and was often difficult to stop.

“Social media has encouraged a more sophisticated approach to cyberbullying,” says Lawrence. “A target may find their private Facebook posts uplifted and shared with their boss via work email. In one case the boss did not share the perpetrator’s identity with the target, only the allegation. So the target was left wondering which of his/her Facebook ‘friends’ was the cyberbully, or whether the person was sitting next to them.”

DEALING WITH THE CYBERBULLIES

So how can individuals deal with a cyberbully(ies)? Lawrence suggests that the first thing to do is to ignore the communications (but this only works sometimes, and has the potential to result in the allegations appearing more credible). The following list of suggestions should be implemented in liaison with your ICT department and/or supervisor:

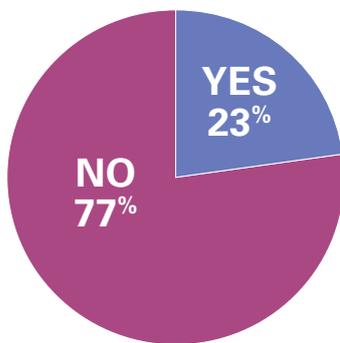
- If possible, unfriend or block the person.
- Change your online permissions so you can view and/or manage defamatory statements or photos before they’re broadcast.
- Update online privacy settings to manage who has read/ access to your posts
- Record the abuse, and report the person/abusive content to your manager or supervisor, workplace ICT area, or external website or online service. If the cyberbullying is deemed criminal, seek assistance from the police.
- If you know the person is not malicious and you have a good work relationship, politely and courteously ask them to stop.
- With an anonymous perpetrator(s):
 - » Manage your account(s) privacy settings and permissions.
 - » Discuss the problem with friends and colleagues for support.
 - » Change your username, accounts or delete your profile through your workplace ICT area.
 - » Withdraw from the online collaboration forum.
 - » Stop attending the offline events or places.
 - » Record the abuse, and if the abuse is deemed criminal (i.e., stalking) report the problem to law enforcement.
- Employers should also consider providing:
 - » Specific workplace cyberbullying programs that educate employees of the difference between online and offline bullying and harassment together with specific mitigation strategies.
 - » Training and/or awareness programs for recruiters and/ or employees seeking transfers or promotion and have been the target of defamatory social media posts, YouTube videos or photos still on the internet.
 - » Awareness of how to discuss potentially embarrassing material can provide reassurance to vulnerable employees.
 - » Additional training to newly promoted managers who may need communication strategies in dealing with staff seeking to undermine them by making use of the publicly available online information.

Lawrence, F. *Prevalence and Consequences of Negative Workplace Cyber Communications in the Australian Public Sector*, Faculty of Education Queensland University of Technology, 2015

Felicity Lawrence’s blog is: [Cyberbullying at work](#)

- Investigate and warn if necessary (16%)
- Formal disciplinary investigation of breach of code of conduct/policies, with termination possible (12%)
- Assess whether the employee can be linked to the employer:
 - » If yes, talk to them (12%)
 - » If yes, ask them to stop or remove the comments (2%)
 - » If yes, conduct a formal disciplinary investigation (17%)
 - » If no, do nothing (6%)
- Assess the impact on the organisation and act only if negative (4%)
- Deal with under their Social Media Policy (6%)

Has your organisation experienced instances of bullying/harassment via social media?



As we see organisations incorporating social media more into their HR and other business practices, we can also see the dark side of social media starting to have some impact, with 23% of respondents reporting their organisations have experienced instances of bullying via this medium.

Fifty-six respondents elaborated further on these instances, with the over a third of these (38%) indicating the bullying had primarily involved employees making comments about their co-workers – Facebook was specifically mentioned in five cases. Respondents reported employees making “inappropriate,” “derogatory” and “disparaging” comments about their fellow workers and in some

cases (7%), those comments were about sexuality or race. In an additional 11% of cases employees’ comments were directed towards their managers.

Also of concern were the 11% of instances of bullying that involved harassment of an employee by someone external to the organisation – customer service staff and managers were more vulnerable to this. Examples include an employee being targeted by a disgruntled unsuccessful tenderer and managers having unsubstantiated allegations made about them.

In a number of cases, bullying moved from comments to actual threats and harassment of employees by colleagues, for example:

- Stalking
- Threats to co-workers
- Releasing information about a co-worker
- Group bullying. Instances included: an employee who was “un-friended” on Facebook by her colleagues which she complained was a form of bullying; and group bullying of an employee who was not part of a particular group, led by one employee. Outcomes included the latter employee’s resignation, warnings, training and apologies to the maligned employee.
- Accusations of sexual harassment against another employee
- Posting of inflammatory material
- Posting of videos and photographs of co-workers or the workplace

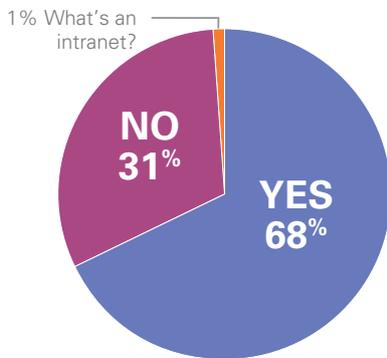
The above instances emphasise the importance for organisations of having a social media policy which is underpinned by a code of conduct and which provides a framework in which to investigate its breaches.

CONCLUSION

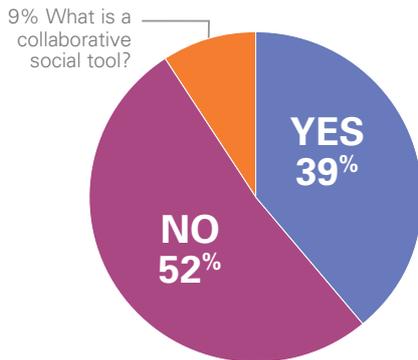
SOCIAL MEDIA DOESN'T HAVE TO BE OUTSIDE OF WORK

A number of social media platforms exist to enhance organisational communication by connecting work colleagues – Facebook has even created a Facebook At Work platform¹⁹. Social media can also improve employee engagement, particularly around cultural change²⁰.

We first asked whether respondents have an employee intranet: over two thirds said they do.

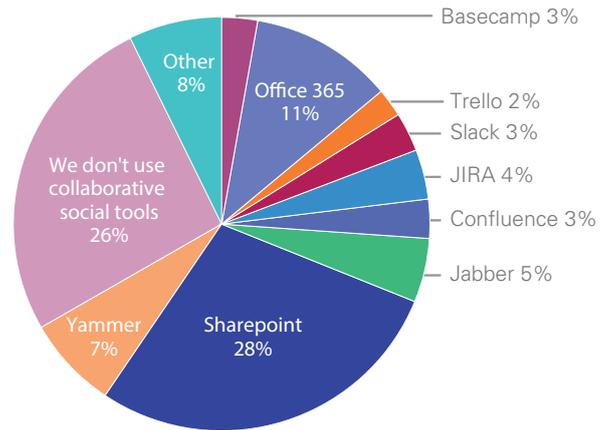


However, only 39% use collaborative social tools to organise their work groups:



The most popular tool is Sharepoint (28%), followed by Office 365 (11%) and Yammer (7%).

Collaborative Social Tools Used



Silos are a major barrier to collaboration in many organisations. Collaborative social tools can allow everyone involved in a particular value chain (eg from filling a customer's order to working on complex projects such as web development) to be directly connected and share what they are doing, seek help from others, overcome bottlenecks, etc²¹. Similarly, collaborative social tools can be used to facilitate communication across all levels of an organisation – more people can discuss ideas, express opinions and add their expertise. As organisations more than ever need to be nimble to respond to accelerating change, it is surprising that only a minority (39%) are using these tools in 2016.

Australian employers are managing the use of social media with varying degrees of effectiveness.

While over half of employers allow their employees to access social media on work-supplied devices, there is a lag in having appropriate policies and procedures in place: only 40% have a written social media policy that is well-communicated and enforced and over a third do not provide any training on the policy, which dilutes the effectiveness of having a policy.

And only 20% have policies which cover the ownership of social media contact lists directly related to work in their organisations.

LinkedIn is the most popular site which is freely available to employees on work devices, followed by Facebook. LinkedIn, and to a lesser extent, Facebook have also been embraced by employers for recruitment and are used for advertising roles and for reviewing candidates' profiles. The Social Index provides a fascinating case study of new developments in recruiting via social media.

When faced with potential issues such as employees making disparaging comments about other employees on Facebook, or employees slandering someone outside the organisation via Facebook or Twitter, most employers are aware of the need to investigate but vary in whether they would talk informally to the employee(s) or whether they would instigate formal disciplinary processes.

When it comes to a potential issue of an employee posting inflammatory comments on a political website, employers are more cautious over whether this is their business, however 44% of employers would at least talk to the employee.

23% of organisations have experienced bullying of their employees via social media, with over a third of the reported instances involving employees making "inappropriate", "derogatory" and "disparaging" comments about their co-workers and 11% of comments were directed towards their managers. In a number of cases, the bullying progressed beyond comments to actual stalking or harassing behaviour. Our results tally with those of cyberbullying expert Felicity Lawrence whose research shows one in five Australian public servants are experiencing or have observed cyberbullying and who are increasingly stressed by social media's role in escalating it.

Only 39% of Australian organisations are using collaborative social tools to organise their work groups and enhance organisational communication by connecting work colleagues, potentially not taking advantage of tools which can take them beyond silos and improve their communication and efficiency.

Poor understanding and handling of issues around social media can end with employers and/or employees facing a tribunal or court. We also alerted you to the four main categories of unfair dismissal issues to avoid (all of which were represented in our survey findings):

1. excessive use of social media during working hours
2. inappropriate use of social media outside of work
3. non-work related usage, and
4. posts which breach confidentiality.

The 2016 WorkplaceInfo Social Media Index provides a clear picture of social media use and abuse in Australian organisations – how does your organisation compare?



WHO WE SURVEYED

In February 2016²², we surveyed the subscription bases of the Australian human resources/ industrial relations website WorkplacelInfo²³ and the Australian HR management website HR Advance²⁴. We received 371 total responses.

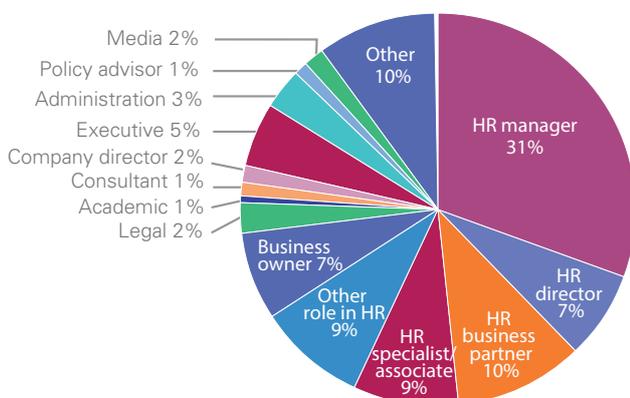
In line with the general makeup of the human resources profession²⁵, three quarters (76%) of respondents are female. All states and territories are represented in the sample, with half (51%) of respondents located in NSW, another 19% located in Queensland and 15% in Victoria.

Most respondents are in the mid-age range: more than a half were in the age range 36-55 years (61%), with 21% aged 25-35 years and 29% aged 46-55 years. Only 1% are aged under 25 years, the age group which is known as "digital native"²⁶ and who are most likely to use social media²⁷. However, as this survey was designed to measure the policies and practices which are implemented in Australian organisations, the low response rate from this group – who are unlikely to be in decision-maker roles at this stage of their careers – is not considered significant.

HR roles most represented

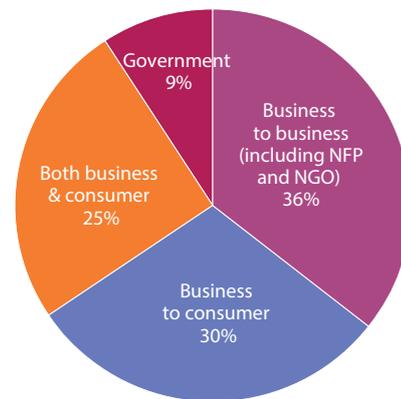
Two thirds (66%) of respondents are employed in an HR-related role: from the largest group, HR managers (31%) to HR directors (7%), HR business partners (10%), HR specialists (9%) and those with another HR role (9%). A number of other job functions are also represented:

Job Function



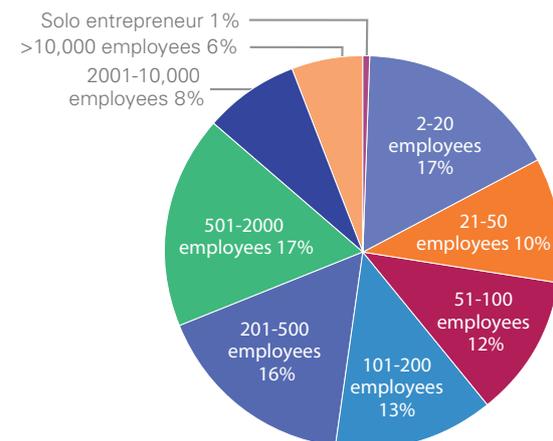
Types of business

Respondents are spread fairly evenly between the type of business activity performed by their organisations: business to business accounts for 36% of respondents, business to consumer for 30% and both business and consumer for 25%. Government organisations are at 9%.



In relation to the size of the organisations in the sample, again there is a fairly even spread, with no particular organisation size standing out. Only 1% are solo entrepreneurs, but at the other end, 10% of respondent organisations have over 10,000 employees.

Number of employees



Respondents are scattered across all industry types with the highest concentration in Health care and social assistance (15%) and Professional, scientific and technical services (10%).

FURTHER RESOURCES

Keep up to date with the latest information and analysis in HR via **WorkplaceInfo** – subscribe today.

The Social Index

Felicity Lawrence, **Cyberbullying at Work** blog

Kyle Scott, Australian Business Lawyers & Advisors

Social Media in the Workplace Around the World 3.0, Proskauer, 2014

Siow, V. The Impact of Social Media in the Workplace: An Employer's Perspective

Communications Law Bulletin, Vol 32.4 (October 2013)

ENDNOTES

- 1 See: **Marroun v State Transit Authority [2016] NSWIRComm 1003**
- 2 See: Adam Kaplan & Anor v Go Daddy Group Inc [2005] NSWSC 636
- 3 Harassment via social media - **Little v Credit Corp Group Limited [2013] FWC 9642**
- 4 See: **Sharon Bowker, Annette Coombe, Stephen Zwarts v DP World Melbourne Limited, Maritime Union of Australia (Victorian branch) and others [2014] FWCFB 9227**
- 5 Threatening comments on social media - **Mary-Jane Anders v The Hutchins School [2016] FWC 241**
- 6 See: Journalist fired over Twitter comments - **McIntyre v Special Broadcasting Services Corporation T/A SBS Corporation [2015] FWC 6768 (1 October 2015)**
- 7 See: **Ms Palak Rani v Limitless Ventures Toscas Pty Ltd T/A Toscanis Mackay [2015] FWC 6429**
- 8 See: **Richard O'Connor v Outdoor Creations [2011] FWA 3081**
- 9 See: **Malcolm Pearson v Linfox [2014] FWCFB 1870**
- 10 **Is it OK to view a job applicant's Facebook profile?**
- 11 **Social media at work: recent legal developments**
- 12 **Workers succumb to internet temptations**
- 13 **Launch recruitment blog**
- 14 **Unfair dismissal, procedural fairness**, Employment Topics A-Z, WorkplaceInfo
- 15 **Valid reason for termination**, Employment Topics A-Z, WorkplaceInfo
- 16 See: In AGL Loy Yang v Construction, Forestry, Mining and Energy Union [2014] FWC 8093,
- 17 See: Journalist fired over Twitter comments - **McIntyre v Special Broadcasting Services Corporation T/A SBS Corporation [2015] FWC 6768 (1 October 2015)**
- 18 **Tweet justice for sacked SBS reporter**
- 19 **Why your boss should encourage Facebook at work**
- 20 **Use social media to create a real buzz at work**
- 21 **Digital Hives: Creating a Surge Around Change**, McKinsey Quarterly, April 2015
- 22 WorkplaceInfo is a subscription based online resource providing HR/IR managers and professionals with news, tools and expert guidance. WorkplaceInfo is published by Australian Business Consulting & Solutions, a wholly owned subsidiary of the NSW Business Chamber. WorkplaceInfo has been published daily since 2000.
- 23 HR Advance is a subscription based people management system that provides HR/IR managers and business owners with customisable, legally compliant HR documents. Part of Australian Business Consulting & Solutions, a wholly owned subsidiary of the NSW Business Chamber, HR Advance has been helping businesses create and maintain accurate employee documentation since 2005.
- 24 An estimate by the Australian Human Resources Institute (the Australian HR professional body) is that 70 per cent of the membership is female.
- 25 Marc Prensky, **Digital Natives, Digital Immigrants**, 2001
- 26 J Jackson, **Know your audience: How the digital native generation consume media**, 2013
- 27 1292.0 – **Australian and New Zealand Standard Industrial Classification (ANZSIC)**, 1993



so-cial me-di-a
 noun [treated as sign. or pl.]
 websites and applications used for social networking.

WORLDWIDE

like

SHARE

In-ter-net
 a global computer
 and communication f
 using standardized

SOCIAL MEDIA

World Wide Web

The world wide web is a system of interlinked hypertext documents that are accessed via the Internet. With a web browser, one can view web pages that may contain text, images, videos, and other multimedia and navigate them via hyperlinks.

COMMUNITY

ADD FRIENDS

+



Computer



Connect



E-mail



Tweet

Internet

Friends

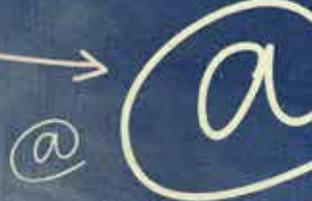


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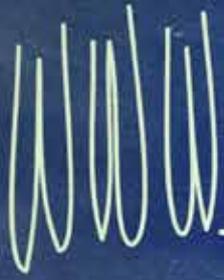
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