

Call Me Maybe (Not):

*Working Overtime and A Right
To Disconnect in Australia*

**By Eliza Littleton and Lily Raynes
The Centre for Future Work at the Australia Institute**

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Summary

Each year the Centre for Future Work at the Australia Institute conducts a survey of Australian working hours, as part of the annual *Go Home on Time Day* (GHOTD) initiative. Findings from the survey regarding the maldistribution of working hours and the scale of unpaid overtime are examined in a companion report – *Theft By Any Other Name*. This year, the survey also included a section exploring how a right to disconnect might be implemented in Australia, to further help preserve the boundary between work and personal time for workers.

Working beyond scheduled hours has long been a problem for Australian workers. The nature and scale of overtime has more recently been shaped by the rise in flexible working arrangements and the integration of information and communication technology at work. Checking emails on the weekend, taking multiple-time-zone calls out of hours, and teleconferencing from the dining table have all become familiar experiences amongst workers. This both enabled working from home conditions during the pandemic for a large portion of workers, and accelerated patterns of overtime through the blurring of lines between work and home life.

The survey results presented in this report show that overtime is a prevalent and systemic issue in Australia, primarily driven by working conditions within the control of employers.

- Seven in ten (71%) workers reported having performed work outside of scheduled working hours. While only 29% of workers indicated that they have not done overtime.
- Of those who completed overtime, the largest share performed overtime often, as opposed to sometimes, rarely, or never.
 - Almost half (44%) reported often performing overtime to meet employer expectations, and another 31% performed overtime sometimes.
 - Overtime was fairly evenly spread across industries and occupations, suggesting it is not an isolated issue that can be resolved with a targeted solution.
- The incidence and frequency of overtime are more common among men, young people, those with full-time jobs, and those in goods producing sectors or working as managers.

- The most common reasons workers perform overtime were having too much work (36%), followed by staff shortages (28%), less interruptions working outside normal hours (26%), and managers' or supervisors' expectations (23%).
- Over a third of workers (38%) reported that overtime was an expectation in their workplaces.

Overtime doesn't come without cost: it has significant consequences for workers, their families, and for society more broadly.

- The most commonly experienced negative consequences of overtime work were physical tiredness (35%), followed by stress and anxiety (32%), and being mentally drained (31%), each affecting around a third of workers.
- Over a quarter of workers reported that overtime interfered with their personal life and relationships (27%), and 17% responded that it led to disrupted or unfulfilling non-work time.
- One in five workers identified that working outside scheduled hours negatively affected their relationship with work; 22% reported reduced motivation to work, and 19% experienced poor job satisfaction.

Australia has enterprise agreements, modern awards, and national employment standards that are intended to set out limitations on working times. However, the prevalence of overtime suggests that Australia's industrial relations systems are not properly protecting the boundaries between work and non-work time for many workers. In particular, existing laws have done little to prevent the creep of work into private time, aided by technology. This is why workers, employers, unions, and governments around the world have been looking at how to implement a 'right to disconnect'.

Our survey found considerable support amongst Australia workers for a right to disconnect.

- Six in seven (84%) workers expressed support for the Federal Government to nationally legislate a right to disconnect that directs employers to avoid contacting workers outside of work hours, unless in an emergency.
 - Only 8% opposed the idea of a right to disconnect.

A right to disconnect could take several forms, and be implemented via different avenues in Australia. Based on international examples and the attitudes of workers in Australia, this report finds that implementing the right within the national employment standards would be the most effective.

- Four in five (80%) workers thought that a right to disconnect would be effective if legislated in national employment standards, making it the avenue viewed as effective by the most workers.

This report provides strong evidence for the government to pursue a right to disconnect as a way of limiting the creep of work into non-work time.

Introduction

The 8-hour day may have been won long ago, but the struggle over working hours is not consigned to the past. Although average working hours trended down for much of the 20th century across the industrialised world, this progress slowed in recent decades and over the past couple of years has even reversed in Australia¹ (ABS, 2022; Messenger, 2018). Diversification of working arrangements have seen deviation away from standard working times and hours with a rise in flexible employment and conditions. The proliferation of information and communication technology (ICT) has coincided with this trend and brought about a revolution in how we communicate and manage our work and personal lives. With smartphones always in reach, workers are ‘always on’ – connected and available – making it difficult to delineate between work and non-work time. Under these conditions overtime has become ubiquitous.

The expansion of work into all areas of our lives was accelerated during the pandemic when a significant portion of the workforce moved to working from home (WFH). While WFH came with some perks, in many cases it allowed a further incursion of work into people’s personal time, blurring lines between home and work life. The last two GHOTD reports saw a large increase in unpaid overtime over pandemic era lockdowns. This was evident of inadequate protections for workers amid the struggle to manage work and other responsibilities for a home setting. This created new patterns of work that didn’t disappear with lockdowns. Workers are only now realising and dealing with the consequences.

In many cases, the incursion of work into people’s personal lives undercuts Australia’s set minimum employment standards, including standard hours, overtime, and penalty rates. This has detrimental implications for work/life balance, and consequent negative implications for physical and mental health. With existing industrial relations laws failing to protect workers from new patterns of technology-assisted exploitation, this problem will likely worsen without government intervention.

The right to disconnect refers to establishing a right for workers to unplug from their work after their scheduled hours. This includes not responding to work emails or messages and completing ‘urgent’ tasks during un-rostered hours. It has been pursued in several forms internationally including in France, Ireland, and Germany in the last decade. Now it has arrived on Australian shores with the Victorian Police implementing

¹ This refers to actual working hours not just paid working hours, as defined by the ABS.

the right in their enterprise agreement, to help preserve workers' personal time for decent rest and recovery. The question remains: where to from here?

This report examines the issue of overtime for Australian workers, and consider how a right to disconnect could be implemented in this country. It includes results from a nationally representative survey of 1,410 respondents to get a better sense of the scale, frequency, and reasons for overtime in Australia. The report covers the negative consequences of overtime and gauges the appetite of workers for a right to disconnect. The last section of the report focuses on possible avenues for implementing such a right.

Overtime

Working more than set ordinary or scheduled hours is a problem in most countries around the world. However, the frequency, nature, and reasons people work more than their scheduled hours are highly dependent upon interrelated economic, societal, and institutional factors. For workers with very low wages, overtime might be a structural necessity to make ends meet. Alternatively, employers may cultivate workplace expectations of overtime or distribute work in such a way that makes it unavoidable. Overarching the social and economic motivations are industrial relations systems that regulate aggregate trends in overtime (Anxo and Karlsson, 2019) shaping the behaviour of governments, employers, workers, and trade unions.

In Australia, Enterprise Agreements and Modern Awards set out working time limitations including maximum and minimum ordinary hours, as well as the general spread of time these hours can be worked. This varies between full-time, part-time, and casual employees, as well as industries. Australia's National Employment Standards (NES) establishes an employer cannot make an employee work more than 38 hours per week unless the additional hours are reasonable, meaning exceptions exist, and conditions apply.

For the most part, a request for overtime can be made as long as the needs of workers are considered. For example, workers' health, safety, and personal circumstances must be considered, workers should be given enough notice by bosses and compensation for working the additional hours. The foundational idea is that overtime should not be a regular occurrence for workers, and should not be ad hoc or coerced. This is often not how overtime is approached in Australia. Our companion report, *Theft By Any Other Name*, reports that Australian workers are on average performing 4.3 hours of unpaid overtime a week. This is consistent with past reports; every year our *Go Home On Time Day* survey show workers perform vast quantities of unpaid overtime, confirming that the existing industrial relations system in Australia is insufficient to protect the boundaries between work and non-work time.

Rising working hours and overtime can be linked to labour market trends over the past couple of decades. There has been a growing diversification of working time arrangements leading to a movement away from the standard workweek of fixed hours over fixed days (Messenger, 2018). Different flexible working arrangements have proliferated employment, including shift work, teleworking, hours averaging, compressed workweeks, on-call, compounded by the demands of a 24/7 economy, requiring more availability from workers (Messenger, 2018). Simultaneously, the

growing use of information and communication technologies (ICT) like smartphones, laptops, and tablets, have enabled connectivity and the expectations of always being contactable. The standards around availability and integration of ICT have resulted in a blurring of boundaries between work time and the time reserved for personal life.

This became more evident during the pandemic, which saw many workers move to working from home. This expedited advances in teleworking and has created new and permanent patterns of work for many Australian workers. These changes have not been without positive implications for the lives of workers, including reduced commute time, theoretically greater autonomy over working time, and greater flexibility to mould work around other responsibilities (ACTU, 2020). However, there have also been disadvantages, including the tendency towards excessive working hours and a weakening of the boundaries between home and work life (Senate Select Committee, 2022).

If the current industrial relations settings are not preserving workers' non-working time in the face of new and changing patterns of work, then it is worth asking how these settings can be reformed. First though we must better understand the problem. Our survey included several questions aimed at ascertaining the incidence, frequency, and reasons why workers in Australia are performing ubiquitous overtime.

INCIDENCE OF OVERTIME

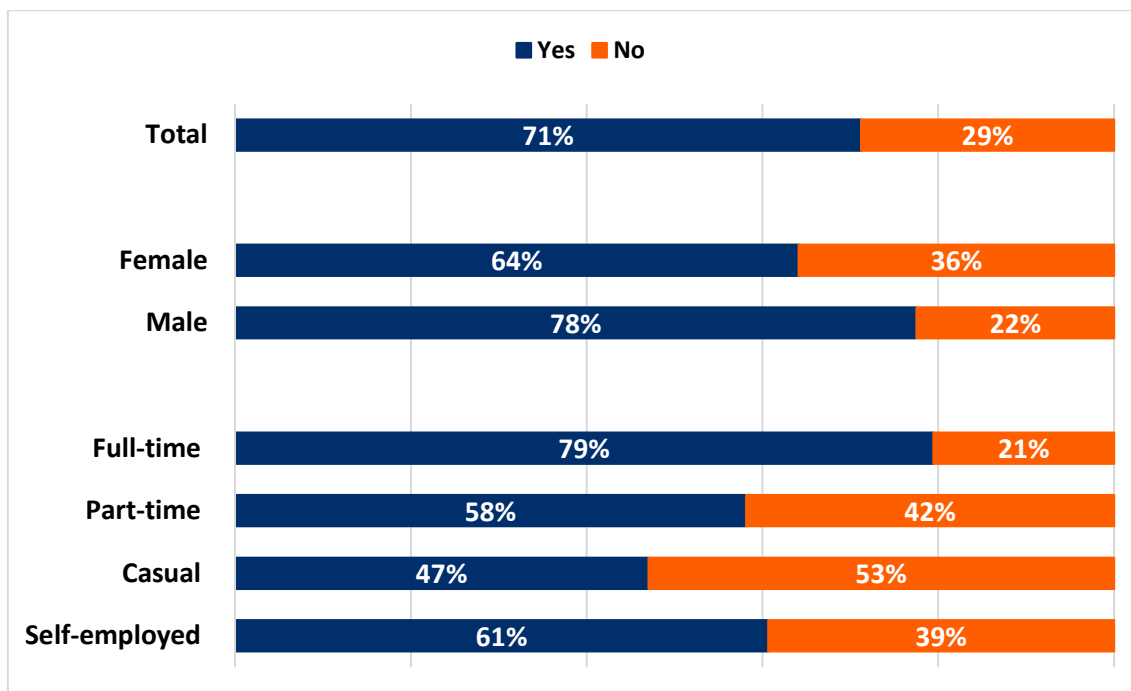
Overtime in this survey was defined as all time worked in addition to scheduled working hours. It therefore refers to both paid or compensated overtime, and unpaid or uncompensated overtime.

In the survey respondents were asked whether they ever perform work outside of their scheduled hours. Figure 1 shows that seven in ten (71%) Australian workers have performed overtime at some point in their working lives, while less than a third (29%) of workers indicated that they have never performed overtime. There are many types of work where 'overtime' is not an obvious concept to apply: for example, platform workers whose hours are not scheduled, or other jobs which allow some autonomy over working hours and times. Our survey results clearly show the phenomenon of overtime is prevalent in Australia.

Overtime may be very common, but it is not evenly distributed among workers. Men are more likely than women to perform overtime: 78% compared to 64%, respectively (Figure 1). This is obviously related to the fact that women perform a disproportionate amount of unpaid family and caring work in Australia, which necessarily, limits the amount of paid work (including overtime) which women are able to perform.

According to a recent ABS survey, women spend 41% more time than men on unpaid household and community activities including domestic, childcare, adult care, and voluntary work activities (ABS, 2022b).

Figure 1: Do workers ever perform overtime? By gender and employment type



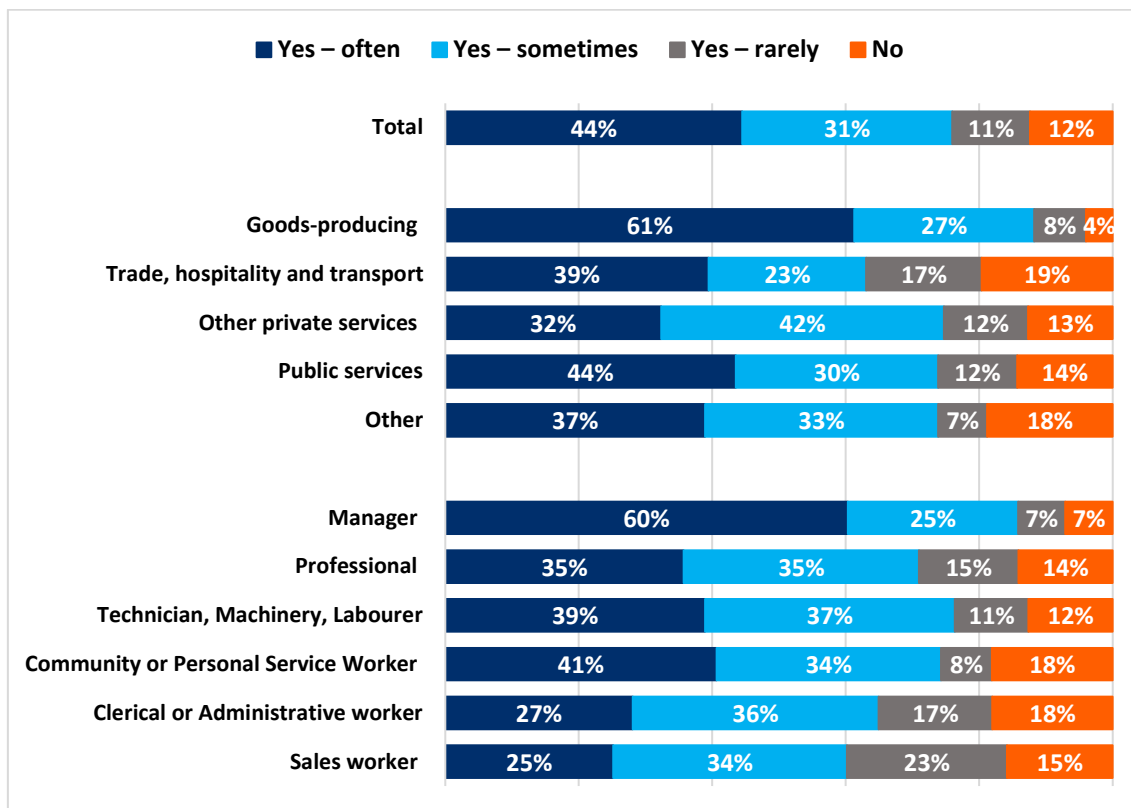
Source: Survey results as described in text.

Full-time workers are the most likely to have worked overtime, with four in five (79%) reporting working outside of scheduled hours. This is followed by self-employed (61%) and part-time workers (58%). Although casual workers are the least likely to have worked overtime, almost half (47%) still indicated they had. Men are also more likely to be employed in full-time positions, the type of employment most likely to report overtime.

The frequency of and motivations for overtime are other important dimensions of this problem. Figure 2 shows that 44% of Australian workers frequently work outside of scheduled hours in order to meet the expectations of their employer.² Around a third (31%) of workers indicated they sometimes perform overtime, and 11% who rarely did overtime. Therefore the largest share of workers perform overtime often, as opposed to sometimes, rarely, or never.

² Note: the 1% of workers who responded Don't know/Not sure were excluded.

Figure 2: Frequency of overtime to meet employer expectations by industry and occupation



Source: Survey results as described in text.

Overtime is fairly evenly spread across industries and occupations, with the exception of goods producing workers and managers. On an industry basis, people working in goods producing industries³ were most likely to report that they often performed overtime (61%). This was followed by those working in public services⁴ (44%), and trade, hospitality, and transport (39%). The results suggest that overtime is an issue for workers across the board rather than an issue afflicting people working in any particular industrial setting (whether office jobs, factories, or hospitals), which is important information to consider when developing appropriate policy solutions. In other words, overtime is not an industry-specific problem that can be resolved with a targeted solution.

Almost two thirds of managers (60%) reported they often worked overtime to meet the expectations of their employer (Figure 2). These workers were also least likely to report that they did not feel it was necessary to perform overtime. It tends to be

³ Goods producing industries include agriculture, mining, manufacturing, utilities, and construction.

⁴ Public services include education and training, health care and social assistance, and public administration and safety.

culturally accepted that managers – those with more responsibility and likely with better pay – assume a degree of flexibility regarding their working hours. On the other hand, two in five (41%) of community or personal workers often work overtime but receive lower average wages.

The survey also showed that over half of people under the age of 40 often felt it necessary to work outside of scheduled hours, compared with about one-third of workers between 40 and 59. This could reflect the relatively weak positions of power that younger workers experience earlier in their working lives.

In sum, the incidence and frequency of overtime are more common among men, young people, those with full-time jobs, and those working in sales or as managers.

REASONS FOR OVERTIME

According to conventional economic theory, the number of overtime hours a worker does is the outcome of both supply and demand factors. It is assumed workers are free to choose the combination of working and leisure hours that maximises their utility, and that this is highly dependent on the relative ‘prices’ of work and leisure time (Anxo and Karlsson, 2019). On the demand side, employers prefer flexibility in their employment decisions (regarding both the number of workers and the hours they work) in order to respond to troughs and peaks in demand for goods and services (Anxo and Karlsson, 2019).

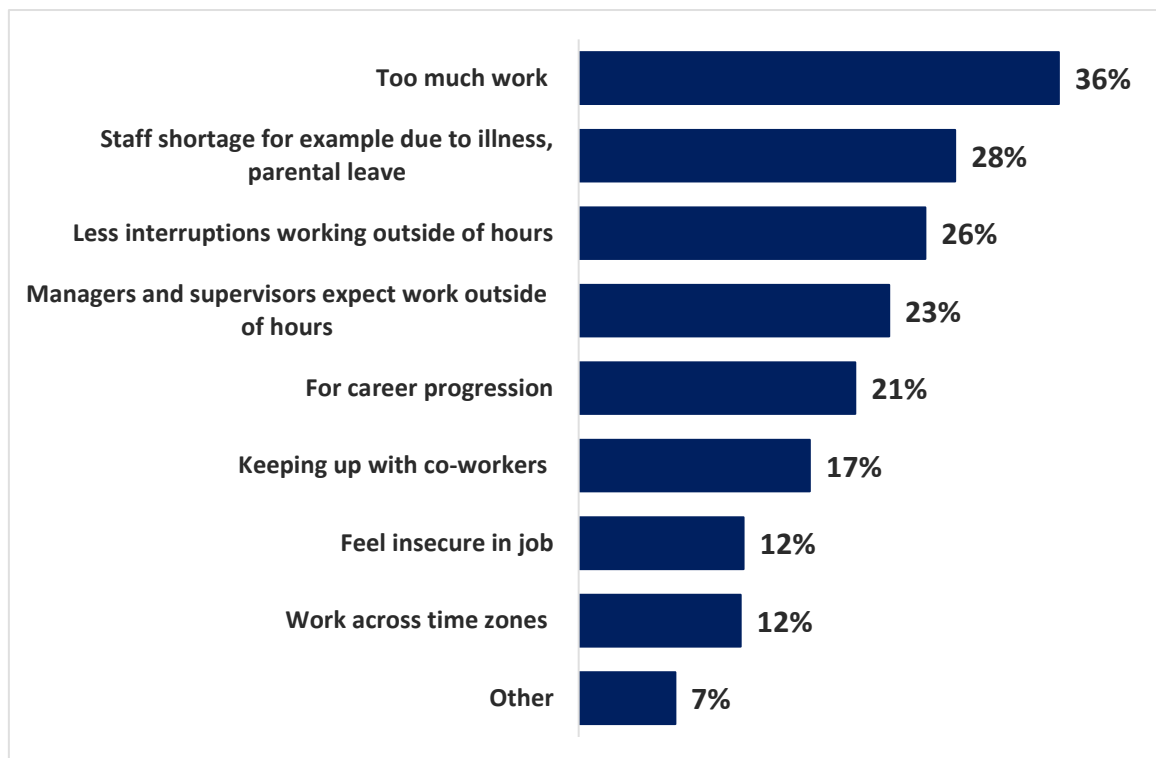
But there are many limitations in a theory explaining overtime on the basis of the free choices of workers and employers. The theory overlooks many barriers workers face in adjusting their working hours to wage settings, family circumstances, tax rates, and other variables. Our survey shows that workers perform paid and unpaid overtime for many different reasons, not properly elucidated by conventional ‘supply and demand’ theory.

The survey asked respondents who performed work outside of scheduled working hours, the reasons why. They were provided with a list of possible reasons (see Figure 3) but could also submit other options.

The most common reason why Australian workers performed overtime was that they had too much work, reported by one third of workers (36%). This was followed by 28% who attributed it to staff shortages, 26% said they worked outside of normal hours because there were fewer interruptions to their work at these times, and 23% reported that overtime was expected by their managers and supervisors. Notably, three of these top four reasons for overtime reflect external workplace issues, rather

than ‘choices’ workers make voluntarily. Workload issues, staff shortages and workplace expectations of overtime are all conditions under employers’ control. Comparatively, more worker-centric motivations including desired career progression, keeping up with co-workers, and feeling insecure in a job were identified by fewer workers as motivations for overtime.

Figure 3: Reasons why workers complete overtime



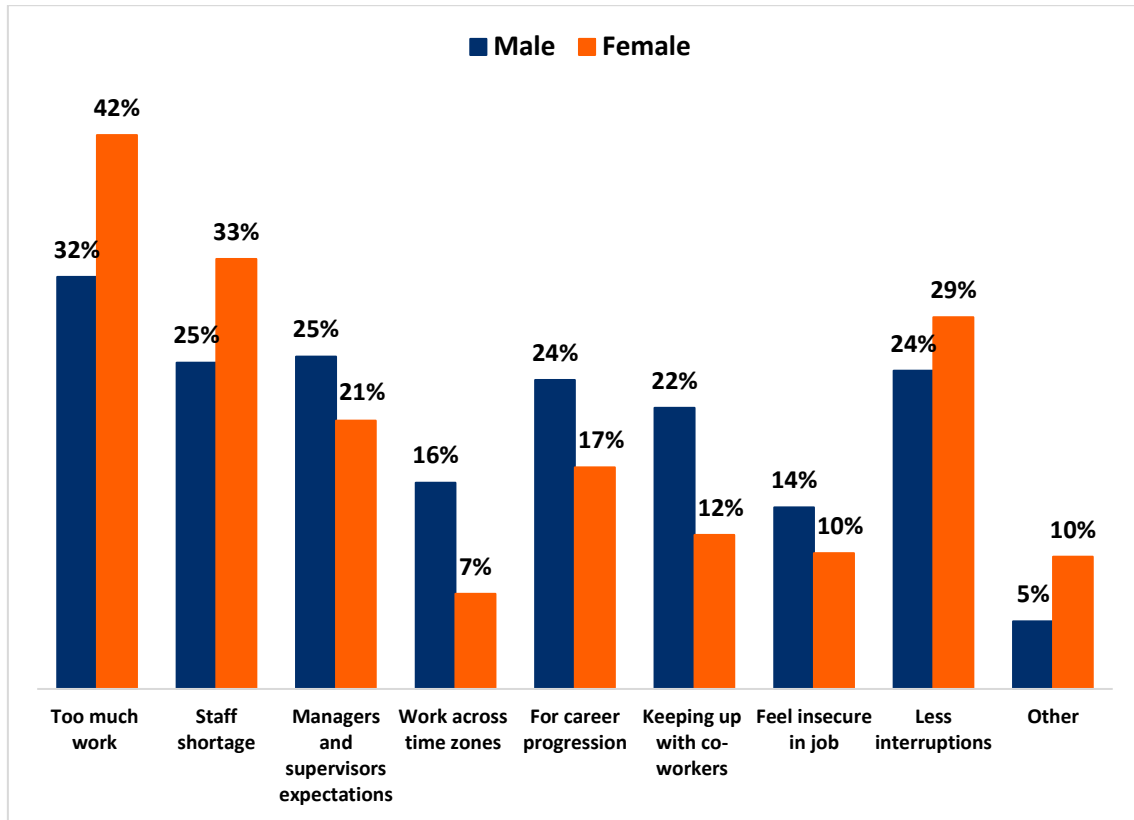
Source: Survey results as described in text. Note: respondents could pick more than one option.

Respondents could offer customised answers under the ‘other’ category. Common among these responses was additional pay as a reason to complete overtime. This is particularly understandable in the current context of declining real wages and rising cost of essentials. Overtime provides some workers with flexibility to increase hours and receive additional pay. Other common customised responses included: travel while working; that they cared about their customers, clients, or students; and that they owned a business.

The most common reason for overtime for both men and women was too much work, however women were more likely to attribute overtime to workload (42%) than men (32%). Women were also more likely to identify staff shortages, and less interruptions to work outside normal hours, as the reasons for overtime. In contrast, men were more likely than women to cite work across time zones, working overtime to advance career progression, and keeping up with co-workers as reasons for overtime.

Gendered segregation in types of work, industries, and occupations contribute to these differences, as do socialised expectations around gender within workplaces.

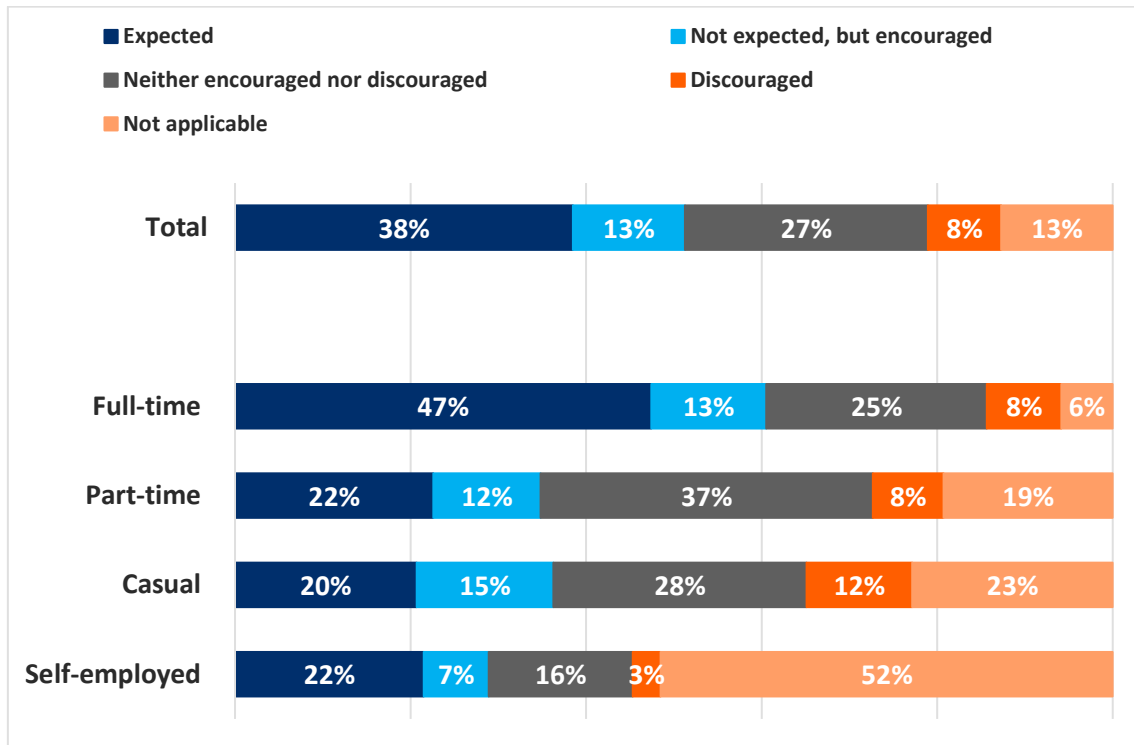
Figure 4: Reasons why workers complete overtime, by gender



Source: Survey results as described in text. Note: respondents could pick more than one option.

Respondents were asked about expectations concerning overtime in their workplace (Figure 5). Over a third of workers (38%) reported that overtime was expected in their workplace, and only 8% said their workplace discouraged overtime. Expected overtime is particularly common for full-time workers, with 47% reporting overtime was an expectation. The results suggest that overtime is a systemic issue, and that a big driver of why people complete overtime is the culture of workplaces and expectations of employers. This makes it difficult for individual workers or even a group of workers in a particular workplace to combat.

Figure 5: Workplace expectations of overtime



Source: Survey results as described in text.

CONSEQUENCES OF OVERTIME

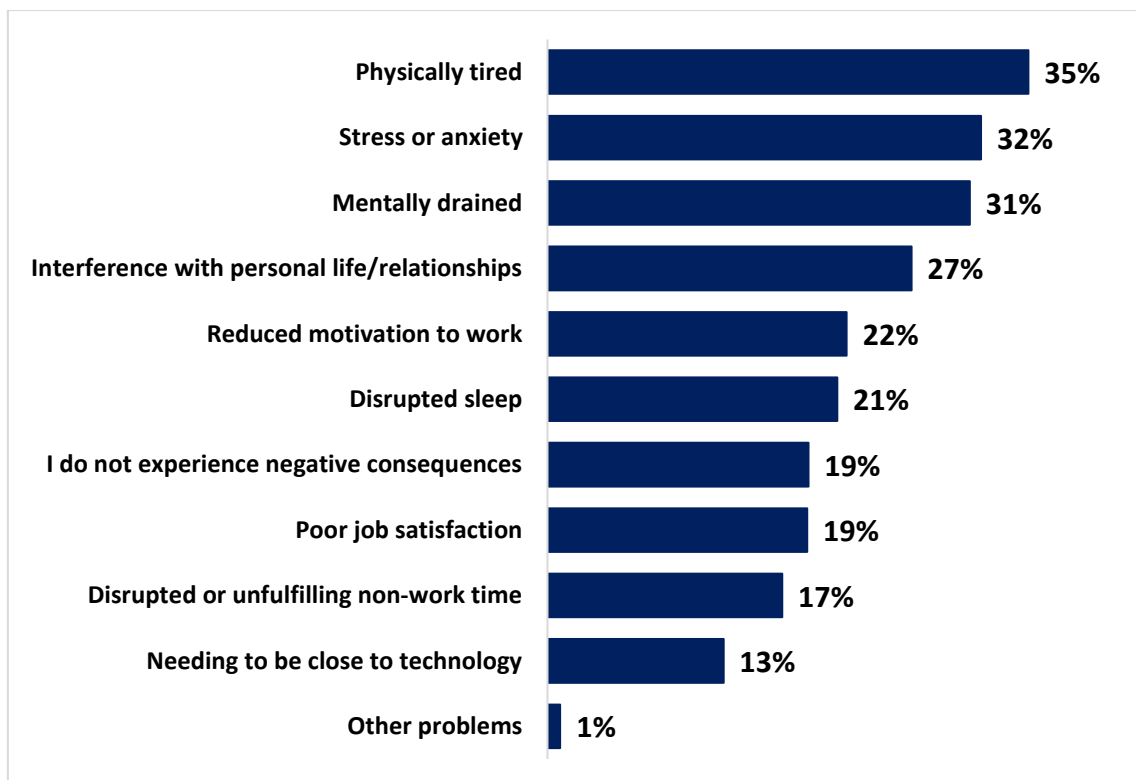
Overtime can have significant consequences for workers and society more broadly. Long working hours can be detrimental to workers' health, safety, and work-life balance – experienced in separate and interconnected ways. Exposure to long working hours, particularly if persistent, is associated with anxiety, sleep disorders, depression, and even physiological conditions like cardiovascular and metabolic disorders (Anxo et al, 2017; Bannai and Tamakoshi, 2014; Pega et al, 2021). The physical and mental health toll of overtime puts workers' safety at stake, as the risk of accident or injury increases disproportionately beyond the 7th hour worked per day (Deloitte, 2010).

In addition to the health and safety implications, long working hours disrupt workers' family and social spheres. Workers with poor work-life balance report more sick leave, display lower work motivation, and are generally less loyal to their employers (Anxo et al, 2017). Work-life balance issues go beyond the challenge of reconciling work and family commitments, and indeed encompass workers' whole life course in various dimensions. Work-life imbalance can lead to issues with workforce participation, financial insecurity, and social cohesion (Anxo et al, 2017).

In our survey, respondents who reported to have worked overtime, were asked what negative consequences they experience due to working outside scheduled hours. They were provided with a list of ten, but once again were also given a write-in option (see Figure 6). The results are consistent with consequences identified in other published research. Only 19% of those working overtime reported no negative consequences; 81% reported experiencing at least one consequence. On average respondents identified two negative consequences attributed to overtime.

The most commonly experienced negative consequence was physical tiredness (35%), followed by stress and anxiety (32%) and being mentally drained (31%), each affecting around a third of workers. Over a quarter of workers reported that overtime interfered with their personal life and relationships (27%), while 17% responded that it led to disrupted or unfulfilling non-work time. One in five of those working overtime identified that working outside scheduled hours negatively affected their relationship with work; 22% reported reduced motivation to work, and 19% experienced poor job satisfaction.

Figure 6: Negative consequences of overtime



Source: Survey results as described in text. Note: respondents could pick more than one option.

Only 1% of respondents identified negative consequences associated with overtime other than the suggested responses in the list. Common responses in this 'other'

category included not having enough time to spend with children. This interference with family time is particularly worrying as it reinforces the gendered maldistribution of caring duties, family well-being, and even child development.

Notably there are clear differences in the experience of these negative consequences across age groups. For example, workers aged 50 and over were more likely to report that they do not experience negative consequences from overtime, with 46% in this age group reporting no consequences – compared to 13% of workers aged between 18-49.

In sum, a large portion of Australian workers are performing overtime. While there are some valid reasons for an employer to request, or for an employee to perform, overtime, our results suggest overtime is often driven by unreasonable or unclear expectations of workers, and sub-optimal working conditions. Australia's industrial relations policies and institutions are not appropriately protecting the boundaries between work and non-work time for many workers, at the expense of their health, safety, social and family lives.

The right to disconnect

The use of information and communication technology (ICT) has facilitated a creeping of work into private time. An employee taking a laptop home to complete a task, answering a mobile phone, or attending a zoom meeting outside of hours all facilitates this expansion of work responsibilities beyond normal working hours. The trend was accentuated during the COVID pandemic, which saw a significant portion of people move to working from home (WFH). WFH has interceded and created new patterns of work enabled by ICT, with both positive and negative impacts on workers. Increased flexibility of working time has weakened the boundaries between work and non-work time, exacerbating the incidence, expectations, and toll of overtime. Previous *Go Home On Time Day* reports conducted since the onset of the pandemic have explored and documented the blurring of work-life boundaries during the pandemic.⁵

In reaction to growing overtime and the omnipresence of technology in recent years, some countries have moved to limit work outside of hours through various policy measures and protections. One such initiative is to implement a 'right to disconnect'. This right would guarantee the freedom of employees to switch off from communications with their workplace outside of working hours, with a particular focus on digital methods of communication such as mobile phones, emails, and virtual meetings. The right to disconnect is about reasserting the right to uninterrupted personal time, in the face of an increasing prevalence of digital connection permeating work culture (Lerouge & Trujillo, 2022). The International Labour Organization considers it to be an indirect way of limiting working hours (ILO, 2021).

As outlined above, Australia already has regulations dealing with working time and contact hours. However, our survey results show that overtime remains a chronic issue in Australia, revealing weaknesses in the way existing workplace relations laws protect workers' capacity to disconnect from their job. This section of the report will examine how some other countries have approached a right to disconnect, what Australian workers think about this right, and how it might be implemented in this country.

APPROACHES TO A RIGHT TO DISCONNECT

The 'right to disconnect' is a relatively new idea, and is being addressed through new policies being developed in various jurisdictions. Naturally, these initiatives show

⁵ See Nahum (2020, 2021).

considerable variety in how a right to disconnect has been defined, codified, and implemented. One broad distinction can be made between a 'soft' approach, where the responsibility lies on the employee to demand and enforce their own right to disconnect, supported by educational materials, versus a 'hard' approach, where the obligation lies with an employer to ensure their employees are not contacted beyond working hours.

The argument for pursuing a softer approach is that the focus of policy should be on changing the culture of workplaces. This minimises the legislative imposition on businesses, leaving it open to implement a right to disconnect through training and educational materials. Examples pursued by companies have included training exercises for staff on appropriate working hours, and digital pop-ups that remind employees of appropriate work pattern (Eurofound, 2021b). At BMW, management opted to introduce a 'mobile working drivers licence' that trained employees on how to establish better boundaries around work (Eurofound, 2021b).

Merely informing an employee that they can demand limitations on working hours and have a right to turn down excessive work may seem like an easy solution, however it ignores the power imbalances that are an unavoidable reality of the employment relationship. In practice, if an employee works in an environment in which there is pressure to perform excess work, through unmanageable workloads facilitated by technological connectivity, leaving it to an individual to demand their own right to disconnect is risky and unrealistic. Employees may be wary of harming their future job prospects in asserting that right against their employer, all the more so in conditions of insecure work and widespread unemployment (Autonomy, 2021).

An alternative is to implement a harder right to disconnect, backed up by genuine regulatory strictures, not just individual education. A hard right declares a positive duty on employers to ensure that employees are not contacted outside of working hours. Employers could satisfy this duty by closing down contact methods outside of appropriate hours. Further, part of this duty would be compelling the employer to inquire into why excessive hours are being performed in the first instance. This takes the onus off workers to protect their own right to disconnect, instead making it the employer's responsibility to ensure the right is not contravened. There is a risk this approach may incentivise employees to hide excessive work, to avoid the implication that they are failing to manage their own workload. For effectiveness, the responsibility should fall on the employer to prove that it has not contravened a right to disconnect, rather than on the employee to enforce it (Lerouge & Trujillo Pons, 2022). For all these reasons, a hard right to disconnect offers a stronger pathway for clearly enforcing limits on working hours and a separation between work time and

leisure and family time. Without this, the voluntary dimension of softer disconnection policies leaves them too open to continuing employer misuse.

The right to disconnect in some form has been legislated in France, Ireland, Belgium, Italy, Spain, and Ontario, Canada, while legislation has been proposed and is being considered in the Netherlands, Philippines and Germany. In most cases, these countries have implemented a right to disconnect at a sector or company level through collective bargaining. In general, legislation has been vague, preferencing a soft approach that sets out a right but leaves to individual firms to implement. The following examples (including France, Ireland, Germany, and Ontario) demonstrate the variety of approaches to date, and the varying degrees of obligation that rest on the employer or employee.

France

France was the first European country to introduce right to disconnect legislation, in August 2016 (Eurofound, 2021a). This right states that employees cannot be punished for refusing to connect (through any means) with their workplace outside of working hours (Law No° 2016-1088).

The law requires companies to negotiate the procedure of a right to disconnect with their employees through collective bargaining.⁶ If agreement cannot be reached, then companies must create a charter. The charter is made in consultation with the Social and Economic Committee (CSE), establishing procedures for implementing a R2D and training protocols for employees (Eurofound, 2021a). Both agreements and charters are non-binding, with no sanctions for breaching the right to disconnect once negotiated. This leaves the model of implementation open to employers and employees to negotiate. The degree to which the obligation rests on the employer, and is then a hard approach, relies on the strength of the negotiators to set the terms. Because of this flexibility, forms of right to disconnect agreements vary across France.

One agreement reached at a sector level by notaries in 2018 imposed a positive obligation on employers to note excessive working hours and investigate the root cause (Eurofound, 2021a). This reflects a harder approach that situates the base obligation with the employer to ensure employees' right is protected. The French approach focuses on making an obligation to negotiate as the imperative for introducing a right to disconnect.

⁶ In France, some 98% of workers are covered by collective bargaining agreements (OECD Labour Market Statistics, Collective Bargaining Coverage), and hence leaving the details to negotiation is more feasible than in countries (like Australia) with weak bargaining coverage.

Ireland

In 2021 the Irish government introduced a ‘Code of Practice for Employers and Employees on the Right to Disconnect’ (Miley, 2021). This is a written guideline codifying a ‘best practice’ model for employers. The right to disconnect is explained as the right for employees to switch off from work outside of normal working hours, including a right not to respond to emails, telephone calls or other messages. This is modulated by three elements in the code.

1. The right of an employee to not routinely perform work outside normal hours.
2. The right to not be penalised for refusing to attend to work matters outside of normal working hours.
3. The duty to respect another person’s right to disconnect (by not routinely emailing or calling outside normal working hours).

The terms of the code are not enforceable as an offence, however the code can be considered in other proceedings under the *Workplace Relations Act 2015*. The overall approach of the Irish government has favoured ‘flexibility,’ with a reluctance to impose explicit regulation on employers. This imposes few conditions on employers, and without an additional obligation to negotiate is likely to manifest in ‘soft’ self-regulation by employers. At its introduction, an opposition politician (O’Reilly, 2021) stated “the reality is this code of practice does not confer a single additional legal right on workers”. The function of the code is to give practical guidance, rather than meaningful intervention in labour regulation.

Germany

In Germany trade unions have led a debate around a right to disconnect following a spike in stress-related absences in the workplace (Eurofound, 2021a). The right to disconnect is supported on the basis that over-connection is an occupational health and safety issue. Although debate has bubbled along since 2011, to date the right to disconnect has only been implemented by some companies, rather than legislatively enshrined at an economy-wide level (Eurofound, 2021a). Similarly to France, this leaves it to works councils and trade unions in Germany to negotiate the parameters of a right to disconnect. An example of this process leading to a hard right to disconnect comes from Volkswagen. In 2011, following negotiations between the works council and management, the company introduced a policy that disabled phones and other ICT between 6.15pm and 7.00am (Eurofound, 2021a). The works council sought this approach specifically because it wanted to shift the burden of enforcing the right from employees to employers (Eurofound, 2021a). This approach is not uniform across

German companies, however, with many opting for self-regulation and a ‘soft’ right to disconnect that fails to give employees substantive protection (Müller, 2020).

Ontario

Another example of a very soft right to disconnect policy is provided by new legislation in Ontario, Canada. A new provision was added to the province’s *Employment Standards Act* in 2021, which simply requires companies with over 25 employees to establish a policy regarding the right to disconnect outside of normal working hours, and then to communicate that policy to staff.⁷ The legislation does not indicate what protections must be included in this company policy, nor even that it must protect employees’ rights to disconnect at all. As one critic argued, a company policy that all workers are expected to respond to communication outside of normal working hours would be entirely consistent with this legislation (see Doorey, 2021). So while this policy has been widely miscommunicated as a ‘right to disconnect’, it is better described as a ‘right to be informed about your employer’s policy regarding out-of-hours work demands.’ The Ontario experience, therefore, provides a cautionary warning about the risks of governments capitalising on popular interest in the concept of disconnection, but in ways that do not provide any meaningful protection.

DO AUSTRALIANS HAVE A RIGHT TO DISCONNECT?

Public interest in a right to disconnect has been bubbling away in Australia for several years. Trade unions have been the initial champions, with a codified right to disconnect first successfully pursued by the Police Association of Victoria, in its *Victoria Police Enterprise Agreement 2019*, negotiated with the Victoria state government (The Police Association Victoria, 2020). This agreement contained a clause setting out that police employees could not be contacted outside of normal hours other than for emergency situations or genuine welfare issues. Other trade unions in Australia have also sought to introduce a right to disconnect in enterprise agreements. More recently, the National Tertiary Education Union (NTEU) included a right to disconnect in its key issues for its 2022 round of bargaining as a work-life balance measure (Thompson, 2022).⁸ Additionally, during the COVID pandemic the Australian Council of Trade Unions published a ‘Working From Home Charter’ that included a right to disconnect (ACTU, 2020).

⁷ See Ontario Ministry of Labour, Immigration, Training and Skills Development (2022).

⁸ Which will inform their bargaining strategy for all universities.

The debate about a right to disconnect has also entered Australia's Parliament. In October of 2022, the Senate Select Committee on Work and Care tabled its interim report (Senate Select Committee on Work and Care, 2022). The report included a recommendation for the Department of Employment and Workplace Relations to investigate reforming the *Fair Work Act 2009* to include a right to disconnect. The purposes of this right would be to support productive work from home, support flexibility, protect the right of workers to disconnect from their job, place a positive duty on employers to accommodate that right, and allow employees to appeal to the Fair Work Commission where their right is not observed by employers.

It is still early days in the campaign to win an effective right to disconnect in Australia, but momentum is clearly building. There are still many questions to resolve regarding how the right should be defined and codified, and at what level it could be implemented. There is little doubt, however, that Australians want a right to disconnect, as our survey results confirm.

ATTITUDES TOWARDS A RIGHT TO DISCONNECT

In our survey, respondents who were employed were presented with the following pre-text:

"In 2020, the union representing Victoria police negotiated a 'right to disconnect' from work. It directs employers to avoid contacting workers outside of work hours, unless in an emergency."

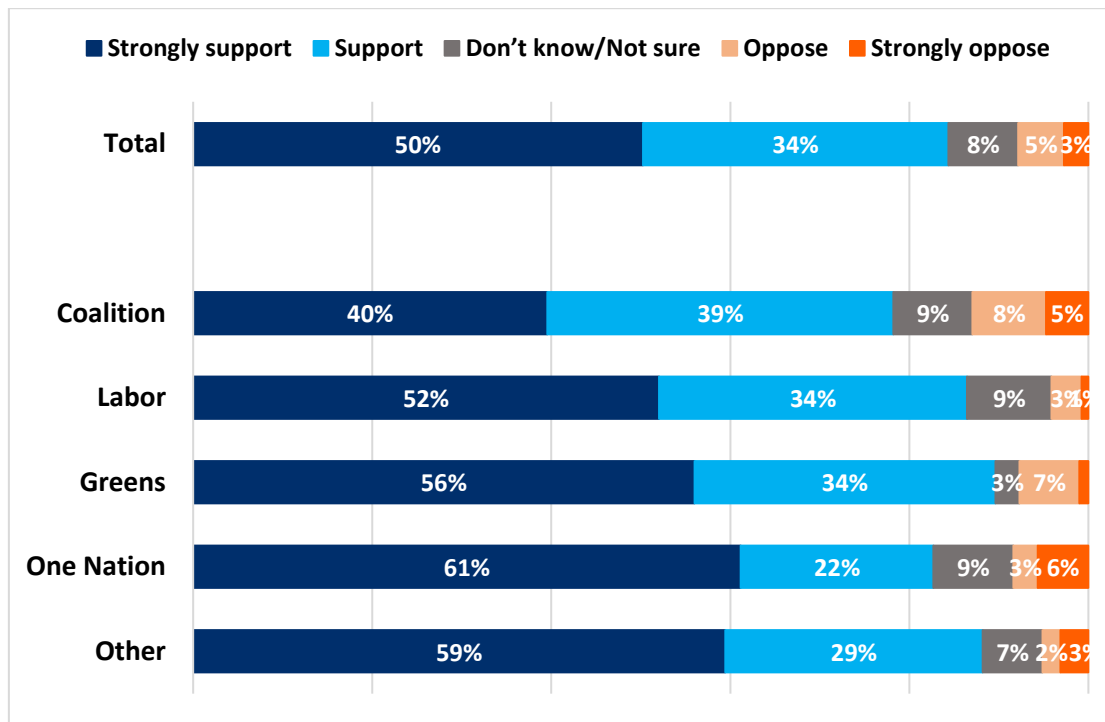
Respondents were then asked whether they would support or oppose the Federal Government legislating a similar right to disconnect nationally. The idea met with overwhelming support.

As shown in Figure 7, six in seven (84%) Australian workers support this idea of a right to disconnect, including half (50%) who strongly support it. Only 8% of Australians oppose the idea. Those who oppose the idea of a right to disconnect tend to be older workers; recall from our survey results on overtime work, older workers also reported fewer negative consequences due to overtime. Opposition to a right to disconnect was also more common among self-employed workers, for whom the idea may seem less relevant.

Notably, there is little variation in support for the right to disconnect across voting intention in Australia. Support is highest among Greens voters (90%), followed by people who vote Independent or for other minor parties (88%). However, support is overwhelming among major party voters, with 86% of Labor voters and 78% of

Coalition voters supporting the Federal Government legislating a right to disconnect nationally.

Figure 7: Attributes towards legislating a right to disconnect in Australia



Source: Survey results as described in text. Note: only employed respondents were asked this question.

This breadth of support suggests considerable appetite for a right to disconnect in Australia. Workers are experiencing the consequences of being always contactable and performing considerable appetite, and they are also ready for solutions. If Australian workers are to have a right to disconnect, then the possibilities and mechanisms for implementation of this right must also be considered.

POSSIBILITIES FOR ENSHRINING A RIGHT TO DISCONNECT IN AUSTRALIA

The right to disconnect could take several forms in Australia. It could be voluntarily adopted at the individual firm level, negotiated through enterprise bargaining agreements, or legislated as a minimum standard in our labour law framework. These varying approaches would have different impacts across the workforce, and differing degrees of effectiveness in protecting workers' non-work time.

One option would be for Australia to implement a code of practice, similar to Ireland. This would not introduce a new right; rather it would be a practical clarification of the operation of current working-hour regulations. For reasons outlined above, this option is not enforceable, so leaves considerable scope for misuse or non-use by employers who opt-out of meaningful changes to their workplace culture. This approach is already possible: there are currently no restrictions on employers unilaterally pursuing a policy of the right to disconnect in their workplace.

Alternatively, the right to disconnect could also continue to be implemented on an enterprise-by-enterprise basis as pursued by trade unions. This approach, too, is already legal under our existing legislative framework, as working hours are within the ambit of 'permitted matters' that can be bargained for by parties. The benefits are that where it is attained, a negotiated right to disconnect can be better articulated to suit the circumstances of particular industries and workplaces. The limitation of this approach is that it relies on there being an active and sufficiently strong trade union to pursue this claim in the workplace; this is more the exception in Australia's labour market today.⁹ Consequently, this approach is only likely to result in a small portion of the Australian workforce benefiting from a right to disconnect.

A third option is to assert a right to disconnect as a universal workplace protection by including it in the National Employment Standards (NES).¹⁰ This could be achieved through an amendment to the *Fair Work Act 2009*, as recommended in the Senate Select Committee on Work and Care interim report.

This would be an especially effective approach as it would achieve a greater degree of universality and be enforceable. The NES set out a minimum floor of working conditions in Australia, which cannot be 'contracted out' of any workplace agreements. If a right was included in the NES it would also automatically filter upwards through the Modern Awards and Enterprise Bargaining system, thereby benefiting a greater number of workers (since Modern Awards, Enterprise Agreements, and individual contracts all cannot undermine or undercut the conditions of the NES). Putting a right to disconnect into the NES would ensure it applies to all workers. Further, as our Modern Awards and Enterprise Agreements are modulated to suit the conditions of different sectors and industries, a right to disconnect in the NES would augment existing working hours systems in different workplaces.

⁹ As documented in Stanford, Macdonald, and Raynes (2022), only 11% of workers in Australia's private sector are currently covered by a current enterprise agreement.

¹⁰ There are currently eleven minimum entitlements that must be provided to employees without exception.

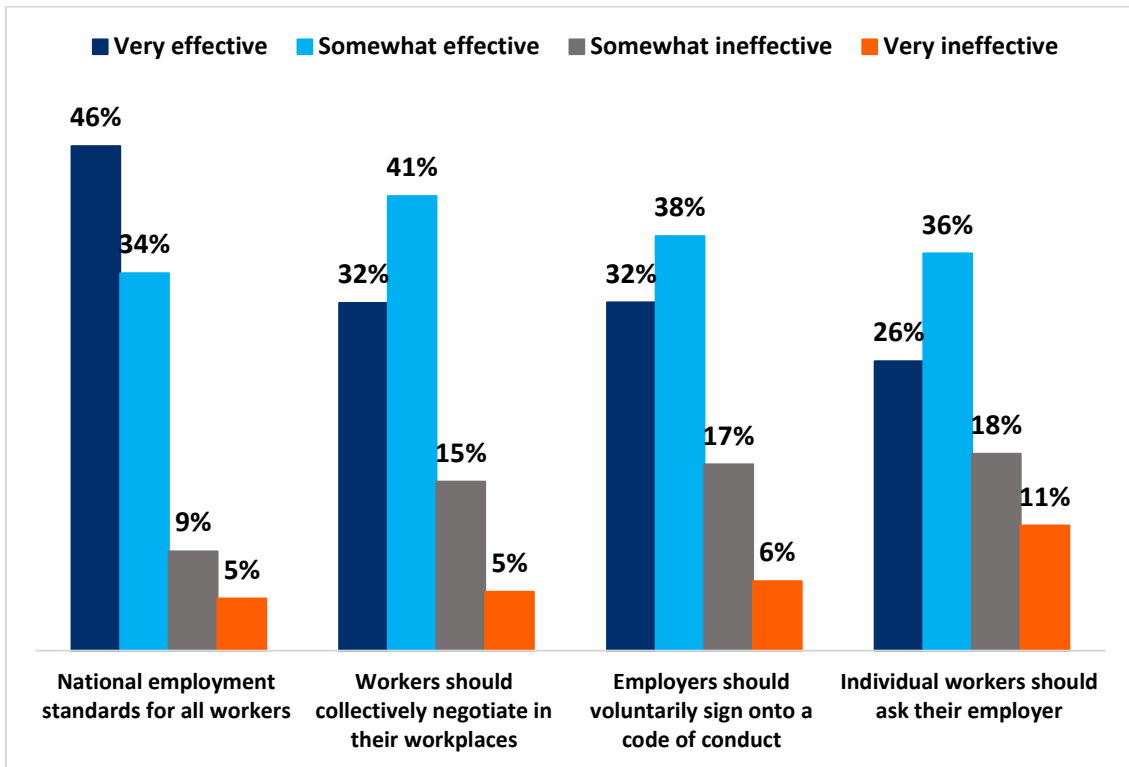
As identified in the Senate Select Committee on Work and Care interim report, it is important that any right to disconnect protects employees from adverse consequences for refusing contact outside of working hours. This is because huge swathes of the workforce, disproportionately women, youth, and other low-paid workers, are employed in smaller non-unionised workplaces. As a result, their reduced power makes it unlikely a right to disconnect can be realistically bargained (at an individual or even workplace level), particularly if they fear retribution (Pocock, 2021). Explicitly identifying the right to disconnect as a core workplace right would automatically ensure protection against adverse action. Adverse action is a legal protection for any employee who faces repercussion for asserting a workplace right.

Australians agree that legislating a right to disconnect in national employment standards would be the most effective avenue for implementing this right. In our survey, employed respondents were asked how effective they think four different avenues for implementing a right to disconnect would be: including via national employment standards, collective negotiation, a voluntary code of conduct for firms, or requests by individual workers to their employers.

As illustrated in Figure 8, four in five (80%) workers thought that the government legislating the right in national employment standards would be effective, with 46% who thought it would be very effective. This was by far the highest endorsement of effectiveness of any of the options presented. Almost three-quarters of respondents (73%) thought that workers collectively negotiating for the right with their employers would be effective, including 32% who responded that this would be very effective. So respondents view collective bargaining as the second-most effective option for implementing a right to disconnect.

The third most popular option was for employers to voluntarily sign onto a code of conduct. 32% of respondents reported this would be very effective, and 38% somewhat effective. Of the four options for implementation, individual workers asking their employers was considered least effective. Just 26% of respondents thought this approach would be very effective. Almost one in three (29%) thought this option would be ineffective.

Figure 8: Effectiveness of different avenues for implementing a right to disconnect



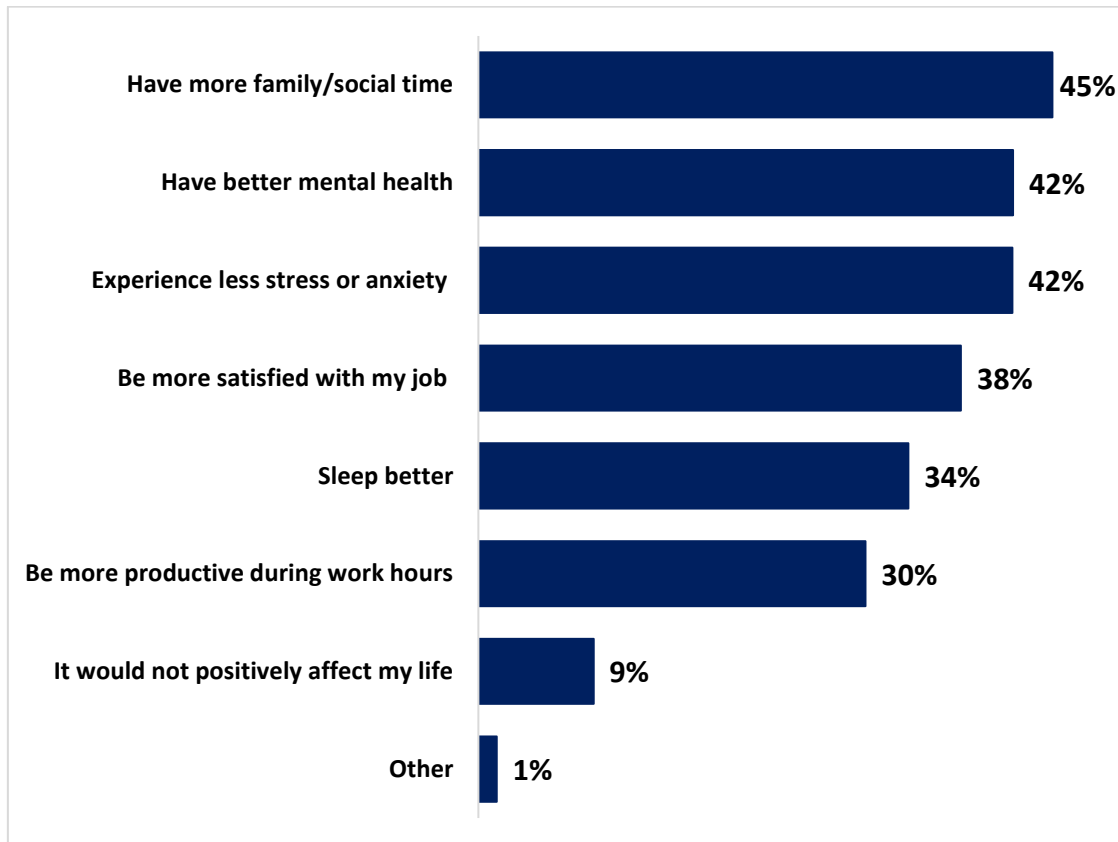
Source: Survey results as described in text. Note: only employed respondents were asked this question. Note: only employed respondents were asked this question.

Even Coalition voters viewed implementing a right to disconnect via NES as the most effective option. One in three (35%) Coalition voters thought legislating within the NES would be very effective – more than 31% who viewed a voluntary code, 29% collective negotiation, and 24% individual requests as very effective. Green voters were the most likely to view the NES approach as very effective (57%), followed by Labor voters (49%).

BENEFITS

The survey also asked respondents how a right to disconnect might positively affect their lives, if at all. This question was asked following introductory text defining a right to disconnect as “directing employers to avoid contacting workers outside of work hours, unless in an emergency”. Only 9% of respondents reported that a right to disconnect would not positively affect their lives (Figure 9).

Figure 9: Positive effect of a right to disconnect



Source: Survey results as described in text. Note: only employed respondents were asked this question.

The most widely identified positive effect of a right to disconnect, reported by almost half of workers (45%), was having more family and social time (see Figure 9). Interestingly this same issue did not place in the top 3 negative consequences of overtime; however, it appears at the most commonly recognised benefit of limiting engagement with work outside of scheduled hours. This indicates the significant value that people place on social relationships in their lives.

Two in five workers (42%) identified that a right to disconnect would help with their mental health, and a similar proportion indicated they would experience less stress or anxiety. These benefits are particularly important in the context of rising mental health challenges amongst Australians. According to the ABS, around 4.8 million Australians (20%) reported a mental health or behavioural condition in 2017-18, an increase of 20% since 2014-15 (ABS, 2018). Other reported benefits of a right to disconnect include greater job satisfaction (identified by 38% of respondents), better sleep (34%), and higher productivity (30%).

In sum, the vast majority of Australians support the concept of a right to disconnect, and inclusion of that right within the National Employment Standards is seen as the most effective channel for implementing that right. Australians see a broad range of personal, familial, and work-related benefits arising from the ability to disconnect from work outside of regular hours.

Conclusion

John Maynard Keynes predicted that the generation of his grandchildren would be working three hours a day or a 15-hour workweek (Keynes, 1930). This prediction was based on the long-term trend of declining working hours, reinforced by strong worker-led movements to reduce working hours and the length of the work week. But workers in Australia and around the world are still working much longer hours than in Keynes' imagined future. The struggle to win more opportunities for leisure and family time will be hard fought, without measures to clarify and defend the boundaries between work and non-work time.

Our survey results confirm that overtime is a routine, prevalent practice in Australia, with seven in ten workers reporting having performed work outside of scheduled working hours. These are not just one-off instances of overtime, but occur regularly. Of those that completed overtime, almost half (44%) reported often performing overtime to meet workplace expectations, and another 31% performed overtime sometimes. According to workers the most common reason for overtime is having too much work (36%), followed by staff shortages (28%). Over a third of workers (38%) reported that overtime was an expectation in their workplaces. In short, it is clear that overtime is a systemic issue in Australian workplaces, and that conditions within the control of employers (such as overwork and understaffing) are its primary causes.

The prevalence of overtime suggests that Australia's industrial relations frameworks and institutions are not properly protecting the boundaries between work and non-work time for many workers, at the expense of their health, safety, social and family lives. In particular, existing laws have done little to protect the creep of work into private time, facilitated by information and communication technology. This is why workers, employers, unions, and governments around the world have been looking at how to implement a right to disconnect.

A pioneering implementation of a right to disconnect in Australia was in the *Victoria Police Enterprise Agreement 2019*. More recently the Senate Select Committee on Work and Care included a recommendation for a right to disconnect in its interim report. Our survey found considerable support for this right amongst Australian workers, with six in seven (84%) expressing support for the Federal Government to nationally legislate a right to disconnect that directs employers to avoid contacting workers outside of work hours, unless in an emergency. This report makes a strong case for the government to pursue a right to disconnect as a solution to overtime.

Appendix A - Methodology

Between 6 and 9 September 2022, the Australia Institute surveyed 1,410 adults living in Australia. The survey was conducted online through Dynata’s panel, with nationally representative samples by gender, age group and state/territory.

Voting crosstabs show voting intentions for the House of Representatives. Those who were undecided were asked which way they were leaning; these leanings are included in voting intention crosstabs.

The research is compliant with the [Australian Polling Council Quality Mark standards](#). The long methodology disclosure statement follows.

Long disclosure statement

The results were weighted by three variables (gender, age group and state or territory) based on Australian Bureau of Statistics [“National, state and territory population”](#) data, using the raking method. This resulted in an effective sample size of 1342.

The margin of error (95% confidence level) for the national results is 3%.

Results are shown only for larger states.

Voting intention questions appeared just after the initial demographic questions, before policy questions. Respondents who answered “Don’t know / Not sure” for voting intention were then asked a leaning question; these leanings are included in voting intention crosstabs. “Coalition” includes separate responses for Liberal and National. “Other” refers to Independent/Other, and minor parties in cases where they were included in the voting intention but represent too small a sample to be reported separately in the crosstabs.



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Appendix B - Survey Questions

The following questions were asked in the survey:

The following questions are about both paid/compensated and unpaid/uncompensated overtime. Overtime in this case refers to time worked in addition to your scheduled working hours.

Q. In your workplace, is performing work outside of scheduled working hours...

1. Expected
2. Not expected, but encouraged
3. Neither encouraged nor discouraged
4. Discouraged
5. Not applicable
6. Don't know/Not sure

Q. Do you ever perform work outside of your scheduled working hours?

1. Yes
2. No

Q. Do you feel that it is necessary to work outside of scheduled work hours in order to meet the expectations of your employer?

1. Yes – often
2. Yes – sometimes
3. Yes – rarely
4. No
5. Don't know/Not sure

Q. Why do you complete work outside of your scheduled working hours?

1. Too much work
2. Staff shortage for example due to illness, parental leave
3. Managers and supervisors expect work outside of hours
4. Work across time zones
5. For career progression
6. Keeping up with co-workers
7. Feel insecure in job
8. Less interruptions working outside of hours
9. Other [text box]

Q. What negative consequences do you experience due to working outside of your scheduled hours, if any?

1. Disrupted sleep
2. Mentally drained
3. Physically tired
4. Stress or anxiety
5. Disrupted or unfulfilling non-work time
6. Needing to be close to technology
7. Reduced motivation to work
8. Interference with personal life/relationships
9. Poor job satisfaction
10. Other problems [text box]
11. I do not experience negative consequences

Q. How important are the following to you?

	Very important	Somewhat important	Not important	Don't know/Not sure
Leaving work on time				
Not being interrupted by work while on leave (for example annual leave)				
Not being interrupted by work after hours or on weekends				
Being able to mentally leave work behind at the end of the day				
Not needing to check work correspondence				
Achieving a good balance between paid work and family/community/leisure goals				

Q. Some labour advocates have proposed a “right to disconnect” for workers. Generally, this refers to rules protecting workers from being interrupted by work during their non-work hours.

If workers in Australia had a “right to disconnect” what would be the most important aspects for you?

1. Leaving work on time
2. Not being contacted on the weekend
3. Not being contacted while on leave (for example annual or sick leave)
4. Not being required to work on weekends

5. None of the above
6. Don't know/Not sure

Q. In 2020, the union representing Victorian police negotiated a “right to disconnect” from work. It directs employers to avoid contacting workers outside of work hours, unless in an emergency.

Would you support or oppose the Federal Government legislating a similar “right to disconnect” nationally?

1. Strongly support
2. Support
3. Oppose
4. Strongly oppose
5. Don't know/Not sure

In the following questions a “right to disconnect” is defined as directing employers to avoid contacting workers outside of work hours, unless in an emergency.

Q. How might a “right to disconnect” positively affect your life, if at all?

I would ...

1. Have more family/social time
2. Sleep better
3. Experience less stress or anxiety
4. Be more satisfied with my job
5. Have better mental health
6. Be more productive during work hours
7. Other [text box]
8. It would not positively affect my life
9. Don't know/Not sure

Q. If workers in Australia had a “right to disconnect” how effective do you think the following avenues for implementation would be?

	Very effective	Somewhat effective	Somewhat ineffective	Very ineffective	Don't know/Not sure
The government should legislate it in national employment standards for all workers					
Workers should collectively negotiate it with their employer for their own workplaces					

Employers should voluntarily sign onto a code of conduct					
Individual workers should ask their employer					

Appendix C - Sample Distribution

	N =	% sample
Total Employed	876	62%
Male*	464	53%
Female*	412	47%
Age		
18-29	252	29%
30-39	219	25%
40-49	184	21%
50-59	131	15%
60+	90	10%
Employment Status		
Permanent full time	568	65%
Permanent part-time	190	22%
Casual or temporary	69	8%
Self-employed	49	6%
Occupation		
Manager	272	31%
Professional	183	21%
Technician or Trades Worker	58	7%
Community or Personal Service Worker	69	8%
Clerical or Administrative Worker	147	17%
Sales Worker	63	7%
Machinery Operator and Driver	26	3%
Labourer	40	5%
Don't know/Not sure	18	2%
Industry		
Agriculture, Forestry and Fishing	47	5%
Mining	20	2%
Manufacturing	68	8%
Electricity, Gas, Water and Waste Services	19	2%
Construction	44	5%
Wholesale Trade	26	3%
Retail Trade	88	10%
Accommodation and Food Services	33	4%
Transport, Postal and Warehousing	31	4%

Information Media and Telecommunications	27	3%
Financial and Insurance Services	55	6%
Rental, Hiring and Real Estate Services	17	2%
Professional, Scientific and Technical Services	62	7%
Administrative and Support Services	33	4%
Public Administration and Safety	28	3%
Education and Training	79	9%
Health Care and Social Assistance	95	11%
Arts and Recreation Services	28	3%
Other Services	65	7%
Don't know/Not sure	11	1%
Union membership		
Yes	305	35%
No	557	64%
Don't know/Not sure	14	2%

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