

***Developing an Effective  
Global Mobility  
Programme: An  
Employment Law  
Perspective***

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# **Outline**

## ***Global mobility in context***

- ***What does today's global workforce look like ?***
- ***What will it look like tomorrow?***
- ***How are higher education providers using global mobility arrangements?***

## ***Developing a global mobility programme: Initial considerations***

### ***Employment law considerations***

- ***What type of arrangement will meet our needs?***
- ***What minimum labour standards will apply?***
- ***What contractual matters need to be addressed?***
- ***What workplace policy matters need to be addressed?***

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# *Global Mobility in Context*

# *1*

## Three eras of international assignments

### 1970–1990

International assignments are mostly driven by large multinationals based in the US and Europe. These organisations send talent from the HQ country out into the field to manage operations in other parts of the world. Many assignments are from the US into Europe, but oil and gas, mining and other industries dependent on natural resources regularly send staff to more far-flung destinations. Assignees are usually sent off for a two to five-year period and are incentivised with attractive expatriate packages.



### 1990–2010

Demand for global mobility of talent increases as new markets emerge for companies to sell their products and services to, and also manufacture their goods at lower cost. Offshoring gathers pace. A new breed of mobile worker emerges alongside the expatriate and meets the globalisation demand through commuter, rotational, and technology-enabled virtual assignments. The flow of talent is still predominantly from West to East, or intracontinental, but companies begin to tap into rich talent pools in emerging markets, particularly India and China.



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# Global Mobility in Context Today

## Companies are hosting mobile employees in more countries than ever before

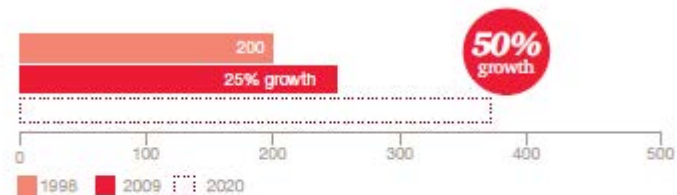
The average number of host locations supported by a global organisation continues to rise



Source: PwC international mobility database – sample 900 companies

## The mobile population in large organisations is increasing

Average number of mobile employees<sup>1</sup>



1. 2020 projection: As the business model of an organisation evolves from multinational to international to global, the mix shifts accordingly (from 80% of mobile employees from HQ to 60% from HQ to 40% from HQ). Numbers continue to increase and the definitions of mobility have broadened – even with increasing numbers, costs may be flat due to changes in package design and focus on lower cost alternatives. Mobile employee type mix has evolved from 50% executive to 10% executive.

Source: PwC international mobility database – sample 900 companies

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# *Global Mobility in Context*

## **Tomorrow**

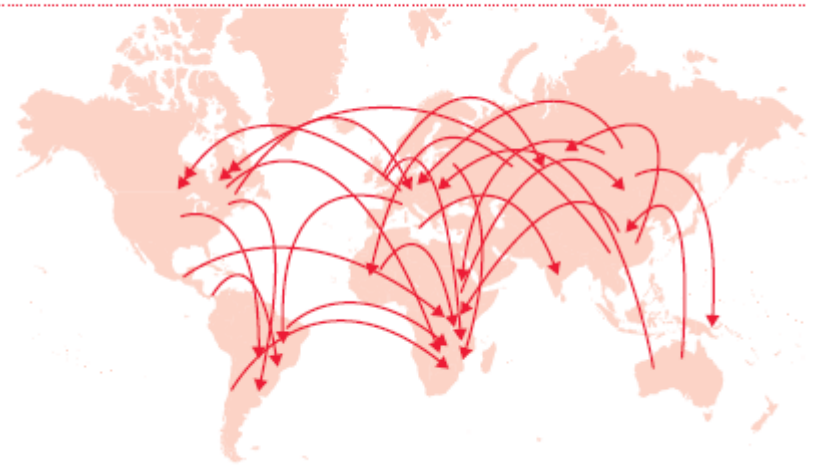
### Future view

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#### **2020**

Global mobility continues to grow in volume. Within the context of closely aligned international regulatory frameworks, the growth of cross-border acquisitions by sovereign wealth funds, lingering public investments in private business concerns, greater security cooperation between nations, and information technology that can identify and connect talent in an instant, global mobility becomes part of the new normal. Mobility of talent is fluid. For example, a Chinese company may engage a European team to manage an investment in Africa.

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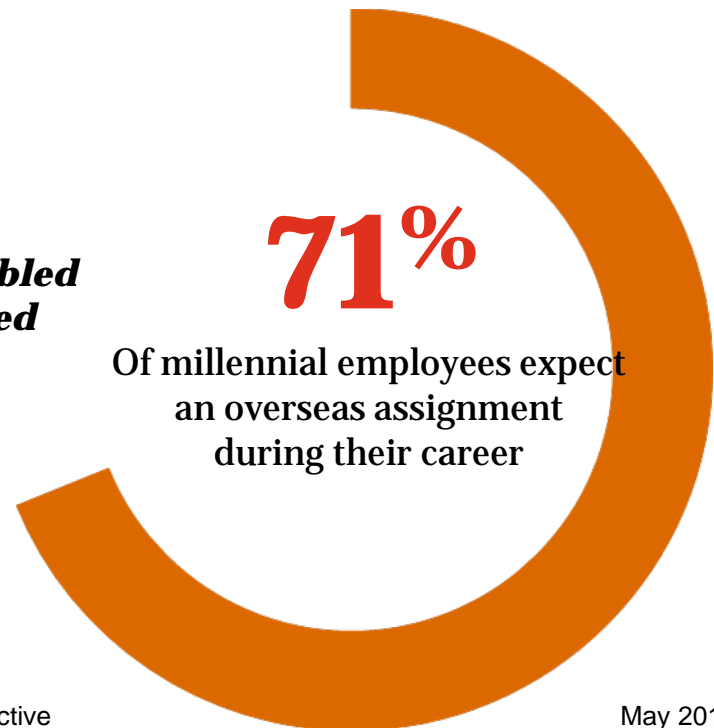
# ***Global Mobility in Context Today***

## ***Key trends***

***Assignee levels have increased by 25% over the past decade but assignments are becoming shorter and more flexible.***

***Mobility opportunities are now recognised as a key element in attracting, retaining, developing and engaging talent.***

***The number of female assignees globally has doubled in the past decade from 10 to 20% but is unchanged for Australian employers at 25%.***



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# ***Global Mobility in Context***

## ***Higher Education Providers***

### **Inbounds** to Australia:

- Highly qualified academic staff engaged to fulfil a particular research need or other requirement. Employed by the Australian HE provider usually only to work a total of several months spread over a finite period. Some (but not necessarily all) work is performed in Australia.

### **Outbounds** overseas:

- Academic staff working for overseas as per the arrangement above.
- Staff sent to work in facilities run by the Australian HE provider or another host organisation overseas, by way of assignment (underlying employment with HE provider remains)



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# *Global Mobility in Context*

## **Higher Education Providers**

### **Local hires** overseas:

- Australian HE provider directly employs overseas locals to work for it (or a legal entity is has established in that country).

Use of **labour hire companies** to provide local temps in overseas facility.

# *Developing a Global Mobility Programme: Initial Considerations*

## 2

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# Initial Considerations

- Legal/compliance
  - ***how will the relationship be structured? What type of relationship best suits the employer's needs?***
  - ***whose labour laws will apply?***
  - ***what else needs to be agreed between the parties?***
- HR/Organisational
  - ***who will manage the day to day aspects of the employment e.g. payroll and leave accruals?***
  - ***who will manage the employee ? How?***
  - ***is there a need for an organisational strategy review e.g. to ensure that the employer's policies are consistently applied to GM employees, ensuring overseas staff are properly acclimatised to the employer's policies and culture?***
- Industrial

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## ***Initial considerations***

- Immigration
  - ***what visa requirements must be met in order for the employee to work in a particular country?***
  - ***what ongoing visa responsibilities does the employer have while the employee is working in that country?***
  - ***What are the employer's visa obligations in the event of termination?***
- Tax

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# *Employment law considerations*

# 3

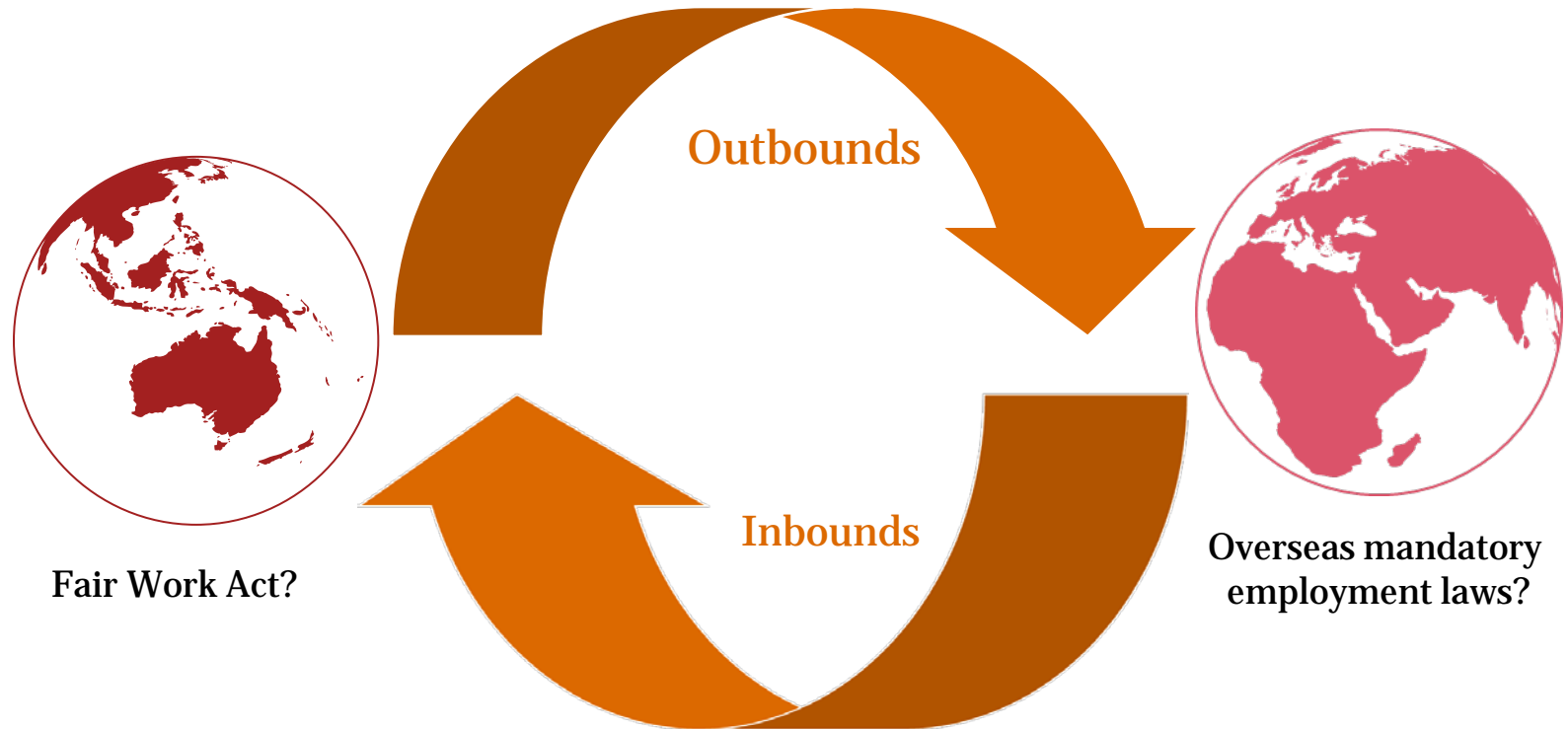
# *Employment law considerations*

## *Structuring the relationship*



# *Whose mandatory labour laws will apply?*

*Extraterritorial operation of the Fair Work Act?*



*Extraterritorial operation of overseas  
mandatory employment laws?*

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## *What minimum labour laws will apply?*

- **Mandatory labour laws:** are legislated labour laws that must be adhered to by employers in that jurisdiction
- ***Inbounds*** will be subject to the *Fair Work Act* if the employment relationship is “in and of Australia”
  - *Fair Work Ombudsman v Valuair Ltd and Others* (No 2) [2014] FCA
  - *Fair Work Ombudsman v China Sanan Engineering Construction Corp* [2013] FCCA 1177



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## *What minimum labour laws will apply?*

- ***Outbounds*** will be subject to the extra territorial provisions of the *Fair Work Regulations* if they are:
  - **Australian-based employees** employed by **Australian employers**
    - Australian based employee is an employee **who was employed in Australia by an Australian employer** (even if they are based outside Australia) OR is otherwise **primarily based in Australia**.
    - Australian based employer includes an employer **incorporated in Australia** or who has its **central management and control in Australia**.
  - Australian- based employees of overseas employers in certain circumstances (for example, if there is an enterprise agreement).
- These extra territorial provisions are always subject to the concurrent jurisdiction of the overseas country.

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## ***Contractual matters***

### **For assignments**

- Clarity over what responsibilities will be given to the host under the assignment agreement and what will remain with the employer under the employment agreement.
- Termination of the assignment and treatment of benefits on termination.
- Long service leave.

### **For transfers of employment**

- Treatment of service if the previous employer was in the same corporate group.
- Long service leave!

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## *Policy matters*

Do policies need to be developed to deal with:

- GM benefits
- GM taxation matters (e.g. tax equalisation)
- Treatment of Australian leave entitlements
- L&D, career progression.

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## ***Concluding remarks***

***In 20 years the term “global mobility” may be redundant and will instead become simply one aspect of an employer’s Human Resources strategy.***

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