IR UPDATE JULY 2025

12 MONTHS OF CHANGE & ANALYSIS

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FOREWORD

While the 2024/25 industrial relations (IR) landscape has seen fewer headline-grabbing legislative introductions compared to previous years, the ripple effects of prior reforms continue to be felt. Several significant changes passed in recent years are now coming into force, requiring employers to adapt and implement new compliance measures.

On 3 June 2025, the Fair Work Commission announced a 3.5% increase to the national minimum wage. In its accompanying commentary, the Commission attributed the restrained figure in part to Australia's ongoing challenges with labour productivity. It also reinforced the importance of continued wage review processes—particularly within female-dominated industries—as part of the national push towards gender equity. More developments in this space are anticipated.

A defining theme of the IR environment this year appears to be an even stronger swing toward employee rights. In several of the cases we explore in this report, employee entitlements have seemingly prevailed over what many might consider 'common sense'—including one memorable case involving a puppy, a rabbit, a pet fence in front of a home office door, and a successful compensation claim.

Statistically, the trend is clear. Unfair dismissal and general protections claims lodged with the Fair Work Commission continue to rise. The 'settlement culture' we examined last year is also intensifying, with the average settlement rate for unfair dismissal cases in the last two reporting quarters reaching 95%—up from 89% in the previous two. This is particularly concerning given that claims proceed to conciliation without any prior merit assessment, and "settlement" often translates to employers making ex gratia payments even in low-substance matters.

On a more encouraging note, some of the feared disruption associated with high-profile reforms—such as the Closing the Loopholes Bill—has not materialised to the extent predicted. Except for "same job, same pay" labour hire provisions, uptake of the new claim mechanisms available to employees has been relatively low, and impacts on day-to-day employer-employee relationships appear to be minimal so far.

This report delves into these developments and more, offering analysis and practical commentary from the Focus HR team on what these changes truly mean for employers across Australia.

As a final note: in our role as trusted people and culture consultants, we are privileged to gain insight into the mindset of SME owners. A heartening trend we continue to see is a shift beyond mere compliance. More business leaders are choosing to do what's right not simply because legislation demands it, but because they are committed to building great workplaces. Rather than getting bogged down in red tape, they are investing in relationships, fostering strong cultures, aligning values, and leading their people with purpose and vision.

This, we believe, is where real impact lies. While this report offers an in-depth analysis of the evolving IR landscape, we encourage all business leaders to keep sight of their broader mission—to lead with integrity and create workplaces where people and business thrive together.

Naomi Wilson
Founding Director,
People & Leadership

Alistair Green
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Strategy

NATIONAL MINIMUM WAGE DECISION

When: Applies to the first full pay period after 1 July 2025

Key Changes:

The Fair Work Commission (FWC) announced the 2025 minimum wage review outcome on June 3, 2025. The decision included that:

- This is a 3.5% increase to minimum award wages.
- The national minimum wage will increase to $948.00 per week or $24.95 per hour.
- These changes will take place from the first full pay period starting on or after July 1, 2025.

To understand the impact of the FWC's national minimum wage decision, it is relevant to know that only 20.7% of the workforce (approximately 2.6 million people) are paid in accordance with minimum wage rates in modern awards. That means it is only that percentage that are directly impacted by the decision. This cohort are mostly female, part-time or casual, working in the industries of accommodation and food services, health care and social assistance, retail trade, and administrative and support services, and more likely to be lower paid. Because of the portion that are casual and part-time, employees on the minimum rates only make up 10.5% of the national wage bill.

FWCs brief is to make the decision on the national minimum wage, taking into account relative living standards, the needs of the low paid, workforce participation, performance and competitiveness of the national economy, and the need for gender equality. They also took into account that employees will receive a 0.5% increase in the Superannuation Guarantee on 1 July.

Submissions received in the lead up to the decision ranged from 2% put forward by the Council of Small Business Organisations Australia (COSBOA) all the way up to 14.5% each year for 4 years, unsurprisingly put forward by the AMWU.

The RBA figures show an annual trimmed mean CPI rate of 2.8% as at end April 2025, compared to the NMW increase of 3.5%. This is positive for the 20.7% of individuals reliant on the minimum Award rates as since July 2021, those employees have suffered a reduction in real wage rates. This is primarily a result of high inflation during 2021 and 2022 and the last 3 annual wage review decisions not fully countering this out of concern that it would result in higher inflation.

The Reserve Bank of Australia has now assessed that Australia's inflation rate has returned to a sustainable 2-3% and so the Commission is taking the opportunity to partially balance out the previous erosion on NMW with an increase that is greater than the CPI.

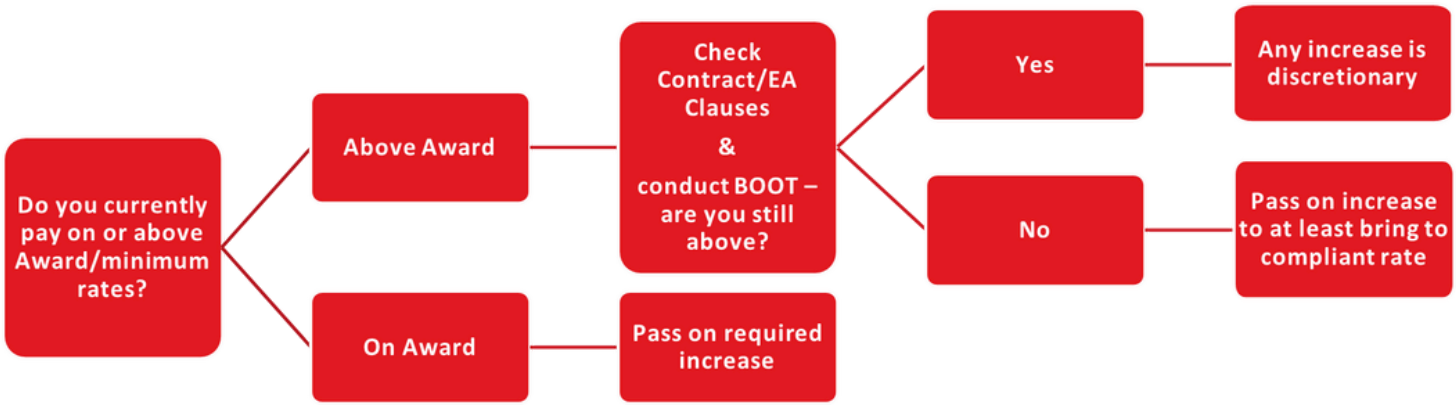
"Labour productivity is still no higher than it was 5 years ago"

However, labour productivity is still no higher than it was 5 years ago and productivity growth has only recently returned to a positive. Essentially, this means that, while the wages have been increasing over the past 5 years, as well as inflation; the actual productivity that we are generating from our workforce is stagnant – so everyone is paying more for labour, and more for products and services, but the amount actually being produced is not increasing. That is not a sustainable equation no matter which way you run the figures.

Practical Tips for Employers:

1) Check and update where needed:
    - Contracts of Employment
    - Individual Flexibility Arrangements
    - Enterprise Agreement Rates
2) Review salaries and all-inclusive hourly rates to ensure they remain compliant
3) Ensure your payroll system updates to new Award and Superannuation rates
4) Communication! We can't stress this one enough. Don't leave employees wondering or guessing what might be happening to their wages. Even if they are not receiving an increase, communicate the decision.
5) To increase productivity or performance through remuneration incentives, break the link between NMW increases (which are mandatory) and discretionary (performance based) pay increases. Wage increases applied around 1 July will be seen by employees as an entitlement linked to NMW increases, rather than recognition of their performance or value to the organisation.

When to Apply Minimum Wage Increases



CLOSING LOOPHOLES

RIGHT TO DISCONNECT

When: 26th August 2024 (large employers)
26th August 2025 (small employers)

Key Changes:
Employees have the right to refuse to monitor, read or respond to contact (or attempted contact) from an employer outside of their working hours – unless that refusal is unreasonable.

The right also extends to contact (or attempted contact) outside of the employee's working hours from a third party if work related (e.g. from customers or clients).

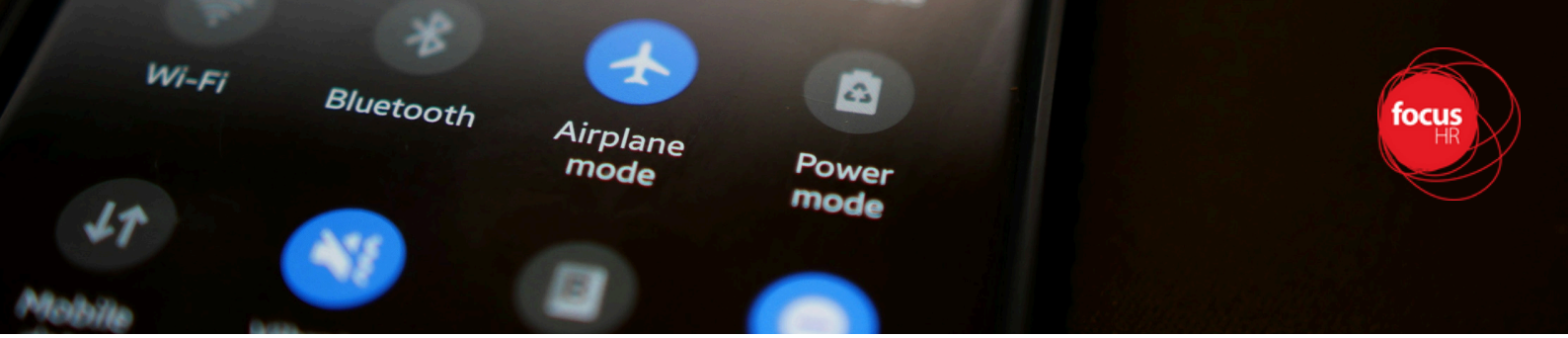
This new right is aimed at preventing employees from being punished for refusing to take work calls or answer work emails outside of their usual working hours, unless the refusal is unreasonable.

What it is:

- A right for employees to refuse unreasonable attempts to contact outside work hours
- Prevents the employer from disciplining/disadvantaging an employee for reasonably refusing

What it isn't:

- A carte blanch rule of no contact with employees



CLOSING LOOPHOLES

RIGHT TO DISCONNECT CONTINUED

What is reasonable?:

Without limiting the matters a business will need to take into account, the *Act* lists these factors that must be considered in determining whether an employee's refusal to be contacted is unreasonable:

- the reason for the contact or attempted contact;
- how the contact or attempted contact is made and the level of disruption it causes the employee;
- the extent to which the employee is compensated (including non-monetary compensation) to remain available to perform work or be contacted, or for working additional hours, outside of ordinary working hours;
- the nature of the employee's role and level of responsibility; and
- the employee's personal circumstances (including family or caring responsibilities).

What happens in the case of a dispute?:

1. There needs to be an attempt to resolve at the workplace level
2. If the matter is not resolved, the employer or employee can apply to the FWC
3. The FWC may make an order to stop refusing contact, to stop taking certain actions, or to otherwise deal with the dispute.
4. The FWC can only impose penalties if an order is breached.

The right to disconnect will also be a workplace right for the purposes of the general protection regime under the *Fair Work Act* – giving employees an additional claim if, for example, they are allegedly disadvantaged or disciplined for reasonably refusing to monitor, read or respond to contact.

Interesting Case:
A case before the FWC is currently testing the Right to Disconnect provisions under S.333M - *Martin v Cairns Rudolf Steiner School [2025]*

Practical Tips for Employers:

At a practical level, complete removal of contact out of hours is not possible. There are times an employee will need to ring a supervisor to say they are sick, times the employer needs to text an employee to let them know that they are starting work at a different site that morning, and times the employer needs to ask an employee if they would like to pick up an additional shift. The impact of this legislation should not be a restriction on good communication practices between employees and employers.

What employers can do to find the right balance:

1) **Review Position Descriptions** –clarify what reasonable expectations are in relation to contact with the position outside of work hours (tailored to the role and level of responsibility)

2) **Review Contracts of Employment** – ensure there is clarity on expectations and, where relevant, a specific allocation of remuneration value if there are requirements to be on stand-by/on-call or other expectations on connection outside of work hours.

3) **Create a culture of disconnecting**
   - Train managers and employees on how to disconnect effectively.
   - Look at the business's systems and practices for ways to reduce inadvertent or unnecessary contact.
   - Consider apps or system access that consciously or subconsciously prevent disconnecting.
   - Implement cross skilling in key roles to reduce reliance on an individual which might increase the likelihood of needing to contact them out of hours.

CLOSING LOOPHOLES

WAGE THEFT

When: 1st January 2025

What it is:

- Where an employer intentionally engages in conduct that results in failure to pay entitlements set by the FWA, Awards or Agreements
- Extends to related offences e.g. accessories, attempts, being complicit, procuring others to commit, conspiracy to commit – this can implicate employees, officers and agents of the employer

What it isn't:

- Genuine, inadvertent payroll mistakes

Key Changes:

Intentional underpayment of wages (dubbed wage theft) by employers will become a criminal offence.

Wage theft occurs where an employer intentionally engages in conduct that results in the failure to pay an employee their minimum statutory entitlements (i.e. entitlements arising under the *Fair Work Act 2009*, or a fair work instrument such as a modern award or enterprise agreement) – defined as "required amounts".

Given the seriousness of a finding that wage theft has occurred, fault must be proven to the requisite criminal standard, being "beyond reasonable doubt". To that end, intention must be proven in relation to the conduct– that is, that there is proof beyond reasonable doubt that the employer intended for their conduct to result in the non-payment of the required amount.

What happens?:

Penalties include a term of up to 10 years imprisonment, and/or a fine up to the greater of 3 times the underpayment amount (being the difference between the required amount and the amount actually paid to the employee) and 5,000 penalty units (currently $1,650,000) for an individual or 25,000 penalty units (currently $8,250,000) for a body corporate.

Interesting Statistic:
0 Prosecutions since 1 January 2025

Practical Tips for Employers:

Remembering that this legislation is designed to penalise employers who intentionally fail to pay an employee their entitlements, the practical steps for employers to take are:

1) Know your industrial instrument (the *Fair Work Act*, Modern Award or Enterprise Agreement) and the employee's entitlements under these.

2) Carefully and periodically assess positions and their classification under the instrument to ensure the correct classification level is applied.

3) Conduct thorough annual wage compliance checks (including for employees on salaries, all up (loaded) hourly rates, and Enterprise Agreements).

4) Keep records of assessments and decisions made (to prove the right intent even if the decision is deemed incorrect by the FWO in future).

CLOSING LOOPHOLES

SAME JOB, SAME PAY, LABOUR HIRE

When: 1st November 2024

What it is:

- Relates to the employees of a labour hire agency
- Labour hire employees may be required to be paid the same rates as employees of the host employer
- The rate of pay is the full rate (including bonuses, loadings, allowances, overtime and penalty rates)
- Various parties can make an application

What it isn't:

- Two-way
- Applicable to small businesses

Key Changes:

The Fair Work Commission (FWC) now has the power to make a "regulated labour hire arrangement order" (RLHAO) requiring employers that supply their employees as labour hire to perform work for a "host employer", to pay their employees the same rate of pay as employees of the "host employer" who perform comparable work.

The new labour hire provisions create a right for various parties to apply to the FWC for a RLHAO.

The FWC must make a RLHAO if:

- an employer (in this case, the labour hire agency) supplies or will supply, either directly or indirectly, employees to a host to perform work for the host;
- a 'covered employment instrument' – generally an enterprise agreement – that applies to the host would apply to the employees if the host employed the employees directly to perform work of that kind; and
- the host is not a small business employer.

If a RLHAO is made by the FWC, the labour hire agency cannot, subject to limited exceptions, pay its employees less than the relevant rate of pay which would apply to the employee under the host's covered employment instrument.

The RLHAO ultimately applies to the host employer i.e. a decision by FWC 'sticks' to the host employer and they have an obligation to apply to the FWC for an order to vary the RLHAO if they engage through a new labour hire agency; and to let potential agencies know that an RLHAO may apply.

The Government's stated intent behind the "same job, same pay" measures is to prevent host employers from undercutting bargained wages in enterprise agreements by engaging labour hire workers (who are paid less than they would be under the host employer's enterprise agreement).

The FWC will only be able to make a labour hire order where it is 'fair and reasonable' to do so and can take into consideration a number of factors such as the current and historical coverage and application of the host employment instrument, and the nature of the work being performed.

Interesting Statistic:
66 orders made since November 2024

Practical Tips for Employers:

1) As a labour hire agency, check whether an Enterprise Agreement applies in a host employer before quoting rates in case of a RLHAO
2) As a host, be aware of potential RLHAOs and consider the financial implication

CLOSING LOOPHOLES

WORKPLACE DELEGATE RIGHTS

When: 30th June 2024/1st July 2024

Key Changes:

A workplace delegate is a person appointed or elected by an employee organisation (e.g. a union) to be a delegate or representative for members working in a particular enterprise.

Delegate's Rights Terms in Modern Awards

By 30 June 2024 a "delegate's rights" term is to be included within all Awards. These terms must ensure that a workplace delegate is entitled to:

- reasonable communication with members and persons eligible to be members in relation to their industrial interests;
- reasonable access to the workplace and workplace facilities for the purpose of representing members' and potential members' interests; and
- unless the business is a small business, reasonable access to paid training during normal working hours for the purpose of their role as a workplace delegate.

At an individual delegate's rights level, there are new "workplace rights" under the banner of "industrial activities" defined for workplace delegates. An employer of a workplace delegate must not:

- unreasonably fail or refuse to deal with the workplace delegate;
- knowingly or recklessly make a false or misleading representation to the workplace delegate; or
- unreasonably hinder, obstruct or prevent the exercise of the rights of the workplace delegate (i.e. the right to reasonable communication, reasonable access to facilities and reasonable access to training for their role as a delegate).

Delegate Rights Terms in Enterprise Agreements

At the enterprise agreement level, all agreements which commence their access period from 1 July 2024 need to have a "delegate's rights" clause which is at least as favourable as the clause within any Award that would otherwise apply to the employee.

Right of Entry Changes - New Grounds for Exemption Certificates

From 1 July 2024, the Fair Work Commission (FWC) can issue an exemption certificate that allows a union official to enter a workplace without giving the usual 24 hours' notice — in a broader set of circumstances.

Previously, exemption certificates were only available if the FWC reasonably believed that advance notice might lead to the destruction, concealment or alteration of relevant evidence.

Now, a new ground has been added. The FWC may also issue an exemption certificate where:

- if it is satisfied that the suspected contravention, or contraventions, involve the underpayment of wages, or other monetary entitlements, of a member of the union whose industrial interests the union is entitled to represent and who performs work on the relevant premises; **and**
- the FWC reasonably believes that advance notice of the entry given by an entry notice would hinder an effective investigation into the suspected contravention.

This change strengthens unions' ability to act quickly in underpayment matters. Employers should expect an increase in unannounced visits in wage-related investigations. Permit holders must still provide a copy of the exemption certificate to the employer either before, or as soon as practical after entry.

CLOSING LOOPHOLES

CONTRACTORS vs EMPLOYEES

When: 26th August 2024

Key Changes:

Contractor Definition

A new definition of employee and employer was inserted into the *Fair Work Act 2009* to determine who's who, and in turn, what protections, rights and entitlements they enjoy.

The meaning of employee and employer under the new definition is to be determined by 'ascertaining the real substance, practical reality and true nature of the relationship' between the parties. To do this, the totality and true nature of the relationship must be considered having regard to the terms of the contract and also to other factors such as how the contract is performed in practice.

BUT WAIT, THERE IS A (DOUBLE) TWIST:

- Independent contractors already engaged when the changes commence, and who earn above a still unspecified contractor high income threshold ($183,100), will have a right to 'opt out' of the employee / employer definition…
- And then they will also have a right to revoke the original opt out!

Unfair Contractual Terms for Independent Contractors

Independent Contractors earning below the contractor high income threshold will be able to dispute allegedly unfair contract terms (UCTs) in the FWC, which is a more cost effective, applicant friendly jurisdiction than the Courts.

The Fair Work Commission's Powers:

In determining whether a term is an UCT, the FWC will take into account matters such as:

- relative bargaining power
- whether the term is reasonably necessary to protect the legitimate interests of a party, and
- whether the contract term imposes a harsh, unjust or unreasonable requirement on a party to the contract.

The FWC can make orders to:

- set aside all or part of a services contract
- amend or vary part of a services contract

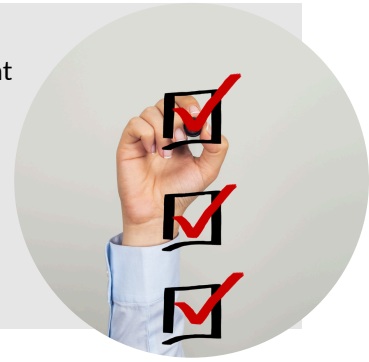
No orders for compensation can be made by the FWC in this jurisdiction.

Practical Tips for Employers:

1) Employers will need to dust off their contractor vs employee checklists and keep them front and centre to determine whether an individual is a contractor or employee.

2) Essentially, employers must check that both Contract and practices are consistent with a Contractor style engagement.

3) Employers should also check their Contractor Agreements to ensure they are fair to both parties.



State v Constitutional Differences:

There is also a difference between the test used for state referred businesses and constitutionally covered businesses.

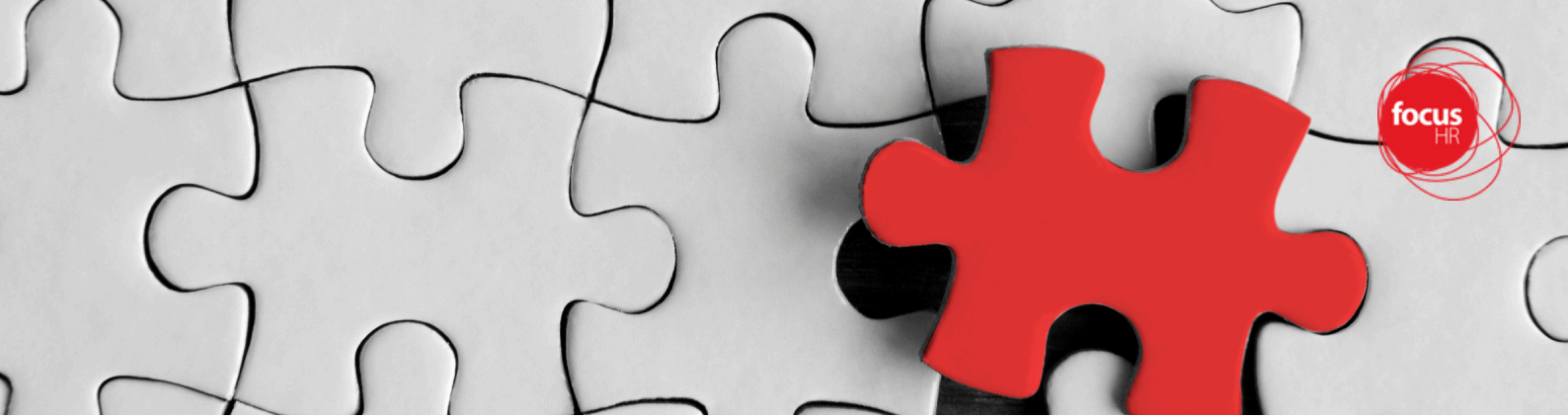
A constitutionally covered business is a Pty Ltd company, foreign corporation, trading or financial corporation formed within the limits of the Commonwealth (Cth), the Cth, the Cth authority, body corporate incorporated in a territory, and business or organisation conducted principally in a territory or Cth place. It does not include sole traders, partnerships, some state government employees, and corporations whose main activity is not trading or financial.

A State referred business is a business that is in the national workplace relations system because the state it is based in referred their powers to make workplace laws to the Commonwealth.

This includes sole traders, partnerships, other unincorporated entities and non-trading corporations in NSW, SA, QLD, VIC, and TAS.

Constitutional corporations use the whole of relationship test. State referred businesses use the start of relationship test. Both tests still consider various factors of employment or contracting relationships, including:

- the amount of control over how work is performed
- financial responsibility and risk
- who supplies the tools and equipment
- ability to delegate or subcontract work
- hours of work, and
- expectation of work continuing.



CLOSING LOOPHOLES

DEFINITION OF A CASUAL EMPLOYEE

When: 26th August 2024

Key Changes:

An employee will be a "casual employee" if both of the following conditions are met:

a) the employment relationship is characterised by an absence of a firm advancement commitment to continuing and indefinite work; and
b) the employee would be entitled to a casual loading, or a specific rate of pay for casual employees under the terms of a fair work instrument or employment contract if the employee were a casual employee.

The emphasis of the new definition is on the totality of the employment relationship.

The requirement for "continuing and indefinite work" to be according to an agreed pattern of work is removed.

A regular pattern of work does not of itself indicate a firm advance commitment to continuing and indefinite work.

Double dipping removed: It is positive to see a provision inserted which allows the amount of casual loading paid to an employee to be 'offset' against any entitlements the employee claims are owed to them.

The amendments also clarify that service as a casual employee is not counted for the purposes of redundancy pay, notice of termination and various other entitlements of permanent employment if the casual converts to permanent employment.

In assessing whether an employee is a "casual employee", the following matters need to be considered:

- the real substance, practical reality and true nature of the employment relationship – the totality of the relationship and not just the contractual terms;
- a firm advance commitment may be in the form of a mutually agreed term in an employment contract, or a mutual understanding or expectation between employer and employee
- other potential indicators must be considered (but no one factor is determinative and not all factors need to be satisfied), such as whether:
  - there is an ability of the employer to elect to offer work and/or an ability of the employee to elect to accept or reject work
  - it is reasonably likely that continuing work will be available in the future
  - there are existing full-time or part-time employees performing the same kind of work
  - there is a regular pattern of work for the employee.

Practical Tips for Employers:

1) Ensure employment contracts offered to casual employees state

- the offer is for employment as a 'casual employee';
- the offer of employment is made on the basis that the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person;
- the amount of the casual loading, or specifies a casual rate of pay;
- that the employer can elect to offer work and that the employee can elect to accept or reject work; and
- the employee will work as required according to the needs of the employer.

2) Evaluate people management practices, particularly in scheduling casual employees.

3) Educate managers on not accidentally creating a 'mutual understanding' of firm advanced commitment with casuals.

CLOSING LOOPHOLES

CASUAL CONVERSION & CASUAL INFORMATION SHEET

When: 26th August 2024

Key Changes:

This is a new regime for casual conversion to permanent employment, which focuses on "employee choice". This means an eligible employee can initiate the request.

The employer must respond in writing to the employee's request within 21 days to accept or reject, but consultation must occur with the employee first.

If accepted, the employer must include in their response whether the employee will now be a part- or full-time employee, how their working hours will change and when the change will take effect.

An employer may reject the request if:

- the employee is still, in fact, a casual employee as defined; or
- "fair and reasonable operational grounds" exist, such as:
  - substantial changes would be required to the organisation of the employer's business;
  - there would be significant impacts on the operation of the employer's business;
  - the employer would have to substantially change the employee's terms and conditions of employment in order not to breach a term of a fair work instrument applying to the employee as a permanent employee; or
  - accepting the notification would result in the employer's failure to follow legally-required recruitment or selection processes.

The Casual Employment Information Statement must be provided:

- For all businesses: on commencement and as soon as possible after 12 months employment
- For large businesses (>15 employees): as soon as possible after six months employment and every 12 months thereafter

What it is:

- Eligible casual employees can initiate a request to change to full-time or part-time employment
- Eligible =
  - believes they are no longer a casual employee at the point in time when they make the notification to their employer.
  - meets the minimum employment period – 6 months (or 12 months if employed by a small business)
  - is not currently (or in the last 6 months) in a dispute over their status
  - wants to change their employment status to full-time or part-time employment

What it isn't:

- A 'right' to conversion - it is a right to 'request'
- A never-ending cycle – an employee can only request once every 6 months

What happens with disputes?:

Parties must attempt to resolve disputes at a workplace level first, before any referral to the FWC.

The FWC must first attempt to resolve the dispute other than via arbitration.

Practical Tips for Employers:

1) Provide the Casual Employment Information Statement on commencement, and then according to the size of your business.

2) Implement a fair and objective process for assessing requests to convert to permanent and know the business grounds for fair decisions.

3) Update existing policies and procedures regarding casual conversion to ensure they reflect the new laws including referencing handling disputes about status of employment in any existing Grievance/Dispute Handling policy.

OTHER LEGISLATION CHANGES

PAID PARENTAL LEAVE (PPL)

When: 1st July 2024 (repeating until 2026)

What's Changing?:

The *Paid Parental Leave Amendment (More Support for Working Families) Bill 2023* passed on March 18th, 2024.

The 20 weeks of paid leave parents can access will gradually increase by 2 weeks each year from July 2024 until the 26 week rate is reached (2026).

Flexible parental leave days to increase gradually:

- Child born between 1 July 2024 and 30 June 2025 - 110 flexible days
- Child born between 1 July 2025 and 30 June 2026 - 120 flexible days
- Child born on or after 1 July 2026 - 130 flexible days

Practical Tips for Employers:

1) Update policies relating to Paid Parental Leave and flexible parental leave days

The Impact:

There is no additional direct cost to the employer; the impact is that employees may be more likely to take the full paid parental leave period where they may otherwise have returned to work after 18 weeks if financial pressure was a consideration.

The rate of pay, which is equivalent to the national minimum wage has remained the same.

The Criteria:

To get Parental Leave Pay, employees must have an individual adjusted taxable income of either:

- $175,788 or less in the 2023-24 financial year
- $168,865 or less in the 2022-23 financial year.

You can get Parental Leave Pay if you and your partner's adjusted taxable income is either:

- $364,350 or less in the 2023-24 financial year
- $350,000 or less in the 2022-23 financial year.

OTHER LEGISLATION CHANGES

SUPER & PAID PARENTAL LEAVE

When: 19th September 2024

What's Changing?:

The *Paid Parental Leave Amendment (Adding Superannuation for a More Secure Retirement) Bill 2024* means parents receiving the government's paid parental leave scheme will also get an additional 12% of their payment as a contribution to their super fund.

Applies to babies born or adopted after 1 July, 2025.

The payments will be calculated and administered by the Australian Taxation Office.

OTHER LEGISLATION CHANGES

C14 RATE DECISION

When: 1st January 2025

Key Changes:

'C14' has become the term coined to reference pay rates within the Modern Awards which fell below the National Minimum Wage (NMW) when the NMW was increased to be higher than the C14 rate for the first time on 1 July 2023.

The C14 decision relates to how the 70 Awards which contain this lower rate are treated to ensure that employees cannot remain indefinitely on a pay rate which is lower than the NMW.

The Commission's objectives which are evident through the various decisions released are important and can be summarised as:

- The C14 rate is only for the initial phase of induction, training and basic skills acquisition and the C13 rate should be the lowest rate applicable to ongoing employment that extends beyond this
- There is no proper basis for employees engaged in longer term employment who have gained basic proficiency in their duties to remain indefinitely at the C14 rate
- Any classification rate in a modern award which is below the C13 rate (including but not limited to the C14 rate) must be an entry-level rate which operates only for a limited period and provides a clear transition to the next classification rate in the award (which must not be less than the C13 rate)
- Industry experience will not be based on a certain number of hours worked
- Employees are not required to retain a record of previous hours worked in order to substantiate the requisite experience with a new employer
- It would be unnecessarily complex to require the employee to evidence that the previous industry experience was acquired within a certain timeframe
- There is no timeframe within which the industry experience must have been obtained

What it is:

The Fair Work Commission has published its decision on the review of C14 rates with 70 Awards impacted.

Some awards to be amended to be varied to provide automatic progress to next level (C13) after a set period.

Practical Tips for Employers:

1) Check for any applicable Awards (do you have employees engaged under one of the 70 Awards impacted?)

2) Review employee tenure for those currently paid C14 equivalent rates in line with progression timeframes under the applicable Award

3) Budget for the financial implications of increases if and when they will be needed

OTHER LEGISLATION CHANGES

AGED CARE WORK RELATED AWARDS

When: 1st January 2025

Key Changes:

The Fair Work Commission (FWC) has made a final decision and determinations regarding the aged care work value case.

This decision impacts the following awards:

- Aged Care Award
- Nurses Award
- Social, Community, Home Care and Disability Services Industry Award (SCHADS Award)

The primary change from this decision is the wage increase to eligible aged care sector employees' wages based on their classification and award.

The new wage increases are inclusive of the previous interim 15% wage increase.

In addition to the wage increases, the decision:

- Changes Award coverage for Assistants in Nursing, removing them from the Nurses Award and moving them to either the Aged Care or SCHADS Award.
- Adds a definition of direct care worker to the Aged Care Award to clarify their role in the sector.
- Provides information on the indicative duties and qualifications for direct care employees.
- Changes the classification level of some employees in the sector.
- Adds two new streams for home care workers to the SCHADS award to cover home care employees performing work for clients in aged care, or clients in disability care.
- Awards contain grandparenting provisions to protect the additional week of annual leave for employees who were covered under the Nurses Award.

Practical Tips for Employers:

1) For businesses who work within the aged care sector, carefully review Award coverage for your business.
2) Within the Awards, check that all employees are correctly classified, paying particular attention to those roles and classifications which have changed as a result of this decision.
3) Ensure that pay rates are correct for each employee.
4) Communicate any changes transparently with employees who are impacted.

OTHER LEGISLATION CHANGES

WORKPLACE GENDER EQUALITY AMENDMENT

When: 26th March 2025

Key Changes:

The Workplace Gender Equality Amendment (Setting Gender Equality Targets) Bill 2024 (WGEA) will:

- Require employers with 500 or more workers to set new gender equality targets;
- Make their progress publicly available on the WGEA website; and
- Require compliance to be eligible for Government contracts.

The Bill requires private sector and federal public sector employers with 500 or more workers to select 3 gender equality targets from a list in an associated instrument.

Within a 3-year period, employers must commit to achieve, or at a minimum, improve on the targets they choose.

The menu of targets that employers can choose from will focus on the gender make-up of boards in the workforce, gender pay gap, flexible working arrangements and support for parents and carers, workplace consultation on gender equality, and efforts to prevent and address sexual harassment, to align with the WGEA's six gender equality indicators.

The Bill requires employers to provide updates on their progress as part of their annual reporting to the WGEA and their boards, and this information will appear on the WGEA's data explorer.

Employers found non-compliant may not receive a certificate of compliance, which is required to be eligible for securing contracts with the government.

Practical Tips for Employers:

1) Companies with over 500 employees, be prepared to report. Visit https://www.wgea.gov.au/ for more information.

2) Companies who are close to 500 employees should monitor and trigger their reporting requirements if they reach the 500 employees mark.

OTHER LEGISLATION CHANGES

AGREEMENTS - NEW MODEL TERMS

When: 26th February 2025

What it is:

The Fair Work Commission published a Decision determining new model clauses for enterprise agreements and they include:

- model flexibility term
- model consultation terms
- model dispute terms

What's Changing?:

Individual Flexibility Arrangements (IFA)

- The IFA model term now requires employers to provide a written proposal before an agreement is made.
- If an employee has limited English skills, the employer must take reasonable steps to ensure they understand the terms.
- IFAs can now only be entered into after employment begins, preventing pre-employment agreements that may disadvantage employees.
- Employees also have the right to request a meeting to discuss the IFA, which the employer must grant.
- An IFA can still be ended by mutual agreement at any time, but now must have a fixed 28-day written notice period for unilateral termination, rather than the previous vague "no more than 28 days" requirement.

Consultation on Workplace Change

- The consultation on workplace change model term has been revised to clarify when the duty to consult arises.
- Consultation is now required once a definite decision has been made about a major workplace change or changes to rosters and ordinary hours of work, rather than at the proposal stage.
- Employers must now provide reasons or justification for the change and must genuinely consider employee feedback before proceeding.
- Employees can also nominate a representative, and employers are required to recognise their role in discussions.
- Additionally, employers must now communicate the outcome of the consultation process to both employees and their representatives.

Dispute Resolution

- The dispute resolution model term retains the requirement that disputes should first be resolved at the workplace level before being escalated.
- However, employees can now advise their employer of a representative rather than formally appointing one, making the process less bureaucratic.
- If a dispute remains unresolved, either party can refer it to the FWC, which will act as the independent dispute resolution body.
- A new Clause 6 empowers the FWC to intervene early in exceptional circumstances, such as:
  - Urgent or significant disputes
  - Situations requiring interim relief (e.g., to prevent adverse action)
  - Cases where one party delays or avoids workplace-level resolution
  - Jurisdictional complexities or impracticality of resolving the matter internally.

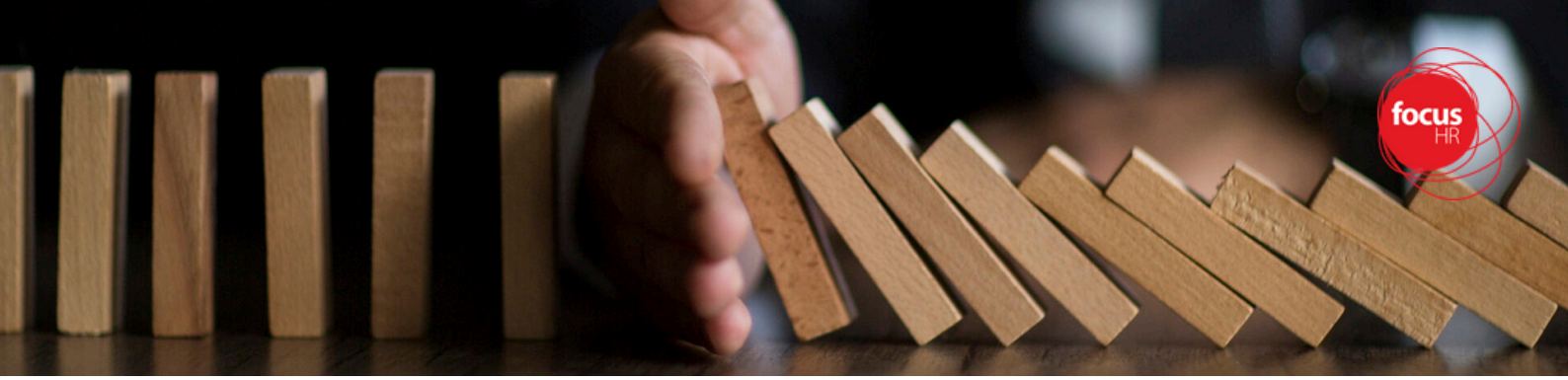
The reasoning behind these new model terms is explained in the Explanatory Memorandum as:

- The amendments would be compatible with and promote the right to just and favourable working conditions of work and collective bargaining.
- The amendments empowering the FWC to determine the model terms for enterprise agreements and copied State instruments require the FWC to consider 'best practice' workplace relations and whether all persons and bodies have had a reasonable opportunity to be heard and make submissions before making the determinations. It is intended that this would ensure the ongoing relevancy of the model terms as well as facilitating greater public consultation in the determination of the model terms.
- In mandating considerations of best practice workplace relations and public participation in the process of determining model terms, individuals are empowered to participate in the determination of up-to-date and relevant terms that may form part of the terms and conditions of their employment. In doing so, the amendments support the right to just and favourable conditions of work.

Practical Tips for Employers:

1) Be conscious of the increasing requirement from the FWC that changes and decisions impacting on employees require consultation with the employee. Even without this, best practice tells us a 2-way conversation with an employee about things that impact them increases the likelihood of buy-in and acceptance.

2) If entering into an EA, use the new model terms to ensure smooth approval through the FWC.



OTHER LEGISLATION CHANGES

SEXUAL HARASSMENT PREVENTION PLANS

When: 1st March 2025

Key Changes:

Effective from 1 March 2025, businesses that operate in Queensland have a new duty under the Work Health and Safety Regulation 2011 (Qld) with regard to sexual harassment, or sex or gender-based harassment.

What it is:

This duty requires the development and implementation of a prevention plan to address identified risks associated with sexual harassment.

Businesses that fail to prepare a prevention plan can face financial penalties if an employee makes a sexual harassment claim.

On 1 September 2024, the Queensland Parliament passed the Work Health and Safety (Sexual Harassment) Amendment Regulation 2024 (Qld) (Amendment). The Amendment requires persons conducting a business or undertaking (PCBU) to identify and manage risks related to sexual harassment in their workplaces.

The Amendment now explicitly requires PBCUs to consider relevant matters when determining what control measures are to be implemented to address the risks arising from sexual and sex or gender-based harassment.

Where risks are identified, from 1 March 2025, the Regulation imposes a new duty to prepare and implement a prevention plan to manage those identified risks.

The Plan

A prevention plan must:

- be in writing;
- state each identified risk;
- identify control measures for each risk;
- identify the matters considered in determining the control measures;
- describe the consultation undertaken in developing the prevention plan;
- be set out in a way that is readily accessible and understandable to workers; and
- set out the procedure for dealing with reports of unsafe conduct.

PCBUs must also ensure the prevention plan is accessible to workers and that they know its content and how to access it.

After preparing and implementing a prevention plan, PCBUs have a duty in which they must review the prevention plan every 3 years, or sooner, if:

- there is a report of sexual harassment or sex or gender-based harassment at work; or
- a health and safety committee requests a review.

Penalties:

PCBUs can face separate fines up to $9,678 for each of the following breaches:

- not preparing a prevention plan;
- not implementing a prevention plan: and
- not informing workers about the prevention plan or undertaking reviews when prescribed.

Resources:

Luckily, Worksafe QLD provides a range of guides and templates to assist employers to implement effective plans, visit www.worksafe.qld.gov.au or use these links:

- Guide for PCBUs
- Managing the risk of sexual harassment and sex or gender-based harassment at work - prevention plan template
- Sexual harassment prevention plan template with example
- Sexual harassment and sex or gender-based harassment fact sheet for PCBUs
- Sexual harassment Regs 2024 comms kit

SEXUAL HARASSMENT PREVENTION PLANS

Practical Tips for Employers:

1) Download resources from www.worksafe.qld.gov.au.
2) Consider the best way to consult with workers (survey, focus groups, WHS committee).
3) Apply a risk mitigation approach, identifying and putting effective controls in place for risks.
4) Monitor and review as required (at least every 3 years).

OTHER LEGISLATION CHANGES PAID AGENTS

When: In trial stage

What it is:

The FWC are beginning to screen paid agents before they appear in conciliations, conferences or hearings.

- solely for general protections matters (but we are seeing it creep in elsewhere)
- new Form 53A and short pre-hearings

What's Changing?:

The Fair Work Commission (FWC) will be making its way through consulting on the implementation of recommendations from the Paid Agents Working Group which was established to review the procedures applicable to the participation of paid agents in proceedings.

5 Recommendations by the Group

1. Members and conciliators will determine applications under s596 for representation by a paid agent prior to any conciliation, conference or hearing.
2. Prior to, or at the commencement of, any conciliation in an unfair dismissal or general protections matter, lawyers and paid agents will be required to disclose an estimate of costs and the arrangements for the payment of costs.
3. The Commission will update its existing resources, and develop new resources, designed to support parties who wish to have or are considering representation by a paid agent.
4. The Commission's standard terms of settlement should provide only for the payment of the settlement amount into a bank account belonging to the applicant.
5. Enhance referral arrangements with Community Legal Centres and other pro bono legal services.

The working group also concluded that a scheme of registration of paid agents would be the most effective long-term solution to challenging paid agent conduct. This option had broad support from stakeholders throughout the consultation process. However, it would require legislation change in order to be implemented, and would need to be supported by a properly resourced regulatory body.

Practical Tips for Employers:

1) Always seek professional advice prior to making decisions which may result in an unfair dismissal or general protections claim – protection is better than cure!

2) If faced with a Fair Work claim, take the time to create a compelling argument in your initial, written response to the claim.

3) Consider carefully whether to engage a paid agent (and be prepared to have to justify that to the Commission), or whether a blended model of support from a trusted advisor (e.g. lawyer or HR consultant) in drafting the response and preparing you for self-representation is the better option.

Pro Tip: when in a conciliation, assume the Fair Work conciliator has not fully read your response. They carry a high case load and have KPIs on turnaround which means your response may not have been given as much attention as you would like. So be prepared to be strong in verbalising your position in the conciliation conference.

OTHER LEGISLATION CHANGES

GENDER-BASED UNDERVALUATION PROCEEDING

When: 30th June 2025

Key Changes:

The Fair Work Commission have issued a key decision in the Gender-based Undervaluation Proceedings setting out a number of significant preliminary views regarding the five priority awards.

The Expert Panel found that:

- Pharmacists covered by the Pharmacy Award;
- Health professionals, pathology collectors and dental assistants covered by the HPSS Award;
- SACS employees, crisis accommodation employees and home care employees in disability care covered by the SCHADS Award;
- Dental assistants and dental/oral therapists covered by the Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award; and
- Children's Services Employees covered by the CS Award

have been the subject of gender-based undervaluation.

These findings constitute reasons to justifying the variation of the modern award minimum wage rates applying to each category of employees.

Pharmacy Award (Definite Change)

- A total increase in minimum wages of 14.1%.
- To be implemented in 3 phases from 30 June 2025, 30 June 2026, and 30 June 2027 for all pharmacist classifications.
- Does not apply to pharmacy assistants or pharmacy students.

Health Professionals Award (Provisional Change)

- For health professional employees, it is proposed to establish a new, simplified classification and minimum wage rate structure.
- For pathology collectors, it is proposed to reclassify the placement of their indicative roles in the Support Services employees structure to Levels 5, 6 and 7.
- For dental assistants, it is proposed to re-classify the placement of their indicative roles in the Support Services employees structure to Levels 1, 5, 6 and 7.

SCHADS (Provisional Change)

- It is proposed to abolish the current five separate classification structures and implement a single, simplified classification structure based on an alignment with the 'Caring Skills' benchmark rate.
- It is also proposed to revoke the ERO as part of the implementation of this new classification structure.

Dental Assistants (Provisional Change)

- For dental assistants, it is proposed to abolish the current classification structure and place dental assistants within the existing Health Worker classification structure at Levels 2, 3 and 4.
- Dental/oral therapists will have a new classification structure which mirrors that proposed for the HPSS Award for AQF Level 7-qualified employees.

Children's Services (Provisional Change)

- For CSEs a new and simplified classification structure is proposed based on an alignment with the Caring Skills benchmark rate for a Certificate III-qualified employee.
- This is proposed to be phased in over a period of five years, with a first instalment consisting of a 5% increase to be operative from 1 August 2025.

Practical Tips for Employers:

1) Employers applying the Pharmacy Industry Award [MA000012] be aware of the significant increase pending on 30 June 2025 (and again in 2026 and 2027) and factor this in to budgets. Do not just apply a 3.5% increase calculation like the rest of the business world on 1 July 2025!

2) Employers using the other listed Awards should register for Award updates through the Fair Work website. You can tailor your notifications in the subscription page.

INTERESTING CASES

CASE LAW

FLEXIBLE WORK

Kelly Foster v National Australia Bank [2025] FWC 959 (7 April 2025)

What happened:

An employee at NAB requested a flexible work arrangement to support her own mental health and care for her daughter, who also has a mental illness. The arrangement, approved in December 2024, allowed her to work from home most of the time, attend her local branch one day a week, and the Brisbane office once a month. Her manager supported the request, noting it wouldn't impact the business and even improved her productivity.

However, in February 2025, NAB ended the arrangement, citing swipe card data suggesting she hadn't met the requirement to attend the Brisbane office monthly. The employee disputed this and took the matter to the Fair Work Commission under the Fair Work Act's flexible work provisions.

Outcome:

The Fair Work Commission dismissed the employee's dispute.

Deputy President Lake found that because NAB had approved the flexible working arrangement, there was no "refusal" to trigger the Commission's jurisdiction under section 65B of the Fair Work Act. He stated that a granted request cannot be considered refused, and section 65B only applies when a request is denied.

DP Lake also clarified that while employees have the right to request flexible work, they don't have a guaranteed right to have it approved—or to keep it indefinitely once approved. Employers are allowed to terminate such arrangements early, especially if the employee doesn't meet the agreed terms.

The Legislation:

Section 65 and Section 65B of the *Fair Work Act 2009*.

Key points:

- Section 65: Gives eligible employees (e.g. carers, over 55's, those with disabilities) the right to request flexible working arrangements. Employers must respond in writing within 21 days and can only refuse on reasonable business grounds.
- Section 65B: Allows employees to take a dispute about a refused flexible work request to the Fair Work Commission.

Practical Implementation/Learnings:

1. **Approved Flexible Work Arrangements can be revoked** – Once an employer grants a flexible work request, it may still retain the right to terminate the arrangement, especially if the employee fails to meet its agreed conditions.
2. **FWC Jurisdiction is limited** – The Fair Work Commission can only deal with disputes about refusals of flexible work requests under s65B. If an arrangement is already approved and later cancelled, s65B cannot be used to contest the cancellation.
3. **No ongoing right to flexibility** – Employees do not have a legislated right for flexible work arrangements to continue indefinitely, even if they are initially approved.
4. **Documentation and compliance matter** – Employers should clearly outline expectations in writing when granting FWAs. Employees must ensure they comply with agreed terms to avoid losing the arrangement.

CASE LAW

WORK FROM HOME

Lauren Vercoe v Local Government Association Workers Compensation Scheme [2024] SAET 91

What happened:

A programmer working from home with employer approval injured herself while stepping over a pet fence during a paid break. While this is a case from South Australia, and hence a different jurisdiction from a workers' compensation perspective, it provides a strong cautionary note to employers nonetheless.

In September 2022, the employee received approval from her employer to work from home for a day to look after a colleague's puppy. She set up a temporary pet fence in her home office, separating the puppy from her pet rabbit, which was kept in a cage in the same area. Taking a break, she attempted to step over the fence while making her way to the kitchen, but tripped, fell, and injured her shoulder and knee.

The employee asserted that her injury arose from employment, as her home office was her workplace during her approved remote work shift. She claimed that she fell during the course of a paid break and that, consequently, her injuries arose from employment.

The workers' compensation insurer rejected the claim on the basis that it was not satisfied that the employee's employment was a significant contributing cause of her injuries. The insurer argued that, by setting up a pet fence across a walkway (without the employer's direction or knowledge), the employee created a clear and unusual hazard.

Outcome:

The SAET concluded that employment was a substantial cause of the injuries because the fence erected by the employee to manage her colleague's puppy was a feature of her place of employment on the day of the incident. In the tribunal's view, the fence blocking a clear pathway between the sunroom and kitchen created a hazard, which was the only cause of the injuries.

Magistrate Carrel observed that while working from home arrangements "have benefits for both employers and workers, those benefits are accompanied by additional risks".

The case will proceed to determine compensation.

The two main issues before the South Australia Employment Court (SAET) were:

- whether the injury arose out of employment; and
- whether the employment was a "significant contributing cause".

In making their ruling, the SAET considered:

- the increased workplace flexibility afforded to the employee
- the use of her private residence as her authorised place of employment on the day of the incident
- the degree of autonomy she had in deciding when to take breaks
- the employer's encouragement for employees to take short breaks away from their workstation regularly.

Practical Implementation/Learnings:

1. **Working from home = workplace** – Employers must recognise that an employee's home can legally be deemed their workplace, meaning injuries sustained there (even during authorised breaks) can be compensable under workers' compensation laws.
2. **Unusual home hazards still count** – Even if an employee creates a hazard (e.g. a pet fence) without employer direction or knowledge, it can still be found that the injury arose from employment, especially in no-fault compensation schemes.
3. **Establish WHS controls for home work** – Employers should introduce strong WHS protocols for remote work, such as mandatory safety checklists, mental health support, and hazard reporting systems to mitigate risks from unpredictable home environments.
4. **Prepare for broader claim risks** – Compensation claims may arise not just from physical injuries but also psychological ones linked to isolation, stress, or challenges balancing work and home life. Policies should anticipate and address these risks.

CASE LAW

RESTRAINTS

AEI Insurance Group Pty Ltd v Martin (No 4) [2024] FCA 1110 (24 September 2024)

What happened:

AEI Insurance Group took legal action against its former Queensland Account Manager in late 2022 after 21 clients decided to follow him to a competitor, MA Brokers. Although AEI secured an injunction preventing him from soliciting more clients, another 25 clients still moved to MA Brokers before the injunction was lifted last August.

Federal Court Justice Thawley reviewed AEI's largely circumstantial evidence—including diary notes, client texts, and the manager's own admission of using his work phone to contact clients. The manager delayed returning his work phone for six months after resigning and faced difficulties providing information. Justice Thawley found one of the manager's mobile phones was immersed in water and another "met with the unhappy fate of being run over by a lawn mower". He noted these issues posed significant challenges to AEI's case in determining whether the manager breached his contract's restraint clause.

Outcome:

Federal Court Justice Thawley found it "more likely than not" that the former Account Manager solicited 16 clients directly or through MA Brokers and played a role in soliciting another 29. He clarified:

"AEI is not entitled to be protected against mere competition from [the manager]. However, AEI is entitled to be protected against unfair competition based on the use by [the manager] after his resignation of aspects of the customer connection which he developed for AEI during his employment."

The judge affirmed AEI's legitimate interest in protecting its customer connections and deemed a 12-month restraint period "reasonable... in the circumstances."

In assessing damages, Justice Thawley set AEI's upper limit losses at $617,282 but awarded $500,000 after accounting for clients who left independently and uncertainties about renewals.

Practical Implementation/Learnings:

1. **Restraint clauses are enforceable when reasonable** – Courts will uphold restraint of trade clauses where they protect legitimate business interests, such as customer relationships, and where the restraint period is proportionate to the risk.
2. **Evidence can be inferred from circumstances** – The Courts will look at evidence with a very broad lense when assessing whether or not a breach of an enforceable restraint occurred and this can include more circumstantial matters like client migration patterns in the absence of any marketing or other campaigns on the part of the competitor that would explain a client's decision to change firms.
3. **Former employees must not exploit customer connections** – Soliciting clients based on connections developed during employment — even indirectly — can amount to a breach of restraint clauses and lead to significant damages.

CASE LAW

HOURS OF WORK

Chin v Visual Thing Australia Pty Ltd [2024] FedCFamC2G 896

What happened:

Ms Chin was employed full-time as a creative retouching specialist by Visual Thing Australia from 2014 until her termination in 2022. Her contract required her to work 40 hours per week, Monday to Friday, 9am to 6pm.

Despite being entitled to overtime payments under the Award, Ms Chin received only her annual salary with no overtime compensation.

Ms Chin claimed her employer breached s62 of the *Fair Work Act* by requiring her to work unreasonable additional hours without pay.

Outcome:

The Court acknowledged that Ms Chin's employer worked in a fast-paced industry with typical 40-hour work weeks and that Ms Chin could have raised concerns about overtime during her employment. However, the Court found nothing in her role that justified regularly working more than 38 hours per week. While two hours of overtime in a single week might be reasonable, the Court ruled that the consistent and prolonged nature of the overtime made it unreasonable. Ultimately, the Court held that the employer failed to prove the overtime was reasonable and therefore breached section 62 of the Fair Work Act by requiring Ms Chin to work unreasonable additional hours.

Practical Implementation/Learnings:

1. **38 hours is the legal default** – Under the Fair Work Act, full-time employees may only be required to work up to 38 hours per week. Any hours beyond this must be demonstrably reasonable — the burden of proof falls on the employer.
2. **Legislation trumps contract terms** – Even if a contract states that an employee is to work a 40 hour week, section 62 of the Fair Work Act sets the statutory maximum at 38 hours and breaches of that may give rise to penalties under the FWA. In addition to this, a modern award or agreement may require extra payments for hours exceeding the weekly maximum and employers will also need to be mindful of this.
3. **Reasonableness depends on role and context** – Factors such as position seniority and industry practices, will influence whether additional hours are considered reasonable. Routine overtime, even if minimal, can be deemed unreasonable over time.
4. **Customary practice doesn't make it legal** – An industry norm of working 40 hours per week doesn't automatically justify exceeding the 38-hour threshold without adequate justification or remuneration.

The Legislation:

Section 62 of the *Fair Work Act 2009 (Cth)*, regulates the hours of work for full-time employees and prescribes that:

- Employers must not require full-time employees to work more than 38 hours per week unless the additional hours are reasonable.
- Employees have the right to refuse to work unreasonable additional hours.

When assessing reasonableness, courts generally start with the assumption that hours beyond 38 per week are unreasonable.

The burden of proof is on the employer to demonstrate that any additional hours worked are reasonable under the circumstances.

CASE LAW

DISMISSAL

Jessica Hastings v Platform To Pty Ltd. [2024] FWC 2475

What happened:

Platform To, a disability support provider, dismissed a casual worker over "behavioural concerns." The worker had returned a client's medication to a pharmacy after the client revealed ongoing antidepressant use, despite telling her Doctor and other support workers she had stopped. The worker also transferred another client's dog into her name and cared for it after the client planned to put the dog down.

A few weeks before her dismissal, the worker also told them she had some tests done and "if it hasn't been blatantly obvious already, I received an ASD Level 2 diagnosis". She asked the directors to "give me a handbook" and "a link of what processes to follow" so she could "stop pestering" them.

The employer terminated her employment after a further client complaint, upgrading their original intention to only performance manage her.

The worker claimed her dismissal was due to her mental disability (ASD Level 2 diagnosis) and that she was penalised for exercising workplace rights.

The employer cited a recurring pattern of breaching professional boundaries and making decisions which put the business and its clients at significant risk as reasons for dismissal.

Outcome:

Deputy President Cross held that the dismissal was not because of the worker's mental disability or her exercise of workplace rights, but due to her conduct, which went beyond her job duties and breached professional guidelines. Her actions—taking the client's medication, intervening with the dog, and other behaviors—were deemed to pose significant risks to the employer and clients.

The DP noted that "the suggestion that two individuals who established a company which provides for people with special needs, made the decision to terminate the [worker] because she was neurodivergent lacks any basis, and was understandably considered offensive,".

Practical Implementation/Learnings:

1. **Dismissal must be based on conduct, not diagnosis** – Employers can lawfully terminate an employee with a disability if the dismissal is due to conduct that breaches professional boundaries or poses risk, provided it is not based on the disability itself.
2. **Clearly define role boundaries** – Especially in support roles, employers must ensure employees understand the limits of their responsibilities. Providing clear policies, handbooks, and training helps prevent overreach and confusion in sensitive situations.
3. **Responding to risky conduct is justified** – Intervention by a worker that involves unilateral decisions — such as taking control of medication or removing a pet — can justifiably result in dismissal if it exposes the business or other parties to risk.
4. **Performance management before termination helps** – Evidence of performance management or consideration of the appropriate level of management action can assist in showing that a dismissal was not abrupt or discriminatory.

The Legislation:

- Section 351 of the Fair Work Act 2009 (Cth), prohibits an employer from dismissing an employee because of a protected attribute, including disability. This protects employees from discrimination based on mental or physical disabilities.
- Section 340 of the Fair Work Act 2009 (Cth), protects employees from adverse action (such as dismissal) for exercising a workplace right, including making complaints or inquiries related to their employment.

CASE LAW

DISMISSAL

Levi Moon v McMillan Shakespeare Limited & Maxxia Pty Ltd T/A Maxxia - [2024] FWC 3140

What happened:

A customer care consultant at Maxxia lodged a Section 365 general protections claim, alleging adverse action under Sections 340 and 351 of the Fair Work Act 2009 (Cth) and claiming constructive dismissal.

The consultant argued that the employer's practice of only approving three-month flexible work arrangements forced him to make repeated requests and created uncertainty that made it hard to plan for his wife's care. He believed he should have been granted ongoing permission to work from home.

Over a period of 12 months, he submitted five flexible work requests, all approved—some with modifications—including arrangements to work from home and work compressed weeks. His final verbal request came in June 2024, after he had relocated closer to the company's Brisbane HQ. The employer requested more details to assess this final application.

Outcome:

Deputy President Lake dismissed the claim, finding Maxxia acted reasonably and did not force the consultant to resign.

He said the company had "good reason" to be "reticent" about immediately approving a fifth request after a year of flexible arrangements but noted this was not a refusal.

Lake found the consultant resigned too quickly, assuming rejection, "I find that it was open to [the consultant] to wait for the request to be formally considered, in accordance with the flexible working arrangements policy, of which he was aware"

He concluded the request likely would have been approved and that the resignation was voluntary, making the consultant ineligible to pursue the claim.

Practical Implementation/Learnings:

1. **Requiring regular flexible work requests is lawful** – Employers may implement policies that limit the duration of flexible working arrangements (e.g. 3–6 months) and require employees to submit new requests periodically, especially where circumstances may change.
2. **Constructive dismissal requires more than frustration** – An employee's resignation based on an assumption or apprehension that a future flexible work request will be refused is not enough to establish constructive dismissal.
3. **Requests can be denied with justification** – It is lawful and reasonable for employers to request additional information to support flexible work requests, especially after extended periods or if an employee's circumstances change (e.g. relocation).
4. **Policy clarity helps reduce the likelihood of disputes** – A well-communicated flexible work policy that outlines the process, duration limits, and review expectations can help manage employee expectations and prevent disputes over perceived entitlements.

CASE LAW

DISMISSAL

Mr Mitchell Fuller v Madison Branson Lawyers Pty Ltd [2025] FWC 784 (7 April 2025)

What happened:

Mr Mitchell Fuller was employed as a solicitor with Madison Branson Lawyers from January 2023 until his summary dismissal on 4 August 2024. The dismissal arose primarily because Mr Fuller lied about being sick, or at least about his whereabouts, on 5 April and 8 April 2024.

On Easter Monday, 1 April 2024, he booked a flight to Adelaide for Thursday night (4 April) and on Tuesday 2nd April, bought a ticket to an AFL game for the Friday. He attended work normally from 2 to 4 April but did not inform anyone of his travel plans or request leave.

After flying to Adelaide late on 4 April, he emailed the firm on 5 April claiming he was unwell and would obtain a medical certificate. Then spent the day enjoying events, alcohol and socialising. On 8 April, he sent another email claiming continued illness and again promised a medical certificate.

Mr Fuller did not provide a medical certificate for 5 April but later made a statutory declaration asserting he was sick that day and unable to see his regular doctor. For 8 April, he obtained a medical certificate from an online provider, but it was unclear whether he had actually consulted a doctor.

His employer only discovered the Adelaide trip after engaging an HR consultant in July 2024, who happened upon photos on Mr Fuller's social media from the weekend showing him at the Adelaide Oval and social events. The principals suspected dishonesty, suspended him, and then dismissed him.

"A Glib Deflection":

When first putting the allegation to Mr Fuller, the employer had alleged that he had 'Engaged in conduct that is harmful to the reputation of the firm by procuring the approval of paid sick leave.'

Mr Fuller responded stating "I deny having engaged in any conduct harmful to the reputation of the firm. I have not been able to identify any evidence of reputational damage to the firm in the materials you have provided. Do let me know if there is something I have missed."

Deputy President Bell stated that his response was "a glib deflection." "Rather than engaging with the substance of that serious allegation, [he] engaged in unmeritorious debating points by seeking to frame this issue about proof of the firm's reputation.

Outcome:

The Fair Work Commission upheld the summary dismissal of Mr Fuller concluding that there were multiple valid reasons for his termination. Deputy President Bell emphasised the seriousness of Mr Fuller's conduct, noting that his false statements and statutory declaration were "extremely serious" given his role as a solicitor who should be "acutely aware of the seriousness of such matters."

DP Bell stated that the best possible interpretation was that Mr Fuller was "simply indifferent to the accuracy of his witness statement to the point of falsity." The Commission found that Mr Fuller had "lied to the firm about being sick" and made a false statutory declaration, which was a key factor justifying summary dismissal under the small business code.

The deputy president also highlighted the employer's reasonable grounds for their belief in Mr Fuller's dishonesty: "[The two principals] each believed that [he] had lied to the firm about being sick and had also made a false statutory declaration in doing so. I also have no hesitation in concluding, for the purposes of the code, that the employer's belief was based on reasonable grounds."

Given these findings, the Commission dismissed Mr Fuller's unfair dismissal application, affirming that the employer acted lawfully and reasonably in terminating his employment due to his serious misconduct.

CASE LAW

DISMISSAL

Mr Mitchell Fuller v Madison Branson Lawyers Pty Ltd [2025] FWC 784 (7 April 2025)

The Legislation:

The key legislation in this case includes provisions from the Fair Work Act 2009 (Cth) related to unfair dismissal and the small business dismissal code. Under the Fair Work Act. Key factors to this case were:

- An employer may summarily dismiss an employee if there is a valid reason related to the employee's conduct, including dishonesty or serious misconduct.
- The small business dismissal code provides a streamlined process allowing small businesses to fairly dismiss employees for valid reasons, including falsifying information or fraudulent conduct.
- Employees who believe they have been unfairly dismissed can lodge an application under section 365 of the Fair Work Act.
- The burden is on the employer to show the dismissal was for a valid reason and that the reason justified termination, including summary dismissal if applicable.
- False statements, dishonesty, and misuse of paid leave are recognised as valid grounds for dismissal.
- Providing false evidence or statutory declarations can constitute serious misconduct, potentially amounting to perjury.

In this case, the employer relied on these provisions to justify summary dismissal due to Mr Fuller's dishonesty and false statements about his sick leave.

Practical Implementation/Learnings:

1. **Sick leave must reflect actual illness:** Employers may be justified in dismissing employees who claim sick leave dishonestly. Medical certificates obtained without a genuine consultation or based on false information may not protect an employee if contrary evidence exists.
2. **Trust and integrity are paramount:** Dishonesty – including false witness statements or statutory declarations – will be taken seriously by the Commission and may justify summary dismissal.
3. **Documentation may be overridden by evidence:** Even with a medical certificate, if an employer has credible contrary evidence (e.g. social media, ticket receipts), the FWC may find that the employee was not genuinely unfit for work.
4. **Social media use can have employment consequences:** Posting images or details online that contradict sick leave claims can trigger disciplinary action. Employers may rely on such evidence in misconduct investigations.
5. **Summary dismissal justified where conduct is serious:** The decision confirms that providing false evidence or misleading an employer about absences constitutes a valid reason for dismissal under the Small Business Fair Dismissal Code.

CASE LAW

DISMISSAL

Hanna Wittner v Glad Security Pty. Ltd [2025] FWC 676

What happened:

The worker was employed by Glad Security Pty Ltd and placed under a labour hire agreement at Eastland Shopping Centre in Melbourne. In January, while working at the information desk, an employee from Results Laser Clinic dropped off a gift voucher—a facial treatment voucher wrapped in a white envelope with a green bow. The Results Laser Clinic employee said the voucher was "for anyone to use."

Unaware that the voucher was part of the shopping centre's 'Golden Giveaway' promotion, and seeing that no one else at the desk showed interest, the worker said she would take the voucher. A couple of days later, shopping centre management followed up with Results Laser Clinic to ask about the voucher.

They were told it had been dropped off at the information desk. The worker's manager then tried to retrieve the voucher, but due to incomplete communications and the worker's belief that she had done nothing wrong, the retrieval process was delayed.

Eventually, the worker said she could not find the voucher and suggested it be cancelled. This situation damaged her reputation with the shopping centre management, who requested that she be "removed" from the role.
An investigation by Glad Security found that the worker did not intend to steal the voucher but concluded that she should have informed her manager, who was not on shift that day. Because the shopping centre management exercised its contractual right to request her removal, the worker was offered a cleaning position elsewhere, which she declined.

During the investigation, it was noted that although the worker clarified she had no interest in keeping or using the voucher and suggested cancellation if it could not be found, her conduct contributed to escalating the situation. It was observed that she should have committed to looking for the voucher promptly to return it, which might have prevented the escalation.

Outcome:

The Commissioner found that the worker's dismissal was not harsh, unjust, or unreasonable. Although the worker did not intend to steal the voucher, her failure to promptly return the voucher escalated the situation. The shopping centre requested her removal, which prevented her from performing her job. The dismissal was based on the client's contractual right to require removal of personnel they found objectionable, a valid and lawful reason as it meant the employee was unable to perform the inherent requirements of her role. Consequently, the worker's application was dismissed.

Practical Implementation/Learnings:

1. When an employment contract allows a client to request removal of personnel, employers may rely on this to lawfully terminate employment if the request makes continued work impossible.
2. Failing to promptly return an item or cooperate with reasonable requests—even without dishonest intent—can escalate a situation unnecessarily.

CASE LAW

POLICY TRAINING

In Ramlan Abdul Samad v Phosphate Resources Ltd T/A Christmas Island Phosphates [2024] FWC 2868

What happened:

A 62-year-old truck driver with 20 years work history at Christmas Island Phosphates (CIP) was dismissed for serious misconduct after repeatedly making offensive comments and gestures toward a colleague, including accusing him of "sucking the boss's dick" and saying he "couldn't take a joke."

CIP held that the employee breached its code of conduct, anti-discrimination and harassment procedure and psychosocial safety and standards of behaviour policies. The driver claimed he was unaware of these policies, one of which had only been covered in a brief toolbox talk. There was no evidence the other 3 had been trained. Deputy President O'Keeffe criticised this as a "tick and flick exercise" and said the process was not conducive to explaining "serious workplace behavioural requirements" particularly where language barriers may exist.

He found the employee had not received proper, culturally appropriate training and noted the driver's remorse was "poorly conveyed" and mixed with attempts to shift blame.

Outcome:

Deputy President O'Keeffe found that while there was a valid reason for the truck driver's dismissal due to his reprehensible conduct, the dismissal was ultimately harsh and unjust.

Key factors influencing this finding included:

- The employee's 20 years of service with no prior disciplinary issues,
- His age (62) and limited employment prospects, and
- A lack of proper training and understanding of the workplace policies he was accused of breaching.

He concluded: "There is the issue of [his] lack of exposure to and understanding of the policies cited in his termination documentation."

"I believe this adds an element of injustice to the termination." As a result, the matter was referred to a conference to determine an appropriate remedy.

Practical Implementation/Learnings:

1. **Policy training must be meaningful, not superficial:** A brief toolbox talk and leaving printed material is unlikely to meet the standard for effectively communicating serious workplace policies. Employers should adopt more engaging, interactive methods of training that cover both the content and rationale of policies.
2. **Documentation matters**: Employers should keep clear records of who attended training, what was covered, and how understanding was assessed. This becomes vital when defending dismissal decisions that rely on alleged policy breaches.
3. **Cultural and language considerations are essential:** Where employees come from diverse cultural or linguistic backgrounds, policy training must be accessible and tailored to their comprehension needs.
4. **Unawareness of policies can render dismissal harsh:** Even if misconduct occurred, if the employer cannot demonstrate that the employee was adequately informed of the relevant policies, the dismissal may be found harsh, especially for long-serving employees with no prior disciplinary issues.

CASE LAW

BULLYING

Hugo Meagher [2024] FWC 3569 (23 December 2024)

What happened:

A lawyer at the Department of Employment and Workplace Relations (DEWR) claimed he was bullied by his supervisor and manager after receiving feedback about his performance.

The supervisor had emailed him to arrange a meeting to discuss his schedule, use of time at work, outstanding tasks, and fatigue, noting concern "from a wellbeing perspective." This followed incidents where the lawyer was late to meetings, observed shopping online and browsing real estate, and was seen nodding off at work. He perceived the feedback as "biased and unfair", and described the email tone as "accusatory" and "menacing."

He also claimed bullying by a manager who gave “condescending and stern” feedback on research work that failed to follow formatting instructions. The manager later requested a further meeting to address concerns about his timeliness and task completion.

In response, the lawyer said that constantly calling him into meetings hindered his performance, and he viewed them as victimisation designed to "degrade" his competency.

Outcome:

Deputy President Dean found that the lawyer had not been bullied and that all actions taken by DEWR were reasonable management action carried out in a reasonable manner.

She held that the department gave “more than adequate” guidance, and that setting expectations around performance was both appropriate and professional.

“Clearly, [the lawyer's] conduct in the workplace was unacceptable and ought to have been dealt with,” she said.

Deputy President Dean noted the employee had been “exceptionally difficult to deal with” and had failed to follow “the most basic of instructions” during the proceedings.

The Legislation:

Workplace harassment and bullying is covered under the provisions of the Workplace Health and Safety Act 2011 and the Fair Work Act 2009.

‘Workplace harassment’ is where a person is subjected to repeated behaviour that:

- Is unwelcome and unsolicited; and
- The person considers to be offensive, intimidating, humiliating or threatening; or
- A reasonable person would consider being offensive, intimidating, humiliating or threatening.

However, reasonable management action carried out in a reasonable manner is not considered bullying.

Deputy President Dean found that the actions taken by DEWR—such as performance feedback, guidance, and meetings—fell within this exception as reasonable management action.

Practical Implementation/Learnings:

1. **Management action ≠ bullying:** Reasonable management action—such as providing performance feedback, addressing lateness, or managing workload expectations—is not bullying, even if the employee perceives it negatively. It must be carried out in a respectful, fair, and consistent manner.
2. **Clear expectations are important:** Employers have the right (and obligation) to clearly articulate work performance standards and behavioural expectations, especially in roles requiring professionalism and autonomy.
3. **Document instructions and feedback:** Maintaining clear records of feedback, instructions, and attempts to support an underperforming employee can be critical in defending against claims of bullying.

CASE LAW

CONTRACTOR VS EMPLOYEE

Murray v 239 Brunswick Pty Ltd and Raffoul [2025] FWC 978 (7 April 2025)

What happened:

A dancer at a Brisbane strip club filed a general protections claim alleging she was employed under the Live Performance Award and had been unlawfully dismissed.

The club argued she was an independent contractor, not an employee, pointing to an agreement signed in September 2023 that required the dancer to:

- Pay a reservation fee to use the club's premises,
- Receive no payment from the club for performances, earning income directly from clients,
- Pay fines for cancelling reservations without sufficient notice.

The club said it did not control the dancer's hours or shifts but encouraged working on busy nights. Dancers were responsible for approaching clients and arranging lap dances. The club did not pay tax, superannuation, or provide employment benefits like leave or uniforms.

Outcome:

Deputy President Roberts concluded, based on the "totality of the relationship", that its "real substance, practical reality and true nature" amounted to "one of principal and independent contractor". He noted the dancer:

- Was not paid wages or remuneration by the club,
- Paid fees to the club and earned income directly from clients,
- Bore the financial risk of earning money at the club,
- Controlled client interactions and negotiated payments.

The decision was made based on the club's uncontested evidence, as the dancer failed to provide further material or participate actively in the case.

Practical Implementation/Learnings:

1. **Worker classification must reflect reality:** Simply labelling someone an "independent contractor" is not sufficient. Employers must ensure the practical realities of the engagement support that classification, including control over work, financial risk, payment structures, and how income is earned.
2. **Inconsistent contract terms matter less than practice:** While some aspects of the contract suggested control (e.g. requirement to follow directions), the FWC focused on the totality of the relationship and how it operated in practice.
3. **Stick to the contracted agreement:** Conduct and contract terms need to align. Risks arises when conduct drifts away from the contract and the original intention of the parties and therefore you should stick closely to what was agreed and ensure that conduct does not drift into something that more resembles an employment relationship and gives rise to exposure.

PREDICTIONS

01 LIMIT ON THE USE OF RESTRAINTS OF TRADE

The 2025 Federal Budget announcement included an intent to ban non-compete clauses for employees earning less than the high income threshold, and the USA is already limiting the use of restraints. We are highly likely to see further legislation in this space.

02 REPRODUCTIVE LEAVE

QLD public servants will receive 10 days paid leave to access reproductive healthcare including IVF and fertility treatments, care for endometriosis, preventative screenings for breast and prostate cancer. The unions continue to lobby for this across all sectors.

03 PAY DAY SUPERANNUATION

This was announced on 2 May 2023 however has not yet been confirmed as 'law'. That said, it is highly likely that from 1 July 2026, employers will be required to pay their employees' super at the same time as their salary and wages.

04 LEGISLATION TO PROTECT PENALTY RATES

The Albanese government made an election promise regarding protecting penalty rates in Awards to safeguard against erosion of the minimum safety net. It is unclear exactly how this would be legislated, but watch this space!

05 OVERHAUL OF THE SCHADS AWARD

Resulting in abolishment of 5 separate classification structures and implementing a single, simplified classification and wage structure.

06 JUNIOR RATE UPDATES

The Shop, Distributive and Allied Employees' Association (SDA) has launched a campaign to remove junior rates from the age of 18 for young workers in retail, pharmacy and fast food industries. The FWC will list a full bench hearing between September and December 2025 so we will be waiting until the end of the year or maybe early next year to see where this lands.

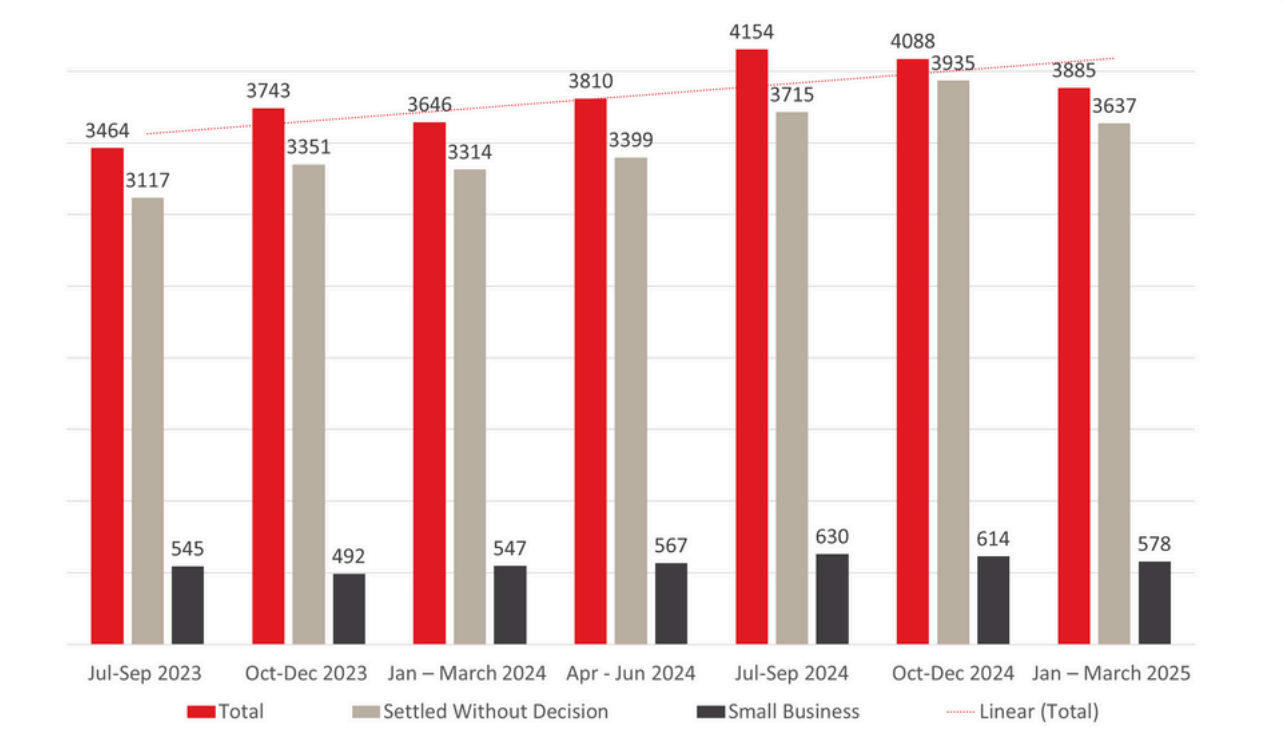
07 MODEL TERMS FOR WORK FROM HOME

The Fair Work Commission has initiated a new major case to develop a working from home term for the Clerks Private Sector Award 2020. The term aims to facilitate employers and employees in making workable arrangements for working at home, and it will also remove any existing impediments in the award that may hinder such arrangements. Terms include potentially allowing non-continuous working hours for employees and enabling part-time employees to choose their own starting and finishing times with employer agreement.

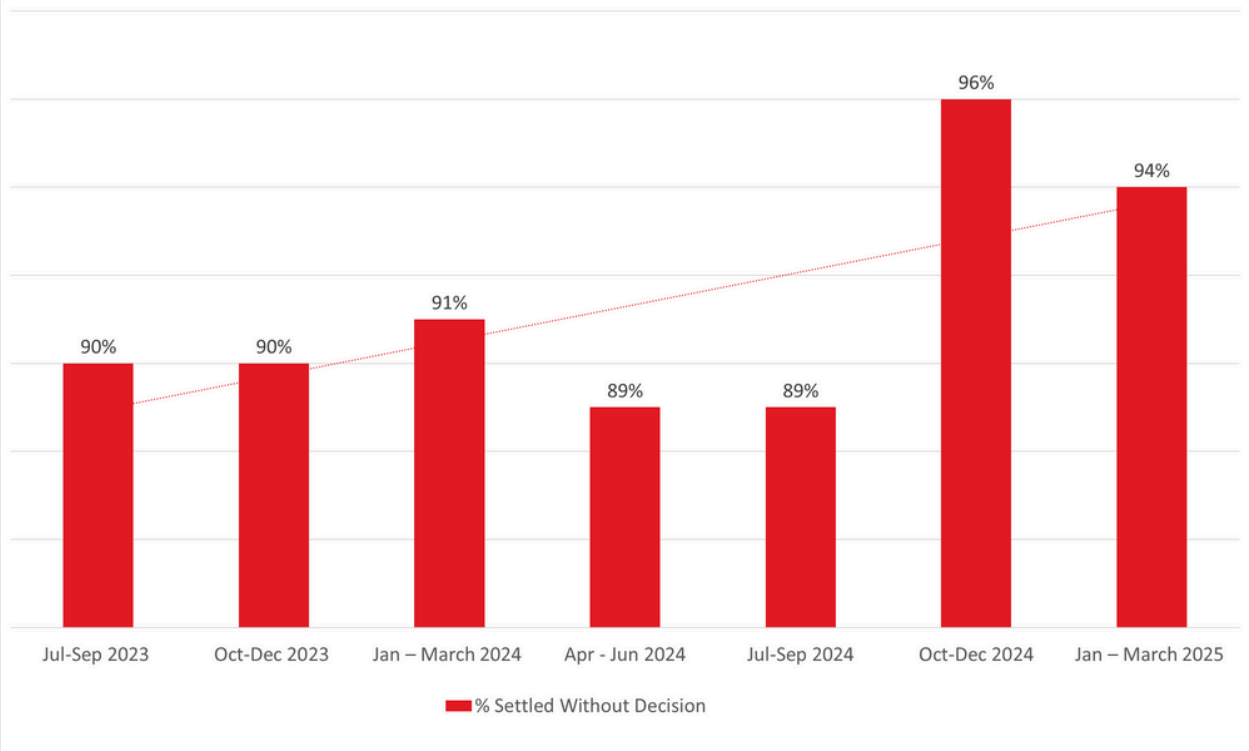
FAIR WORK STATISTICS

FAIR WORK COMMISSION STATISTICS

UNFAIR DISMISSAL APPLICATIONS

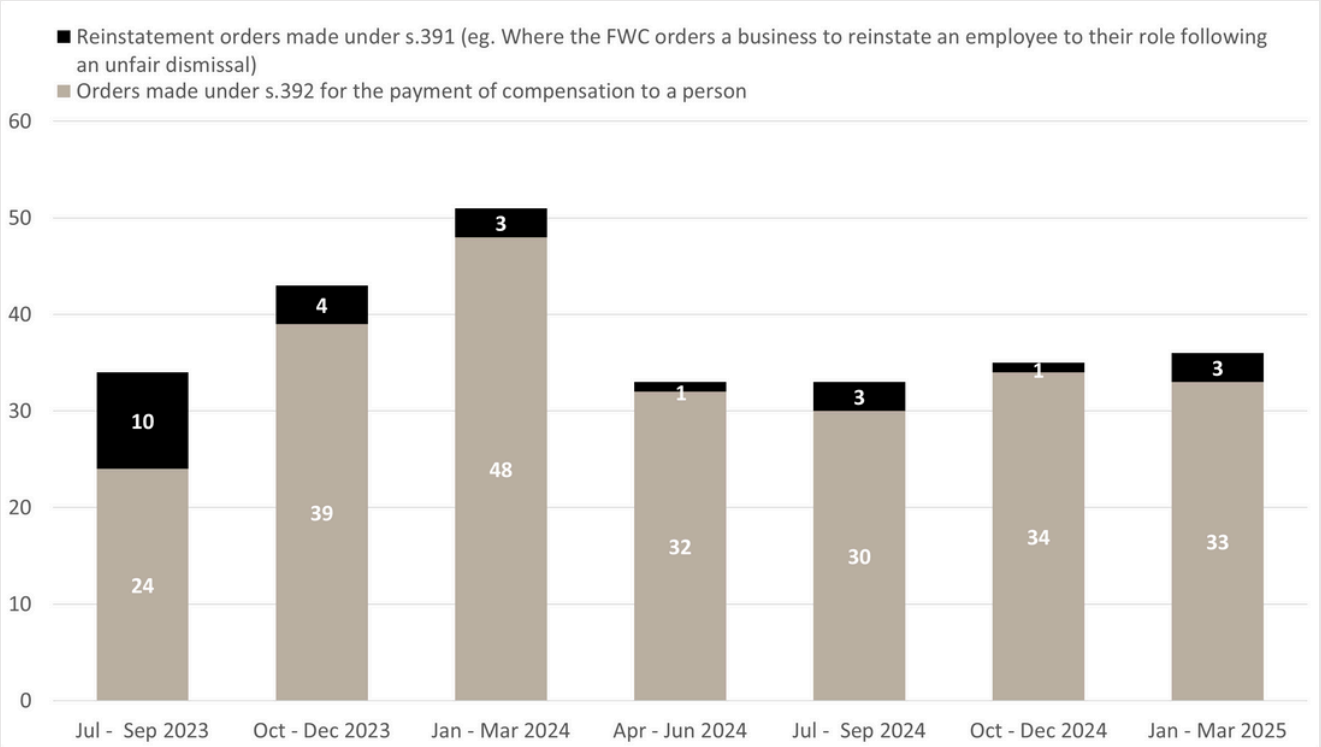


% OF UNFAIR DISMISSAL CLAIMS 'SETTLED'

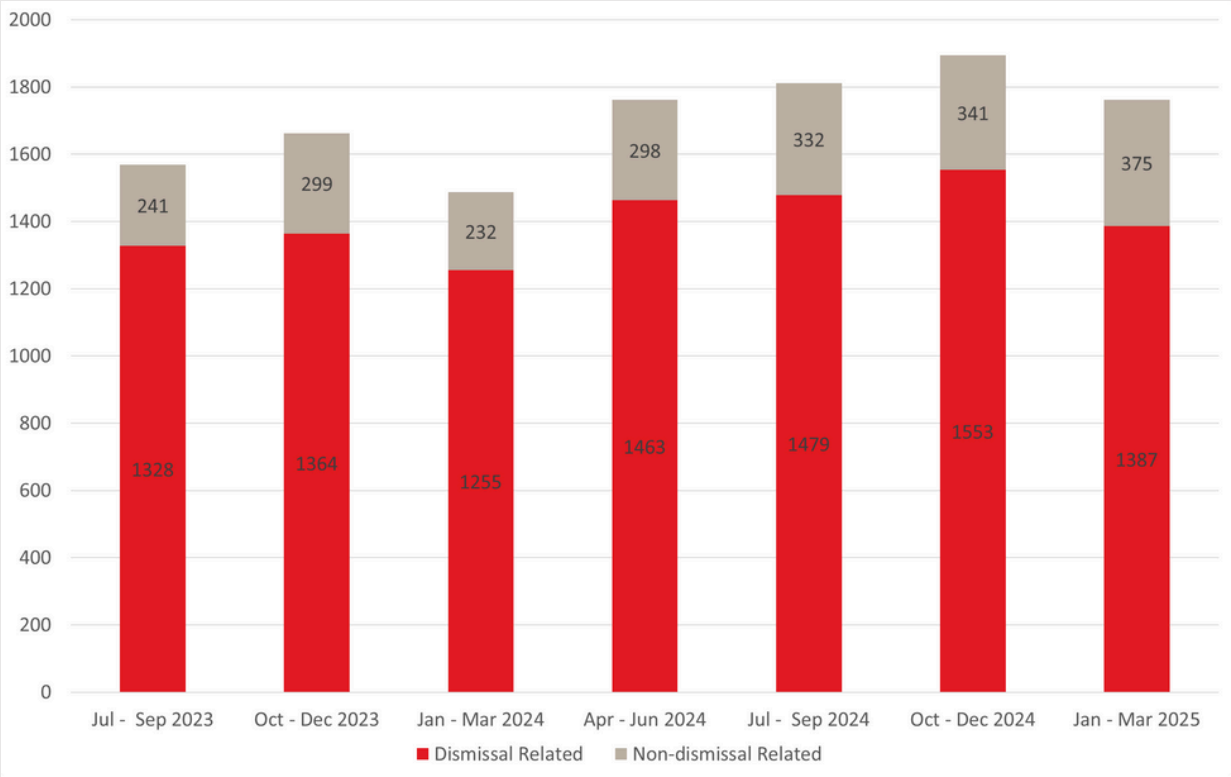


UNFAIR DISMISSAL ORDERS

Matters that are heard by the FWC, where the employer is found at fault.



GENERAL PROTECTION APPLICATIONS



(Based on reports published by the FWC - https://www.fwc.gov.au/about-us/reporting-and-publications/quarterly-reports)

FAIR WORK RESOURCES

Closing Loopholes No.2 Legislation:

Right to Disconnect

- Right to disconnect

Casual employment changes

- Casual employees
- Pathways to permanent employment
- Offers and requests for casual conversion

Independent contractor changes

- Independent contractors
- Whole of relationship test
- Opting out of the whole of relationship test
- Start of relationship test
- Sham contracting
- Contractor entitlements and support

State referred national system businesses

- State referred national system businesses

Minimum standards and protections for some contractors

- Regulated workers
- Understanding regulated workers
- Employee-like workers
- Regulated workers in the road transport industry
- Road transport contractual chains
- Other help for regulated workers

New building and construction employment definition content and case studies

- Contractors in building and construction
- Case studies for contractors in building and construction

Sexual Harassment Disputes Benchbook

Published: 1 October 2024

The FWC published a Sexual Harassment Disputes Benchbook which applies to alleged sexual harassment in connection with work that happened (or started) on or after 6 March 2023. It deals with provisions from the Secure Jobs Better Pay Act which expand the Commission's sexual harassment jurisdiction.

Check out the Benchbook: https://www.fwc.gov.au/about-us/news-and-media/news/sexual-harassment-disputes-benchbook-published

NOTES

OUR YEAR IN NUMBERS 2024-2025 AT A GLANCE

WORKPLACE CULTURE

285 INDIVIDUAL DiSC JOURNEY'S

28 BULLYING & SEXUAL HARASSMENT WORKSHOPS

"Difficult conversations have become conversations about difficult things"

Previous Leadership Program Participant

LEADERSHIP DEVELOPMENT

16 LEAD WITH FOCUS PROGRAM PARTICIPANTS

29 LEADING TEAMS WORKSHOPS

5 BESPOKE LEADERSHIP PROGRAMS

"We recently engaged Focus HR to deliver training sessions for all our staff and they completed this in a timely, simplified manner that was easy to understand and adapt to the workplace. We have no hesitation in recommending them as a valuable asset for any business looking for professional and knowledgeable HR experts who offer clear and concise advice and support."

Grant Sheather, CEO, Toowoomba Turf Club

52,215 WORKING LIVES POSITIVELY IMPACTED

NPS 84%

42 SESSIONS DELIVERED

285 PARTICIPANTS

BUSINESS STRATEGY

"Alistair's skill as a facilitator has been instrumental in shaping our strategic direction. He has a remarkable ability to distil a wide range of ideas and personalities into a clear, actionable plan that reflects our business goals. Focus HR doesn't just hand over a strategy and walk away—they stay with us every step of the way, helping us stay accountable, ensuring the plan was lived, implemented, and refined as needed. Their approach has been pivotal in aligning our team at Piñata Farms."

Gavin Scurr, CEO, Piñata Farms

22 BUSINESSES

83 STRATEGIC PLANS WRITTEN

∞ 'AH HA' MOMENTS

"We recently had the pleasure of working with Focus HR to develop our Managers Handbook and associated templates for our employee lifecycle processes. The experience was exceptional from start to finish.

Working with Focus HR was a seamless and productive experience. We are extremely satisfied with the results and would highly recommend their services to any organisation looking to enhance their HR processes."

Belinda Hughes. Director of People, Home Instead

HR/IR SUPPORT

933 HR/ IR ENQUIRIES

1603 EMPLOYEE WAGES CHECKED

173 POLICIES WRITTEN