



WORKPLACE WATCH – 23RD EDITION: 9 JUNE 2025

In this fortnight's edition of the KHQ Workplace Watch, we will cover:

- updates from the Fair Work Commission, including the outcome of the Annual Wage Review, the application to vary the *General Retail Industry Award 2020*, Menulog discontinuing its application for a new modern award for the food delivery service industry, and its new processes for dealing with unfair dismissal and general protections applications;
- Safe Work Australia's guide to the regulation of airborne contaminants the latest law reform updates;
- New Bills in NSW Parliament dealing with workers' compensation, work health and safety and other reforms to the *Industrial Relations Act 1996* (NSW); and
- the latest case updates, including the Full Bench awarding back pay to former employees in a workplace determination and an alleged whistleblower contravention in the Federal Circuit and Family Court of Australia.

FAIR WORK COMMISSION UPDATES

Annual Wage Review 2025 published

The Fair Work Commission has published its Annual Wage Review for the 2025-26 financial year. The national minimum wage and all modern award minimum wage rates will increase by 3.5% from 1 July 2025.

The new national minimum wage will now be \$24.95 per hour or \$948 per week.

The Panel concluded:

"[7] The Reserve Bank of Australia's (RBA) assessment that inflation has sustainably returned to its target range of 2–3 per cent indicates that this inflationary episode is now over. That provides us with an opportunity to go at least some of the way towards correcting what has happened over the last four years by awarding a real increase to modern award wages and the NMW. We are concerned that if this opportunity is not taken in this Review, the loss in the real value of wages which has occurred will become permanently embedded in the modern award system and the NMW and a reduction in living standards for the lowest paid in the community will thereby be entrenched.

[8] We are satisfied that the level of wage increase we have determined is sustainable. The labour market remains strong overall, with continuing employment growth, low unemployment and historically high rates of participation in the workforce. Reductions in interest rates are likely to lead to higher consumer demand and a higher level of economic growth than we have experienced in recent years. Although business has faced challenging circumstances in recent times, business conditions have remained reasonably healthy, with the level of non-mining profits maintained in real terms and profit margins at approximately their pre-pandemic level.

[9] Australia's continuing poor performance in labour productivity growth has operated as a restraining factor on the size of the increase we have determined. However, that problem is primarily located in the non-market sector, where there has been significant growth in employment in the healthcare and social

services sectors in recent years. In the market sector, there has been modest growth in labour productivity over the current multi-year cycle, which indicates some capacity for business to pay for a modest increase in real minimum wages. Certainly, the productivity problem will not be resolved by the indefinite continuation of the reduction in real wages which has occurred over the last four years. We have also taken into account, as moderating factors in our determination, the upcoming increase in the Superannuation Guarantee contribution rate, the less favourable economic outlook arising from uncertainty caused by changing US trade policies, and some indications of weakness in the Accommodation and food services sector in which a significant proportion of modern award reliant workers are employed.”

The *Annual Wage Review 2025* [2025] FWCFB 3500 can be found [here](#) and further information can be found on the Fair Work Commission’s dedicated webpage [here](#).

Variation of the General Retail Industry Award 2020

On 29 May 2025, the Honourable Amanda Rishworth, Minister for Employment and Workplace Relations, wrote to the President of the Fair Work Commission advising of the Commonwealth’s intention to legislate, as soon as possible, to protect penalty rates in modern awards from being reduced or removed.

Vice President Gibian has invited interested parties in the proceedings seeking to vary the *General Retail Industry Award 2020* to provide submissions in response (including whether the proceedings should now be deferred) by Monday, 16 June 2025.

The Statement issued by Vice President Gibian in [2025] FWC 1506 can be accessed [here](#), and the correspondence from the Minister can be found [here](#).

Menulog withdraws application for new modern award

Menulog has discontinued its application for an on-demand delivery services modern award.

The company wrote to Vice President Asbury advising that it had made the decision “*due to the progression of new employee-like laws and the current operational challenges under the traditional road transport award.*”

The application was originally filed in 2021. Menulog initially claimed that a new modern award that was specifically tailored to the on-demand delivery services industry would help to incentivise the direct employment model in the industry.

The correspondence sent to the FWC accompanying the Form F50 can be found [here](#).

The Fair Work Commission’s webpage dedicated to the Proposed On Demand Delivery Services Award is [here](#).

New processes for general protections and unfair dismissal applications

The Fair Work Commission has announced that its initial case management processes for general protections and unfair dismissal applications.

The Commission will provide the parties with a link to an online portal where documents can be accessed.

Further information can be found via this Fair Work Commission [news update](#).

Unfair termination in road transport industry

The Fair Work Commission has released an online video addressing common questions regarding its recently new jurisdiction to deal with unfair termination claims in the road transport industry. Some of those common questions are:

- what the new rights are
- who may be eligible to make a claim
- the remedies that may be available.

The video can be viewed via this [link](#).

SAFETY UPDATES

Workplace Exposure Limits introduced

Safe Work Australia has published its guide to the upcoming changes to the regulation of airborne contaminants, which are due to take effect on 1 December 2026.

Among the changes the document provides guidance on include:

- a decreased or increased exposure limit value;
- an addition or removal of a type of exposure limit;
- merging or splitting of groups of airborne contaminants; and
- addition or removal of an airborne contaminant listing.

The Changes to Workplace Exposure Limits guidelines can be found [here](#).

LAW REFORM

Law reform in NSW

The New South Wales Government is pursuing a broad reform agenda that is aimed at addressing the rising incidence of workplace psychological injuries and the low return-to-work rates. In this context, several new Bills have been introduced into NSW Parliament.

The *Workers Compensation Legislation Amendment Bill 2025* was introduced into NSW Parliament on 27 May 2025 and has been passed by the legislative assembly.

At a high-level, the Bill seeks to amend the *Workers Compensation Act 1987* to:

- make changes to liability and entitlements for psychological injuries;
- provide a process for assessing the degree of permanent impairment and to enable disputes; and
- enable disputes about liability for a lump sum death benefit to be settled, subject to agreement by the Personal Injury Commission.

The *Workers Compensation Legislation Amendment Bill 2025* can be found [here](#).

The NSW Government has also released the *Industrial Relations and Other Legislation Amendment (Workplace Protections) Bill 2025*.

The Bill involves a raft of amendments to the *Work Health and Safety Act 2011* (NSW) and the *Industrial Relations Act 1996* (NSW), including:

- introducing a mandatory obligation to comply with relevant WHS Codes of Practice;
- introducing a requirement to notify SafeWork NSW when provisional improvement notices are issued by health and safety representatives;
- expanding the rights of unions with respect to exercising right of entry and to even initiate WHS prosecutions;
- establishing an anti-bullying and sexual harassment jurisdiction in the NSW Industrial Relations Commission for workers who are not covered by the Fair Work jurisdiction;
- expanding the powers of the NSW Industrial Relations Commission, including in relation to 'WHS Matters'.

The *Industrial Relations and Other Legislation Amendment (Workplace Protections) Bill 2025* can be found [here](#).

CASE UPDATES

Backpay awarded to former employees in Workplace Determination

On 11 April 2025 the Full Bench issued its decision on the matters at issue in the workplace determination proceedings for Transgrid and its employees. The parties were required to confer and provide the Commission

with the workplace determination that reflected its decision within 14 days.

The parties could not reach agreement. The key issue being when backpay was payable and who it was payable to. Ultimately, the parties agreed to the time by which backpay would need to be calculated and paid to employees. However, no agreement was reached in relation to back pay would be limited to current employees only.

The Full Bench (Vice President Gibian, Deputy Presidents Boyce and Butler) said:

“[19] ... The provisions dealing with the operation, coverage and application of a workplace determination are relevantly the same as the equivalent provisions with respect to enterprise agreements. A workplace determination can include provision that wage increases have effect from a date earlier than the date it commences operation. To the extent that such a provision includes an obligation to make payments to person who have ceased employment prior to the workplace determination being made, it is nonetheless about matters pertaining to the relationship between the employer and employees who will be covered by the agreement for the purposes of s 172(1)(a). It imposes an obligation on the employer to make the payment once it commences operation and applies to the employer.

[20] In our earlier decision, the Full Bench determined that wage increases should be included in the workplace determination which have effect from 1 March 2024. Consistent with the conclusion of the Full Court in Murtagh, the provision of the workplace determination made to reflect that conclusion could impose an obligation to back pay persons who were employed after 1 March 2024 even if they ceased employment prior to the determination being made and would be about a permitted matter. Such a provision would be a term about a permitted matter for the purposes of ss 172(1)(a) and 272(3)(a) of the Act.”

The Full Bench decision in *NSW Electricity Networks Operations Pty Limited v CEPUY, ASU, CPSU and Professionals Australia* can be found [here](#).

‘Federal Circuit and Family Court of Australia lacks original jurisdiction to determine whistleblower contraventions

The Federal Circuit and Family Court of Australia has ruled that an individual employee does not have standing to seek a declaration as to a contravention of the whistleblower protections in the *Corporations Act 2001* (Cth).

Judge Champion said:

“57. In my discussion above, I accepted Mr Macmartin’s submission that nothing in Part 9.6A of the Corporations Act expressly (or by clear or unmistakable implication) excludes the jurisdiction of this court. I observed that the fact that no provision expressly excluded the jurisdiction of this court was not the same as a provision by implication conferring jurisdiction on this court, which underpinned my conclusion that this court does not have original jurisdiction under s. 131 of the FCFCOA Act as to the whistleblower protection claims.

58. In the absence, however, of a provision of the Corporations Act expressly or by clear and unmistakeable implication excluding the jurisdiction of the court there is no reason to interpret the relevant provisions of Part 9.6A as mandating an interpretation that the associated jurisdiction of this court under s. 134 of the FCFCOA Act is to be read down so as to preclude this court having associated jurisdiction as to a Part 9.4AAA claim. As Allsop J said in Macteldir the “associated jurisdiction under [s. 134] is the conferral of jurisdiction in another, different, federal matter, in respect of which jurisdiction could be, but has not been, conferred”. The “associated” matter may be disparate from the matter in which jurisdiction is regularly invoked.

...

61. As a result, although Mr Macmartin’s whistleblower protection claims are not within the original jurisdiction of this court, there is no reason to restrict the ambit of s. 134 of the FCFCOA Act. The better view is that this court has jurisdiction as to Mr Macmartin’s whistleblower protection claims in its associated jurisdiction under s. 134 as a claim in a different federal matter where the court’s jurisdiction is regularly invoked as to the FW Act claims.”

The decision of Judge Champion in *Macmartin v Bunnings Group Ltd* [2025] FedCFamC2G 832 can be found [here](#).



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