# EMPLOYMENT LAW DEVELOPMENTS:

## WHAT EMPLOYERS NEED TO KNOW | 2026

A snapshot of key developments in employment, workplace relations, and safety, which may require actions from employers.

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# About the authors

## Tim McDonald

Principal

Tim McDonald is recognised as a leading employment, workplace relations and safety lawyer.

With more than 20 years' experience, Tim acts for employers across a broad range of industries, including some of Australia's largest employers, Government and insurers. He is valued for providing clear, practical and strategic advice on complex and high-risk workplace matters.
Tim has held senior roles at the highest levels of government and industry, including as Senior Adviser to the Commonwealth Minister for Employment and Workplace Relations and as Director of Employment Relations at a peak employer body, and has acted in many landmark cases.

Tim has served on numerous professional and policy committees, including the Executive Committee of the Industrial Relations Society and the Law Society's Committee for Employment and Industrial Law.
Tim is accredited as a specialist in Employment and Industrial Law by the law Society, has been awarded Employment and Industrial Lawyer of the Year by Lawyers Monthly and has been recognised as a leading Work Health and Safety Lawyer by Doyle's Guide.

tim.mcdonald@mccabes.com.au
02 9265 3261

## Angus Dowey

Associate

Angus holds a Bachelor of Business and Bachelor of Laws from the University of Technology Sydney, where he was recognised on the Dean's Merit List for Academic Excellence and participated in the Faculty of Law's High Achievers Mentoring Program.

Prior to joining McCabes, Angus worked at a commercial law firm on complex commercial litigation matters and in the employment-law team at a community legal centre.

Angus focuses on providing timely, practical legal advice that aligns with his clients' objectives.

angus.dowey@mccabes.com.au
02 9265 3247

## Other Contributors:

**Marko Marelic**

Senior Associate

marko.marelic@mccabes.com.au
02 8023 7919

# 1. Set-Off Clauses in Salaried Employee Contracts

# 1. Set-Off Clauses in Salaried Employee Contracts

The Federal Court delivered an important decision last year on how set-off clauses operate in employment contracts for salaried employees and employers' record-keeping obligations. The Case – *Fair Work Ombudsman v Woolworths Group Limited; Fair Work Ombudsman v Coles Supermarkets Australia Pty Ltd; Baker v Woolworths Group Limited; Pabalan v Coles Supermarkets Australia Pty Ltd (2025) 343 IR 340* – has significant implications for employers who rely on annualised salaries to meet award entitlements.

The Court heard four matters together:

- Two cases brought by the Fair Work Ombudsman (**FWO**) against Coles and Woolworths; and
- Two class actions brought by individual employees against each supermarket chain.

All four proceedings centred on alleged underpayments. The affected employees (**the Employees**) were covered by the General Retail Industry Award 2010 (**the Award**) and were paid annual salaries. The Employees had employment contracts with set-off clauses, which sought to set-off any entitlements under the Award (like penalty rates, overtime, allowances and loadings) against their annual salary. The "basic problem" was that the Defendants did not keep track of employees' entitlements under the Award and accordingly, in many cases entitlements were not properly paid.

The Full Court made a number of important findings:

- **Set-off clauses only work within a single pay period**

  The Court held that contractual set-off clauses cannot be applied to discharge obligations under the Award across multiple pay periods. An employer cannot use an over-award payment in one pay period to cover a shortfall in another. For this reason, Clause 6 of the Woolworths employment contract (which provided for minimum entitlements over a 26-week period) was interpreted as applying only to each fortnightly pay cycle to comply with section 323 of the *Fair Work Act 2009 (Cth)* (**Fair Work Act**).

- **No "pooling" of over-Award payments**

  The Court rejected the idea that employers can "pool" payments over longer periods (such as six months) to show that they had discharged monetary obligations imposed by the Award. The Court described this approach as an "accounting abstraction," not a payment under section 323.

- **Insufficient record keeping**

  Roster and clocking data were not records for the purposes of regs 3.33 and 3.34 of the Fair Work Regulations. The requirement in reg 3.33(3) to record certain details is "*enlivened by the employee's entitlement*" and this requirement is not altered by the form of payment (like an annualised salary).

## What Employers Should Do Now

1. Review any issues with pay periods, including:
   - whether you are currently having to discharge obligations from one pay period to another; and
   - whether a different pay cycle could be adopted.
2. Review record keeping arrangements in relation to pay and overtime.
3. Obtain advice in relation to the above matters to ensure compliance.

# 2. Payday Superannuation

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On 4 November 2025, the Commonwealth Parliament passed the *Treasury Laws Amendment (Payday Superannuation) Bill 2025 and the Superannuation Guarantee Charge Amendment Bill 2025*.

These reforms significantly change when employers must pay superannuation guarantee (**SG**) contributions. From **1 July 2026**, employers will now generally be required to **pay SG contributions at the same time as wages and salaries are paid** (rather than quarterly).

## Key Changes Employers Need to Know

### New concept of "qualifying earnings"

The existing concept of "ordinary time earnings" has been expanded and replaced with a new term, "**qualifying earnings**". Qualifying earnings will determine the amount on which SG contributions are calculated.

### SG contributions due within 7 business days

After qualifying earnings are paid, employers will typically have **7 business days** to ensure the corresponding SG contributions are **received by the employee's superannuation fund**. This marks a move away from the current quarterly payment model.

### Limited exceptions to the 7-day rule

In certain circumstances, employers will have up to 20 business days to make SG contributions, including where:

- the payment relates to the first SG contribution for a new employee;
- exceptional circumstances apply (such as natural disasters or widespread ICT outages); or
- the earnings are paid out of cycle (such as commissions, bonuses, payments made in advance, or back pay).

### SG charge

If SG contributions are paid late (or not paid at all), employers may be liable for the SG charge. The SG charge will be the sum of:

- total individual final SG shortfalls;
- total of the employer's individual notional earnings components;
- employer's administrative uplift amount; and
- total of the employer's choice loadings.

### Other consequences

Late payment of SG contributions may also breach the Fair Work Act or an applicable award or enterprise agreement.

## What Employers Should Do Now

1. Review and update payroll systems, processes and internal policies; and
2. Obtain advice on:
   - the new SG payment requirements and the consequences of non-compliance; and
   - payroll calculations, superannuation obligations and employee entitlements.

# 3. Changes to Government-Funded Parental Leave

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Significant changes to both employer-funded and government-funded parental leave arrangements were made at the end of last year. The parental leave changes expand employee protections and increase entitlements, and will require updates to workplace policies and systems.

## Employer-Funded Parental Leave

The *Fair Work Amendment (Baby Priya's) Bill 2025* recently passed Commonwealth Parliament. The amendments to the Fair Work Act introduce new protections for employees where a child is stillborn or dies on or after **7 November 2025**. Unless an employer and employee expressly agree otherwise, an employee will not lose their entitlement to employer-funded paid parental leave solely because their child is stillborn or dies shortly after birth.

Employers should note that failure to comply with these new provisions may expose them to civil remedy penalties for unlawful contraventions of the Act.

## Government-Funded Parental Leave

Changes to the Australian Government's Paid Parental Leave scheme will take effect from **1 July 2026**. From that date:

- Parental Leave Pay (**PPL**) will increase from 24 to 26 weeks (130 days, based on a standard five-day week) for eligible parents.
- PPL will continue to be paid at the national minimum wage and can be shared between parents. However, **at least 4 weeks** (up from 3 weeks) of the total **26 weeks** must now be used by the second parent.
- The ATO will pay a superannuation contribution of 12% on PPL payments **directly** to an employee's superannuation fund. These contributions will be paid after the end of the financial year in which the employee received PPL.

## What Employers Should Do Now

1. Updating internal leave policies and HR systems to reflect the new entitlements.
2. Reviewing recruitment and workforce planning, particularly in anticipation of longer parental leave absences.
3. Seeking advice on payroll processes, including superannuation obligations and parental leave payment interactions.

# 4. Gender Equality Target-Setting Requirements

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## A) Large Employers (500 or more employees)

Recent amendments to the *Workplace Gender Equality Act 2012 (Cth)* will introduce new obligations for large employers from 2026. The changes are contained in the *Workplace Gender Equality Amendment (Setting Gender Equality Targets) Act 2025 (Cth)*.

Employers with 500 or more employees are classified as designated relevant employers (**DREs**). In 2026, DREs will be required to select and meet, or improve against, measurable targets against three of the six gender equality indicators (**GEIs**) over a 3-year period. DREs must commit to these targets when they lodge their Gender Equality Report in the following periods:

- **Private sector DREs:** 1 April – 31 May 2026; or
- **Commonwealth public sector DREs:** 1 September – 31 October 2026.

DREs may choose from two types of targets:

### Numeric targets

These require a nominated percentage-point improvement, for example:

- reducing the gender pay gap; or
- increasing women's representation in management roles.

### Action-based targets

These must constitute new entitlements or specify things that the employer's policies or processes did not provide for in the baseline, such as:

- introducing employer-funded parental leave; or
- improving recruitment of underrepresented genders.

When setting targets, DREs should note that they:

- must select at least one numeric target;
- may select more than one target from the same GEI; and
- cannot select an action target that their baseline shows is already in place.

The Workplace Gender Equality Agency (**WGEA**) will:

- publish the 3 targets each DRE selects on the Data Explorer; and
- include the selected targets and annual progress in the DRE's Executive Summary.

At the end of the three-year cycle, DREs must have met each target, or demonstrated measurable improvement from their baseline. A DRE will be considered **non-compliant** if it:

- fails to meet or improve against its targets by the end of the cycle (without a reasonable excuse); or
- does not set targets at the start of Year 1.

The **consequences** of non-compliance are significant. If a DRE is non-compliant (and has no reasonable excuse), WGEA may:

- publicly name the employer as non-compliant (with an opportunity to make representations to WGEA as to why this should not occur); and/or
- refuse to issue a certificate of compliance, which may affect eligibility for Australian Government contracts.

# 4. Gender Equality Target-Setting Requirements

Accordingly, it is **important** that DREs take the time now to:

- ensure they select targets across three GEIs when lodging their 2026 Gender Equality Report;
- make informed and realistic choices about which targets to adopt;
- review and implement appropriate policies and strategies to support progress over the three-year cycle; and
- understand the legal and commercial consequences of non-compliance.

## B) Smaller Employers (between 100 and 500 employees)

Employers with between **100 and 499** employees are encouraged (but not required) to adopt targets voluntarily to improve gender equality in their workplaces. Smaller employers must still continue to report their gender equality data to WGEA each year.

# 5. Review of Closing Loopholes Legislation Underway

# 5. Review of Closing Loopholes Legislation Underway

A review undertaken by former FWC member Susan Booth is currently underway in relation to the Closing Loopholes reforms. This review will play a pivotal role in determining how the major industrial relations reforms introduced in 2023–2024 are functioning in practice and whether further amendments are required.

- *Fair Work Legislation Amendment (Closing Loopholes) Act 2023;*
- *Fair Work Legislation Amendment Act 2024 (Closing Loopholes No. 2 Act);* and
- *Paid Family and Domestic Violence Leave Act.*

A final report is due by 15 June 2026.

# 6. Review of the National Employment Standards

# 6. Review of the National Employment Standards

The Committee on Employment, Workplace Relations, Skills and Training is currently conducting an inquiry into the operation and adequacy of the National Employment Standards (**NES**).

The NES set out the minimum employment entitlements that must be provided to all national-system employees.

These minimum standards include:

1. Maximum weekly hours;
2. Requests for flexible working arrangements;
3. Casual employment;
4. Parental leave and related entitlements;
5. Annual leave;
6. Personal/carer's leave, compassionate leave and family and domestic violence leave;
7. Community service leave;
8. Long service leave;
9. Public holidays;
10. Superannuation contributions;
11. Notice of termination and redundancy pay; and
12. Fair Work Information Statement and Casual Employment Information Statement.

The Committee is accepting written submissions until 27 February 2026, after which it will publish its findings and recommendations.

This inquiry has the potential to significantly reshape Australia's employment law framework. Key proposals being considered include:

### Increasing annual leave entitlements

The Shop, Distributive and Allied Employees' Association has proposed lifting the minimum annual leave entitlement from 20 days to 25 days.

### Strengthening redundancy entitlements

The Australian Council of Trade Unions has called for stronger redundancy entitlements, including:

- higher redundancy payments for employees with 10 years of service (being a 16-week entitlement instead of reducing it to 12 weeks);
- the removal of existing redundancy exemptions; and
- adjustments to address job losses arising from the adoption of artificial intelligence.

# 7. Continued Spotlight on Psychosocial Safety

# 7. Continued Spotlight on Psychosocial Safety

Employers need to be mindful of the greater focus on psychosocial safety within the Work Health and Safety (**WHS**) space. We expect this trend to continue in 2026.

Recent WHS reforms place significant emphasis on identifying and eliminating - or at least minimising - risks associated with psychosocial hazards. Psychosocial hazards can include:

- high or unrealistic workloads;
- role ambiguity;
- bullying;
- harassment;
- interpersonal conflict;
- poor supervisor support;
- exposure to traumatic events; and
- isolation in remote or hybrid work environments

## Victoria

The Occupational Health and Safety (Psychological Health) Regulations 2025 (**Regulations**) commenced in Victoria on 1 December 2025. Under the Regulations, employers must:

- **Identify psychosocial hazards** so far as is reasonably practicable. Psychosocial hazards include factors in the carrying out of work, personal or work-related interactions.
- **Eliminate risks** associated with psychosocial hazards so far as reasonably practicable.
- If elimination is not possible, **reduce risks** by:
  - altering the management of work, planning, systems of work, work design, workplace environment; or
  - if such alterations are not reasonably practicable, providing information, instruction, or training; or
  - implementing a combination of these measures (noting information, instruction, nor training cannot be the predominant measure).
- **Review and revise risk control measures** as necessary to ensure their effectiveness.

## New South Wales

The Work Health and Safety Regulation 2025 (**2025 Regulation**) commenced on 22 August 2025, replacing the Work Health and Safety Regulation 2017.

Under the 2025 Regulation, persons conducting a business or undertaking (**PCBUs**) are required to manage psychosocial risks using the **hierarchy of controls** (section 36) where elimination of the risk is not reasonably practicable. The hierarchy of controls is as follows:

- Eliminating the risk;
- Substituting the hazard giving rise to the risk with something that gives rise to a lesser risk;
- Isolating the hazard;
- Implementing engineering controls;
- Minimising the risk by implementing administrative controls.

# 8. Proposed WHS Responsibilities for 'Digital Work Systems'

# 8. Proposed WHS Responsibilities for 'Digital Work Systems'

The Work Health and Safety Amendment (Digital Work Systems) Bill 2025, if passed, would see NSW as the first Australian State to specifically regulate safety risks arising from the introduction of AI and digital work systems into workplaces.

The Bill seeks to amend the *Work Health and Safety Act 2011* (NSW) (**WHS Act**) to address risks arising from the use of "digital work systems" (which are defined as algorithms, AI, automation, and online platforms) in workplaces. A primary duty of care for a person conducting a business or undertaking to ensure that the health and safety of workers is not put at risk from the use of a "digital work system".

Businesses in NSW should keep track of the Bill, as it is likely to be passed by the NSW Parliament in early 2026 and, if it does, will substantially broaden the WHS obligations that need to be observed in workplaces.

# 9. Workplace Protections Act 2025: Key WHS Amendments Now in Force

# 9. Workplace Protections Act 2025: Key WHS Amendments Now in Force

The Industrial Relations and Other Legislation Amendment (Workplace Protections) Act 2025 (NSW) (**Workplace Protections Act**), assented to on 3 July 2025, introduces significant changes to the WHS Act. Several of the amendments made by the Workplace Protections Act came into effect on **13 October 2025.**

## Key Changes to the WHS Act

- **Expanded dispute powers for the IRC**

  The Industrial Relations Commission (IRC) can now deal with WHS disputes, including disputes about the right to cease unsafe work.

- **Extended time for prosecutions**

  Prosecutors may commence proceedings outside the two-year limitation period with leave of the Industrial Court (IC).

- **Union review rights**

  Unions representing affected workers can now apply to review certain WHS decisions.

- **New notification obligations**

  Anyone issued with a provisional improvement notice must provide a copy to the relevant regulator (e.g., SafeWork NSW).

- **Broader disclosure permissions**

  Confidential information obtained under the WHS Act may be disclosed to officers or employees of unions or employer organisations, or to WHS representatives.

- **Expanded powers for entry permit holders**

  WHS entry permit holders may take measurements, conduct tests, and capture photos or videos relevant to suspected contraventions, and may exercise further powers where they reasonably suspect an additional breach of the WHS Act.

- **Compliance with Codes of Practice**

  Persons conducting a business or undertaking (PCBUs) must comply with approved Codes of Practice or manage risks in a way that meets an equivalent or higher standard.

## What Employers Should Do Now

1. Employers and PCBUs should expect a potential increase in WHS disputes and proceedings being brought to the IRC and IC by employees, unions, or the regulator.
2. You should review and, where necessary, update your WHS systems, policies, and procedures—especially in light of the elevated status of approved Codes of Practice—to ensure compliance with the amended WHS Act.

# 10. Proposal to Ban Non-compete Clauses

## 10. Proposal to Ban Non-compete Clauses

The Albanese Government's 2025–26 Federal Budget proposes a statutory ban on non-compete clauses in employment contracts for employees earning below the high-income threshold (currently $183,100, indexed annually). More than three million Australian workers are currently subject to non-compete clauses.

The proposed ban is only expected to affect employment contracts made or varied after the start date.

It is also unclear whether the proposed ban is expected to cover independent contractors.

If the proposed ban is implemented, employers will need to spend time in 2026 reviewing and updating the contracts of new workers.

# 11. Redeployment Obligations and Redundancy

# 11. Redeployment Obligations and Redundancy

In *Helensburgh Coal Pty Ltd v Bartley & Ors* (2025) 424 ALR 1, the High Court clarified how section 389(2) of the Fair Work Act should be interpreted when assessing whether a redundancy is "genuine", particularly in relation to the reasonableness of redeployment within an employer's enterprise.

## The Case

Helensburgh Coal Pty Ltd (**Helensburgh**), operator of the Metropolitan Coal Mine (**the Mine**), used both employees and contractors to provide various services at the Mine. When demand for coking coal dropped significantly during the COVID-19 pandemic, Helensburgh announced a major operational restructure at the Mine (which included reducing the mine's operating days from seven to six per week). As part of the restructure:

- contractor numbers were cut by 40%; and
- employees were reduced by 90 (with 47 forced redundancies).

22 of the affected employees (**the Employees**) lodged applications with the FWC, claiming unfair dismissal remedies under section 394 of the Fair Work Act.

After a series of 4 decisions, the FWC ultimately found the dismissals were not genuine redundancies, concluding that it would have been reasonable for Helensburgh to redeploy the Employees into roles performed by contractors. Helensburgh appealed to the Full Federal Court and were unsuccessful. Helensburgh then appealed to the High Court.

Section 389(2) of the Fair Work Act requires consideration of whether it would have been "reasonable in all the circumstances" for an employee to be redeployed within:

- the employer's enterprise; or
- an associated entity's enterprise.

# 11. Redeployment Obligations and Redundancy

Helensburgh argued that this inquiry does not allow the FWC to consider whether an employer could have changed the way it operated, such as by reducing or replacing contractors to create positions for redundant employees. The main issue the High Court had to consider was whether the FWC (in undertaking inquiry mandated by section 389(2)) could consider whether the employer could have made changes to how they used their workforce in operating their enterprise?

The High Court dismissed the appeal, finding that:

- **Redeployment does not require a vacant position**

  "Redeployed" within the meaning of section 389(2) looks to whether there was work (or a demand for work) within the employer's enterprise or an associated entity's enterprise that could have been performed by the otherwise redundant employee. "Redeployed" does not require there to be a vacant position.

- **The FWC may consider whether the employer could have restructured its workforce**

  Section 389 does not prohibit an enquiry of whether an employer could have changed how it uses workforce to operate its enterprise in order to create or make available a position for an employee who would have otherwise been made redundant. This may include policies and practices in relation to the use of labour (like whether to use permanent employees or contractors).

## What Employers Need to Know

Employers undertaking restructures will now need to undertake a far more holistic review of potential redeployment opportunities for a redundancy to be genuine.

Employers must now consider not only existing vacancies but also whether:

1. There is work within the enterprise that could be performed by the employee; and
2. Reasonable changes could be made to how labour is deployed - including restructuring operations or reducing contractor usage.

# 12. Recent Working from Home Cases

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The Fair Work Commission (**FWC**) has recently handed down a number of decisions in relation to working from home arrangements which, at first glance, may appear to be inconsistent with another. Ultimately, each case depends on its own facts. We unpack these decisions and explain the nuances between them below.

## Fair Work Commission Backs Employee in Remote Work Dispute with Westpac

In the aftermath of the COVID-19 pandemic, Australian employers are increasingly implementing hybrid-work policies and directions requiring employees to return to the office. The recent decision of *Karlene Chandler v Westpac Banking Corporation* [2025] FWC 3115 has attracted considerable interest. Some have wrongly interpreted the case as being an authority for, an employer, having to approve an employee's remote working request. Principal Tim McDonald recently discussed the decision on CNN International. You can view the clip here.

### Facts

On 17 January 2025, Ms Chandler requested under section 65 of the Fair Work Act to work remotely from Wilton to care for her two six-year-old children (**FWA Request**). The employee and her family had moved to Wilton in 2021 during the COVID-19 pandemic and had largely worked remotely for the past few years and performed well doing so.

Westpac had a hybrid working policy requiring staff to work from a corporate office at least two days per week. The employee argued that commuting from her children's school to a corporate office in Sydney would take nearly two hours. Westpac refused the request on 18 March 2025, citing its hybrid work policy.

Westpac also relied on reasonable business grounds by arguing in-office attendance assisted collaboration, centralised operational processes and team communication.

### Decision

The FWC ruled in the employee's favour and ordered Westpac to approve her FWA Request to work from home pursuant to section 65C(1)(f)(i) of the Fair Work Act. In doing so, the FWC made a number of important findings:

- **Insufficient business reasons to deny the request**

  The Banks's business reasons such as concerns about productivity and customer service were not backed by evidence. The FWC gave weight to the fact that the employee had successfully worked remotely for years without any negative impact.

- **Relevance of personal circumstances**

  Denying her request would cause significant disadvantage to the employee and her family and rejected the Bank's argument that the employee's personal choice to move away from Sydney and select a certain school for her children should count against her.

- **Failure to follow proper procedures**

  The Bank's failure to comply with the procedural requirements under section 65A of the Fair Work Act, including timely communication of reasons and genuine consultation, invalidated its refusal of the FWA Request.

# 12. Recent Working from Home Cases

## Fair Work Commission Backs Employee in Remote Work Dispute with Westpac

### Key Takeaways for Employers

1. Here, the employee had been successfully performing her job remotely for some years, and the refusal of her request would likely mean that she could not continue working in that role, which were distinguishing factors in her favour – other employees may not be able to rely upon this argument.

2. Nonetheless, employers need to genuinely consider and engage with an individual employee's flexible work requests and, if rejecting a request on reasonable business grounds, employers will need to explain those grounds.

3. When permitting flexible work arrangements, consideration should be given as to whether such arrangements should have review and/or end date.

## Fair Work Commission Accepts Employer had Reasonable Business Grounds to refuse WFH request

The Westpac decision can be contrasted with *Gagandeep (Skye) KaurvG8 Education Trading AS Jellybeans Childcare* [2025] FWC 3396 where the FWC accepted that an early education provider had reasonable business grounds to reject a worker's request for flexible arrangements to enable her to keep picking up her children from school each day.

### Facts

Mrs Kaur was a full-time diploma-qualified educator who had been working early shifts since 2023. Her employer had moved towards a rotating roster to meet the legal staffing requirements of maintaining 50% diploma staff coverage. Mrs Kaur requested she continue finishing by 3:30pm because she had school childrento pick up from school.

### Decision

The FWC held the employer had reasonable business grounds to reject the request because:

- The employer had made genuine efforts to compromise by offering 3 different rosters as an option, which balanced early and late shifts across a fortnight.
- Mrs Kaur's hours were too restrictive because it would require the employer to reshuffle other staff or hire new staff at an additional cost.
- Allowing one employee a favourable roster when other employees had similar needs would be unfair

### Key Takeaways for Employers

1. Employers must meaningfully consult with employees who have made requests for flexible working arrangements.

2. Employers may be able to successfully rely on "reasonable business grounds" to refuse a request, particularly those based on legal obligations, safety issues, operational constraints and fairness among employees.

# 12. Recent Working from Home Cases

## Hybrid Work and Employer Directions: Lessons from Johnson v Papercut

In *Johnson V Papercut Software Pty Ltd* [2026] FWC 178 the FWC held that an employer did not unfairly dismiss an employee who refused to comply with a direction in line with its three-day-in-office hybrid work policy. Significantly, unlike the cases referred to above, the employee had not requested flexible work arrangements.

### Facts

Mr Johnson commenced employment with PaperCut Software on 4 April 2022. Prior to starting, he signed an employment contract in March 2022 that included the following key terms:

- **Clause 3 – Duties**

  Mr Johnson was required to perform his duties and "*comply with such reasonable and lawful directions and all policies, rules and regulations from time to time provided by PaperCut*".

- **Clause 7 – Mobility**

  Mr Johnson was "permitted" to work from home "*in line with relevant policy*", but could also be required to work at other locations from time to time.

When Mr Johnson commenced employment, PaperCut's hybrid-work policy allowed employees to work from home or the office "*as possible and appropriate as a hybrid workplace*".

The timeline of other key events was as follows:

- In August 2023, PaperCut introduced a staged return-to-office model requiring employees to attend the office three days per week by January 2025.
- In December 2025, PaperCut advised him - verbally and then in writing—that his designated work location would change from his home to the PaperCut office from 1 January 2025. Mr Johnson disputed the change, arguing it breached the mobility clause.
- Despite a number of further meetings between January and May 2025, Mr Johnson refused to comply with PaperCut's hybrid work policy and directions of attending the office at least 3 days. Mr Johnson was also warned that his non-compliance may result in disciplinary action (up to and including the termination of his employment).
- In 19 June 2025, a final meeting was held, and Mr Johnson was dismissed for failing to comply with PaperCut's hybrid work policy as directed.

Mr Johnson made an application under section 394 of the Fair Work Act seeking reinstatement on the basis he was unfairly dismissed from his employment.

The parties made the following arguments:

1. Mr Johnson argued that the dismissal was unfair because PaperCut did not have a valid reason to terminate his employment. He claimed the requirement to attend the office breached the mobility clause, rendering the direction unlawful and unreasonable.
2. PaperCut argued that a reasonable person would understand that Mr Johnson was permitted to work from home, but that in the future he may be required to work from elsewhere, in line with PaperCut's policies (if they changed).

# 12. Recent Working from Home Cases

## Hybrid Work and Employer Directions: Lessons from Johnson v Papercut

### Issue

The key issue in dispute was whether there was a valid reason for Mr Johnson to have been dismissed.

### Decision

The FWC held that Mr Johnson's dismissal was not harsh, unjust, or unreasonable. Key findings included:

**PaperCut's direction was lawful**

The FWC accepted the direction was within the scope of Mr Johnson's Contract. The FWC also found that Mr Johnson did not have an unconditional right to work from home. Instead, the contract stated he was "*permitted*" to work from home "*in line with relevant policy*", which meant:

- the permission was conditional, and
- if PaperCut's policy changed, working from home might no longer be allowed.

**PaperCut's direction was not unreasonable**

The FWC gave regard to:

- the steps taken by PaperCut to develop its hybrid work policy in consultation with staff (including Mr Johnson), to transition to these new working arrangements, and to seek to explain its position to Mr Johnson
- the time Mr Johnson was given to comply with the direction; and
- PaperCut's clear communication of its direction and the consequences of non-compliance

**PaperCut's response was not disproportionate**

Given Mr Johnson's ongoing refusal to follow lawful and reasonable directions, the FWC held that PaperCut was left with no real or reasonable alternative but to terminate his employment. The dismissal was therefore proportionate.

### Key Takeaways for Employers

1. Employers need to review and, if necessary, update clauses of employment contracts and policies in relation to working from home arrangements
2. It is important to well-document directions to employees as these may assist in successfully defending an unfair dismissal claim.

## SYDNEY

t +61 2 9261 1211
f +61 2 9261 2336

## MELBOURNE

t +61 3 8521 1000
f +61 2 9261 2336

## BRISBANE

t +61 7 3444 9300
f +61 2 9261 2336

## PERTH

t +61 8 9221 3110
f +61 8 9221 4453


McCabes


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ABN 89 626 085 685
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