

**UPDATE ON KEY EMPLOYEE & LABOUR
REGULATIONS IN AUSTRALIA**

CHRO ASSOCIATION - SINGAPORE

June 2026

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A satellite view of Australia from space, showing the continent's outline and surrounding oceans. The image is dominated by deep blue and black tones, with the Earth's surface appearing as a lighter, textured area. A semi-transparent blue horizontal bar is overlaid across the middle of the image, containing the title text.

CURRENT AUSTRALIAN ECONOMIC AND INDUSTRIAL LANDSCAPE

CURRENT ECONOMIC LANDSCAPE

INDICATORS

- GDP grew by 0.3% in the March quarter 2026, reflecting a slowdown.
- In April 2026, unemployment rate increased by 0.2 points from March 2026 to 4.5%.
- Wage growth across all sectors is at 3.3% for the year to the March quarter 2026.
- Current inflation rate is 4.2%, down from 4.6% in the 12 months to March 2026.
- From 1 July 2026, 4.75% increase to minimum wages, with National Minimum Wage of \$26.44 per hour / \$52,254 p.a.

FACTORS

- Cost of living crisis.
- Iran war and its impact on the cost and availability of fuel.
- Heavy reliance on commodity exports.
- Rapid public sector spending.

CURRENT INDUSTRIAL LANDSCAPE

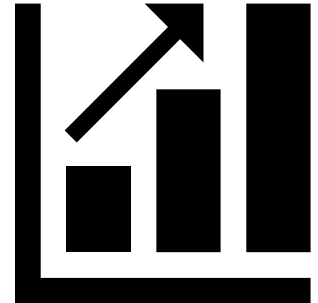


Since coming to power in 23 May 2022 and being re-elected in 2025 in a landslide victory, the Federal Labor Party has been emboldened to introduce a raft of employee-friendly changes, including in relation to:

- Prevention of sexual harassment.
- Underpayments and wage theft.
- Independent contractors.
- Multi-employer bargaining.
- Pay equalization for labor hire.
- The right to disconnect.
- Psychosocial hazards.
- Flexible working.
- Gender equality.
- Post-employment restraints.

EMPLOYEE-FRIENDLY TRENDS

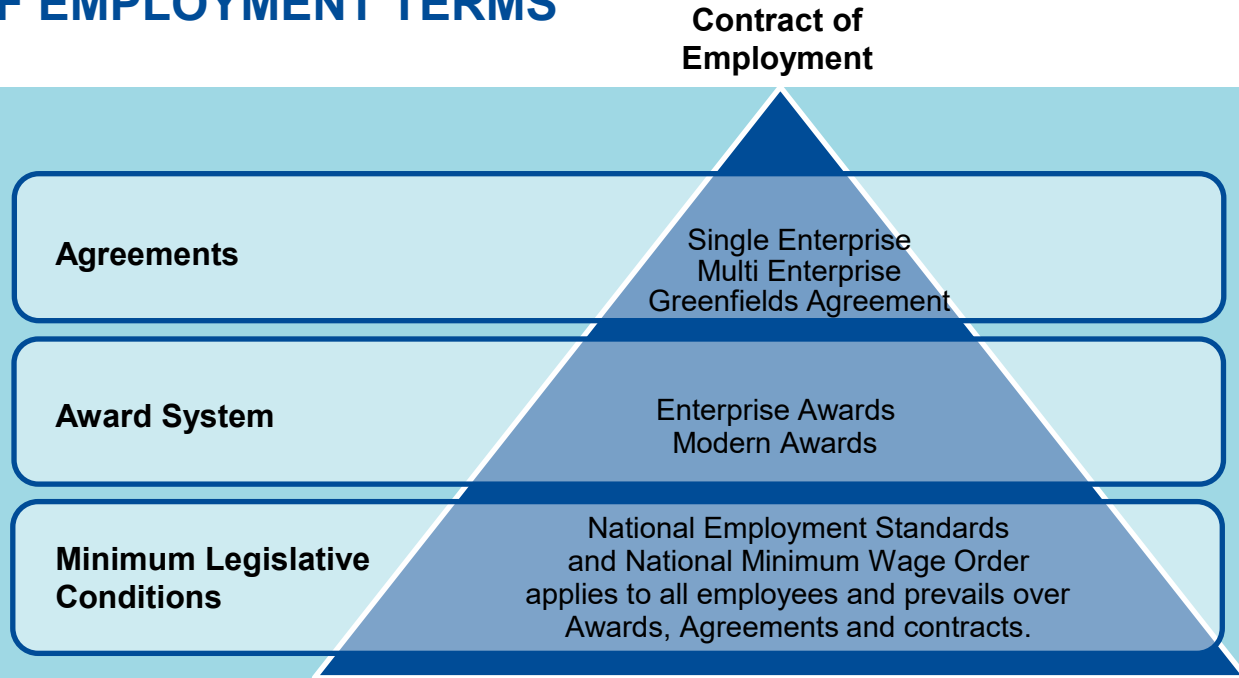
- Since 2022, all appointments to the Australian workplace relations tribunal, the Fair Work Commission, have come from unions or plaintiff law firms.
- We are seeing some unpredictable, employee-friendly decisions as a result.
- With the availability of AI to support employee claims, there has been a 41% increase in the number of unfair dismissal applications and 62% increase in the number of general protections applications.
- To ease the Commission's workflow, a new "intake call" process for general protections claims has been introduced which encourages early settlements.
- A new Bill has been introduced to remove steps in the unfair dismissals claim process as well.






**SOURCES OF TERMS AND CONDITIONS OF
EMPLOYMENT**

SOURCES OF EMPLOYMENT TERMS



NATIONAL EMPLOYMENT STANDARDS

1. Maximum working hours
 2. Right to request flexible working arrangements
 3. Parental leave & related entitlements
 4. Annual leave
 5. Notice of termination and redundancy pay
 6. Community service leave
 7. Long service leave
 8. Public holidays
 9. Personal/carer's leave & compassionate leave
 10. Family & domestic violence leave
 11. Fair Work Information Statement
- 

Employee's period of continuous service on termination	Redundancy pay period
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks



CURRENT CHALLENGES FOR EMPLOYERS

TAKING A CAREFUL APPROACH TO DISMISSALS

- Employers are taking a more careful, risk-averse approach to terminations of employment.
- Maintaining strong paper trails supporting the reason for termination and the termination process that was undertaken.
- A key area of increased difficulty for employers has been performance management, which can quickly turn into a minefield of interruptions and claims.



PERFORMANCE MANAGEMENT INTERRUPTIONS

What happens if the employee...

TAKES PERSONAL LEAVE

- Request and review medical certificate.
- Consider amount of accrued leave.
- Pause and extend PIP.
- If it develops into an extended period of unpaid leave, consider business needs.

CLAIMS BULLYING

- Independently review PIP process to ensure “reasonable management action carried out in a reasonable manner”.
- Consider validity of claim and whether replacing assessor of performance is appropriate to demonstrate impartiality.

CLAIMS DISCRIMINATION

- Independently review PIP process to ensure no suggestion of unlawful discrimination.
- If no merit to claim, continue with PIP process.

POTENTIAL CLAIMS ARISING FROM PERFORMANCE MANAGEMENT

Workplace Bullying (during the process)

A person or group of people repeatedly behave unreasonably towards another and this creates a risk to health or safety.

It is not reasonable management action carried out in a reasonable manner.

“No cost” jurisdiction and no compensation awards available.

Unfair Dismissal

An employee is dismissed from their job in a harsh, unjust or unreasonable manner.

“No cost” jurisdiction.

Employee must earn less than the High Income Threshold or covered by a modern award / enterprise agreement and employed for 6 months or more.

General Protections

Adverse action is taken for a prohibited reason or because they exercised a workplace right (eg. made a complaint/inquiry).

“No cost” jurisdiction, no eligibility limitations.

Broader measure of damages than unfair dismissal, including access to uncapped damages.

Breach of Contract

Employer breaches the terms of the employment contract (or a contractually binding policy).

“Cost” jurisdiction.

Court can order specific performance – requires employer to perform their obligations in the employment contract.

PRELIMINARY MATTERS TO CONSIDER BEFORE COMMENCING PERFORMANCE MANAGEMENT

1. Has the employee recently made a **complaint or inquiry** in relation to their employment?

Consider potential claims for adverse action, victimisation or retaliation.

2. Is the employee eligible for **unfair dismissal**?

Consider unfair dismissal claim.

3. Does the employee have any **protected characteristics** (eg. race, sex, disability)?

Consider general protections or discrimination claim.

4. Does an HR **performance management policy** specify a formal process that must be followed?

Compliance with that process is required.

5. Is the employee within their **probationary period**?

If the employee is not suitable for the role, consider terminating employment before the end of probation.



**UPDATE ON GENDER EQUALITY
OBLIGATIONS**

WORKPLACE GENDER EQUALITY AGENCY (WGEA) REPORTING

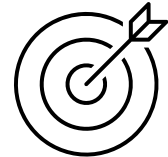
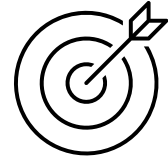
In March 2023, the Australian Federal Parliament passed the *Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023 (Cth)*.



- Mandatory reporting of workforce data on all employees of businesses with 100 or more employees in Australia.
- WGEA's public reports now publish gender composition, policies on flexible work and pay gaps for each reporting business.
- Remuneration of all employees, including executives, must be disclosed but will not be published in the public report.
- Recent changes have expanded the obligations on employers even further.

NEW WGEA OBLIGATIONS

- Businesses with more than 500 employees in Australia must now set three gender equality targets from a menu of numeric and action-orientated targets.
- Those businesses must then either achieve or demonstrate improvement toward meeting such targets every three years.
- Under current Australian Government policy, evidence of compliance with the Act can be requested when tendering for Australian Government contracts worth more than a certain procurement threshold.
- A covered business will fail to comply with the Act if it does not meet its selected targets for the period or fails to demonstrate improvement against the targets without a reasonable excuse, which is not defined.
- The business's achievement or progress towards its targets will be made publicly available online.
- At the end of each three-year reporting period, covered businesses will be required to select new targets for the next three year cycle.





**USING AI IN HR PROCESSES AND THE
LEGAL FRAMEWORK**

AI USE IN HUMAN RESOURCES ROLES

Recruitment

- Draft recruitment documentation
- Screen applicants' resumes and cover letters against criteria and create a shortlist of suitable candidates
- Use chatbots to manage enquiries from applicants
- Schedule interviews

Performance Reviews

- Monitor attendance and time spent on company programs
- Draft performance summaries based on feedback and KPI data
- Recommend areas for improvement

Rostering

- Automate staff scheduling by matching employee availability with business demand
- Allocate tasks based on employee workloads

Payroll Systems

- Automate payroll processes
- Correlate payroll data with logged hours and work produced

AI USE IN WORKPLACE INVESTIGATIONS

Data Management and Event Recognition

- Collect, summarise and analyse information (e.g. identify patterns and involved parties)
- Create timelines of events
- Summarise large amounts of data and evidence
- Make decisions at greater speed, enabling faster response times

Interview Support and Information Synthesis

- Cross-reference large amounts of data and identify irregularities (e.g. altered evidence, false documents and inconsistencies)
- Role-play interview scenarios and suggest follow-up questions
- Transcribe interviews in real time

Report Generation and Recommendations

- Summarise facts from evidence and witness statements
- Make recommendations based on the fact pattern and gathered evidence
- Draft proposed outcome letters based on investigation findings

USING AI TO DRAFT DOCUMENTS AND RESPONSES TO LEGAL CLAIMS

- Employers are increasingly using AI tools to draft termination letters, manage performance improvement processes and conduct workplace investigations.
- They are also using AI tools to draft responses to legal claims.
- Risks include:
 - AI hallucinations;
 - procedural deficiencies;
 - inconsistencies between documents;
 - overstatements of success; and
 - excessive settlement recommendations.



COMPLIANCE CONCERNS

The use of AI in the workplace raises various concerns:

1. The use of AI heightens the potential for discrimination associated employment claims.

2. AI systems are not always transparent about how they make decisions, which can increase the risk of successful statutory unfair dismissal, general protections and discrimination claims.

3. Excessive monitoring and surveillance may lead to physical or psychological harms.

4. Data security and privacy risks.

FAIR WORK ACT 2009 (CTH)

General Protections

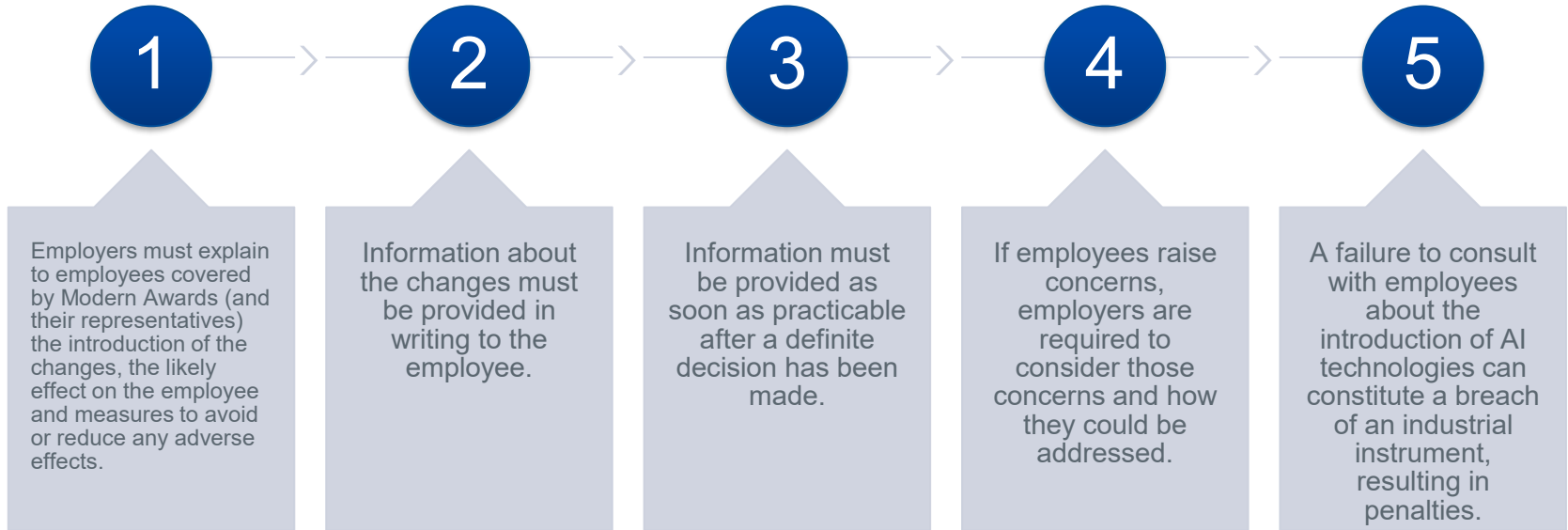
- Employees and prospective employees are protected from adverse action taken against them for a prohibited reason.
- Adverse action can include failing to be employed, being passed up for a promotion or termination of employment.
- The burden of proof rests on the employer to prove adverse action was not taken for a prohibited reason.
- Employers can be required to identify the (human) decision-maker and the information that contributed to the decision-maker's decision.
- A breach may be found if the decision-maker cannot identify cogent reasons for the decision (e.g. where AI was the decision-maker).

Unfair dismissal

- In order to lawfully terminate the employment of an employee with access to the FWC's unfair dismissal jurisdiction, terminations must be for a valid reason for dismissal and must not be harsh, unjust or unreasonable in the circumstances.
- Employers remain liable for decisions made by an AI algorithm to terminate an employee's employment.
- Reliance on AI may impact the veracity of a 'valid dismissal' argument and may not constitute a fair process if the decision-maker cannot identify cogent reasons for the decision (e.g. where AI was the decision-maker).

MODERN AWARDS

Changes to production, programming, organisation, structure and technology can constitute “**major changes**” that trigger consultation obligations under Modern Awards if the changes are likely to have significant effects on employees. While not yet confirmed by the FWC, the introduction of AI technologies could constitute a major change.



WORK HEALTH AND SAFETY LAWS

Model laws

- Employers around Australia must ensure, so far as is reasonably practicable, the health and safety of workers and other persons affected by the work.
- There are also specific examples as to how a PCBU can ensure the health and safety of workers and other persons, including safe plant and structures, and safe systems of work.
- A failure to take reasonably practicable steps to address risks to physical and psychological harms can constitute a breach of the applicable State legislation, resulting in penalties.
- The model WHS laws are technology-neutral, and so the use of AI technologies is arguably already caught by these broad duties.
- There are also consultation obligations where the introduction of technology creates a risk to health and safety.

Work Health and Safety Act 2011 (NSW)

- NSW has passed the *Work Health and Safety Amendment (Digital Work Systems) Bill 2026*, amending the *Work Health and Safety Act 2011* (NSW) to ensure that the health and safety of workers is not put at risk from the use of, or by the allocation of work through, a digital work system.
- “Digital work system” has been defined as an algorithm, artificial intelligence, automation or online platform.
- WHS entry permit holders (e.g. union officials) will soon have the power to inspect any digital work system relevant to a suspected contravention.
- Applies only to workers, not to others affected by the work.

ANTI-DISCRIMINATION LEGISLATION

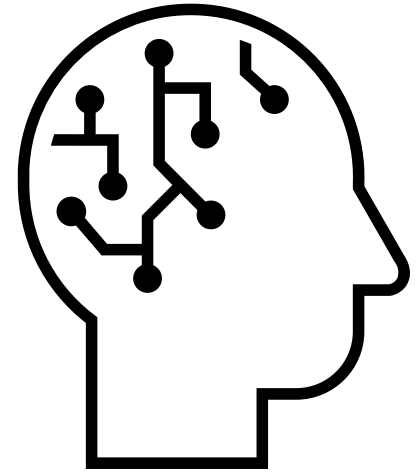
- Federal and State anti-discrimination laws render it unlawful to discriminate on the basis of protected attributes including age, race, disability, marital status, gender identity and religious belief.
- Anti-discrimination laws apply regardless of whether the discrimination was intentional.
- However, outside of discrimination on the grounds of sex, there is no positive duty on employers to eliminate discrimination based on other protected grounds.
- This means workplace bias may be reinforced and replicated through these technologies.
- Liability for discrimination remains with the employer (and potentially the individual decision-maker) even if discrimination arises from an AI decision-maker.

PRIVACY ACT 1988 (CTH)

- The *Privacy Act 1988* (Cth) (**Privacy Act**) already requires businesses to obtain consent from individuals (including employees) where personal information is collected and used for a purpose that an individual would not reasonably expect.
- However, it does not protect individuals against their data being subjected to AI processes.
- Amendments to the Privacy Act taking effect in December 2026 require businesses to update their privacy policies to disclose their use of automated decision-making systems. Descriptions must include:
 - the kinds of personal information that will be used;
 - the kinds of decisions that will be made solely using AI technology; and
 - the kinds of decisions where AI will be substantially relied on.

IMPORTANCE OF HUMAN OVERSIGHT

- Human oversight is the most important regulatory tool of AI use in the workplace.
- Within a workplace, human oversight improves ethical decision making, accountability and trust between employees and their employer.
- Failure to regulate AI is likely to lead to increased workplace claims and increased future costs.
- Always get appropriate human intervention before implementing an AI-generated decision, especially before implementing adverse decisions like disciplinary action or termination of employment.



OTHER INTERNAL RISK MITIGATION STRATEGIES

Identify Specific Need

- Ensure specific, identified use of AI
- Define the exact role that AI will carry out in processes
- Inform employees about how AI will be integrated into the business to the extent it affects them

Conduct Pilot Programs

- Allow for investigators to flag potential issues
- Conduct parallel testing where a human and AI complete the same task
- Review discrepancies and potential bias

Policies and Education

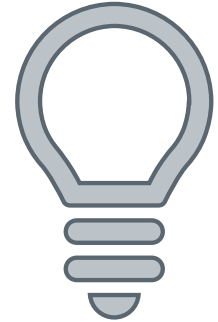
- Introduce internal AI policies to improve AI literacy and reduce risks of misuse
- Conduct training on responsible AI use, bias awareness, documentation of prompts, interpretation and review of AI outputs

Using Quality AI Tools

- Use sophisticated AI tools to reduce (but not eliminate) the risk of AI hallucinations
- Ensure high-quality input data to produce more effective outputs (“ie. garbage in, garbage out”)

KEY TAKEAWAYS

- With a newly empowered pro-employee Government re-elected, we expect to continue seeing progressive changes favouring employees.
- Given employees' ease of accessing remedies, make sure you have your "ducks in a row" before pulling the trigger on termination of employment.
- We recommend that businesses with more than 500 employees in Australia identify the most effective but achievable gender equality actions and monitor progress towards such goals.
- Existing non-specific employment, discrimination, privacy, and work health and safety laws are already regulating workplace AI use.
- Employers remain accountable for AI-assisted decisions and may face claims arising from bias, lack of transparency, hallucinations and privacy risks.



SPEAKER BIOS



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