Significant Workplace Relations Issues

Australian Industry Group Report for Australian Furniture Removers Association Members

11 July 2025

Dear Members

As we move through 2025, the workplace relations landscape continues to evolve at pace, shaped by political developments, the ongoing implementation of recent regulatory changes, and shifting economic conditions.

Not only is the new Parliament preparing to sit from late July, with a new Minister for Workplace Relations the Hon Amanda Rishworth MP, but changes to the *Fair Work Act 2009* (Cth) during the last Parliament continue to be implemented and tested in the Fair Work Commission (FWC) and the courts.

In this dynamic environment, Ai Group remains committed to keeping AFRA members informed, represented, and supported.

This edition of the Significant Workplace Relations Issues Report captures key developments from May to June 2025, including the implications of the Albanese Government's re-election and major FWC cases. From disputes about flexible work arrangements, to wages and bargaining trends and modern slavery changes, the breadth and complexity of issues facing employers continues to grow.

Ai Group's Workplace Relations Policy and Advocacy Team is deeply engaged across all fronts, advocating for balanced and practical outcomes, contributing to critical consultations, and representing employer and business interests in major cases.

This report provides an update on Ai Group's recent work and is designed to provide you with timely insights and practical guidance on key current and emerging issues.

We thank you for your continued engagement and support. Your feedback and involvement are vital to our advocacy and policy work. As always, we welcome your thoughts and encourage you to reach out to Ai Group's workplace relations policy team should you wish to discuss any of the matters covered in this report.

AFRA members can also contact Ai Group's Workplace Advice Line on wages, awards and other workplace relations matters on **1300 55 66 77**.

Warm regards,

Brent Ferguson
Head of National Workplace Relations Policy
Australian Industry Group

Table of Contents

Executive Summary

TRANSPORT INDUSTRY

- The TWU has threatened an industrial campaign targeting the transport sector, including pursuing multi-enterprise agreements.
- Ai Group continues to allocate significant resources to several applications relating to individual awards and similar proceedings which may have significant implications for member:
- The TWU has applied for minimum standards orders and has made an application for a road transport contractual chain order. Ai Group is heavily engaged in these proceedings, is taking part in Fair Work Commission (**FWC**) led discussions and is appointed to the sub-committees established by the FWC for each of these matters.
- The FWC has issued two decisions in the new 'unfair dismissal' jurisdiction for 'gig workers', finding against each applicant seeking relief for 'unfair deactivation', as they each had insufficient qualifying service.

WAGES AND BARGAINING

- The Average Annualised Wage Increase for federal agreements approved in the March 2025 decreased from 4.8% in the previous December quarter to 3.8%.
- The recently issued Wage Price Index for the March Quarter shows the growth in private sector wage rates has slowed and is largely being driven by enterprise agreements.
- The Expert Panel of the FWC issued its decision in the Annual Wage Review 2024-25 proceedings to increase award minimum wages by 3.5% and the National Minimum Wage to $948.00 per week or $24.95 per hour. Ai Group played a major role in the proceedings.

POST ELECTION – WHAT'S AHEAD FOR 2025

- On 3 May 2025, the Australian Labor Party (**ALP**) was re-elected to govern for a second term.
- The ALP announced a narrow workplace relations agenda prior to the election. This included changes to 'protect penalty rates' in awards, prohibit non-compete clauses in employment contracts, preventing withdrawing employer parental leave benefits following still birth and early infant death, as well as the implementation of payday superannuation.
- It is nonetheless foreseeable there may be pressures to expand this agenda in light of previous commitments, the outcomes of scheduled legislative reviews, and the priorities of both the Greens and union movement.

LEGISLATIVE DEVELOPMENTS

- The Victorian Government's introduction of the Wage Theft Amendment Bill 2025 that proposes to repeal the Victorian wage theft offence.
- The introduction of two bills to the NSW Legislative Assembly on 27 May by Minister Cotsis, containing proposed changes to workers compensation, work health and safety and industrial relations legislation to address the dramatic increase in psychological injuries and related workers compensation claims.
- Various changes, including to high income thresholds and filing fees in the Fair Work Commission (FWC), as well as an uplift in parental leave flexibilities, are effective from 1 July.

FAIR WORK CASES/DECISIONS

- The FWC is continuing to conduct proceedings associated with the development of a potential 'working from home clause' for inclusion in the Clerks – Private Sector Award 2020 (**Clerks Award**). A report on an FWC commissioned survey of employers and employees on working from home arrangements has been released.
- We have intervened in an appeal against an order to grant a flexible working request in circumstances where compliance with that order would require the employer to contravene the terms of its enterprise agreement.
- A FWC Full Bench decided a request made by a teacher to temporarily work part-time in an executive role should be granted despite the employer having reasonable business grounds to refuse the request.
- A Full Bench of the FWC granted its first voting request order, finding that the ETU had unreasonably failed to agree to the employers putting a multi-enterprise agreement to a vote.

INQUIRIES, CONSULTATIONS AND REPORTS

- A Victorian Inquiry into Workplace Surveillance has reported back, recommending the introduction of comprehensive principles-based workplace surveillance legislation and broadening existing state privacy legislation to regulate employers' collection, use and storage of workplace surveillance data.

OTHER DEVELOPMENTS

- The High Court dismissed the constitutional challenge to the Federal Government's legislation placing union branches under administration.
- The Australian Competition and Consumer Commission (**ACCC**) investigated online services platform Mable Technologies Pty Ltd (**Mable**) in relation to the contract terms it used when connecting people seeking care support to independent support and found they were unfair.
- The Federal Court found that an employee of the Australian Broadcasting Corporation (**ABC**) was unlawfully dismissed because of her political opinion.

WORKPLACE BEHAVIOURS AND EQUALITY

- The Australian Human Rights Commission's (**AHRC**) release of a report on systemic barriers faced by people who experience workplace sexual harassment. The report recommends reforms, including prohibiting non-disclosure agreements, introducing penalties for an employer's breach of positive duties to eliminate sexual harassment, and further expanding the remit of the Workplace Gender Equality Agency (**WGEA**).
- The Government will shortly commence consultation to review the *Disability Discrimination Act 1992* (Cth), including as to whether it will introduce a positive duty on duty-holders to eliminate disability discrimination, harassment and victimisation and broaden obligations to make reasonable adjustments to accommodate a person's disability.
- The NSW Law Reform Commission is consulting as part of its ongoing review of the *Anti-Discrimination Act 1977* (NSW).

MODERN SLAVERY

- The Australian Anti-Slavery Commissioner has indicated that introducing mandatory due diligence, penalties for non-compliance and high-risk declarations are likely to be on his agenda this year.
- The Office of the NSW Anti-slavery Commissioner has released updated guidance on managing risks of modern slavery that may be relevant to members selling goods or service to public entities, including specifically for the construction sector.

PART 1 – TRANSPORT INDUSTRY

TWU Threatens To Target The Transport Sector

The Transport Workers Union (**TWU**) has threatened to "*shut down Australian transport*" in a bid to pursue the "largest co-ordinated industrial campaign in the sector's history".

In a speech to union members, TWU National Secretary Michael Kaine promised significant national disruption if employers do not agree to the TWU's demands for higher pay and improved conditions. He highlighted the efforts of the union to engineer the simultaneous expiry of 200 road transport enterprise agreements in 2026.

Mr Kaine told his members that:

> "*Make no mistake – this will be the largest co-ordinated industrial campaign in Australian transport history. This alignment of agreements isn't accidental. It's been carefully orchestrated to maximise our collective bargaining power*".

Mr Kaine also indicated that "*without significant movement to ensure we have good, safe jobs in transport and aviation, there will be disruption, it will be significant, it will be co-ordinated, and it will be effective*."

In aviation, the TWU is investigating using 'multi enterprise bargaining agreements' across the industry. The TWU's national council has endorsed a strategy to explore advancing multi-employer agreements beyond ground crew to cabin crew and airport staff. National Secretary Kaine has indicated the TWU will seek to coordinate its efforts with other aviation unions including the Flight Attendants' Association of Australia (**FAAA**) and the ASU, which represents customer service agents and aviation screeners. He has also been reported to be willing to "ground flights" in pursuit of the union's claims.

The FAAA is also pursuing gender undervaluation proceedings, proposing a new wages and classification structure in the *Aircraft Cabin Crew Award 2020* that would increase minimum wages for cabin crew by 20 to 30 per cent.

Other divisions of the TWU are also active, with 24-hour industrial action severely impacting public bus services in Melbourne and regional Victoria across recent weeks. Key issues cited in taking protected action included 'rostering, safety and pay'. The strike followed months of unsuccessful enterprise bargaining negotiations and an unsuccessful enterprise agreement vote.

Return to Executive Summary

Road Transport (Long Distance Operations) Award 2020

On 19 August 2024, an application was made to the FWC by an individual employee to make a determination to vary the *Road Transport (Long Distance Operations) Award 202*0. It seeks 22 separate variations, many of which give rise to complex issues including and Ai Group will play a significant role in these proceedings.

The variations sought by the employee deal with various issues, including:

- The minimum payment and engagement of casual employees
- Ordinary hours of work and rostering
- Rostered days off
- Unpaid meal breaks
- Delays, breakdown or impassable highways
- Minimum weekly rates of pay, rates of pay – hourly driving method and payment of wages
- Industry disability allowance and overtime allowance
- Annual leave and loading and payment on public holidays
- Award coverage

On 22 January 2025, the President of the FWC issued a statement, referred the application to Road Transport Advisory Group (RTAG) for advice, and directed that the RTAG should conduct a consultation process in respect of the application. Ai Group has been appointed to a sub-committee to discuss the application.

Return to Executive Summary

TWU Applications for Minimum Standard Orders and a Contractual Chain Order

Since 26 August 2024, the FWC has had new powers in relation to independent contractors and that are relevant for the road transport industry, including to:

- Set binding minimum conditions for road transport contractors through Road Transport Minimum Standards Orders (**RT MSOs**).
- Set binding minimum conditions for road transport contractors, road transport employee-like workers and other individuals in a road transport contractual chain through Road Transport Contractual Chain Orders (**RT Contractual Chain Orders**).
- Set non-binding guidelines for road transport contractors and road transport businesses through Road Transport Guidelines (**RT Guidelines**).

- Set non-binding guidelines for road transport contractors, road transport employee-like workers and other individuals in a road transport contractual chain through Road Transport Contractual Chain Guidelines (**RT Contractual Chain Guidelines**).

On application, the FWC also now has the power to approve, vary and terminate collective agreements between road transport businesses and union(s) and may deal with unfair termination claims by road transport contractors.

Applications for RT MSOs may be made by a road transport business, a registered organisation representing road transport contractors (e.g., the TWU) or businesses, and the Minister for Employment and Workplace Relations. Applications for RT Contractual Chain Orders may be made by a regulated business in a road transport contractual chain, a party to the first contract or arrangement in a road transport contractual chain, a registered organisation representing one or more persons in a contractual chain (e.g., the TWU), and the Minister for Employment and Workplace Relations.

In September 2024, the TWU made the following applications:

- An application for a RTMSO relating to delivery in the "*last mile*" and employee-like workers who perform work that involves the transport by road of goods, wares or other things (other than food, beverages and other like things).
- An application for a RTMSO relating to delivery of food, beverage and other like items and employee-like workers who perform digital platform work in the transport by road of food, beverages and other like items.
- An application for a RTMSO relating to road transport contractors who perform work that involves the transport by road of goods, wares or other things (other than food, beverages and other like things).
- An application for a RTCCO.

The FWC has established the Road Transport Advisory Group (**RTAG**). RTAG includes representatives from the road transport industry, including Ai Group as a peak council. RTAG has various functions, including to advise the FWC about the making of RT MSOs, RT Guidelines, RT Contractual Chain Orders and RT Contractual Chain Guidelines. The President of the FWC must consult with and have regard to the views of RTAG in determining how it prioritises its work in relation to matters affecting the road transport industry.

Each application is subject to ongoing discussions between union representatives and representatives of principal contractors through the confidential RTAG consultation process – with meetings scheduled to occur regularly through to August 2025.

The FWC has also established an Expert Panel for the Road Transport Industry. On the request of RTAG, the Expert Panel has facilitated subcommittee meetings in relation to each of these matters. An Ai Group has been invited to join each of the subcommittees.

Ai Group is participating in all the FWC led discussions and will advise Ai Group and AFRA members as the process progresses and as the FWC makes any RT MSOs, RT Contractual Chain Orders, or RT or RT Contractual Chain Guidelines which may be relevant.

Return to Executive Summary

“Deactivation” Decisions for ‘Gig Workers’

The FWC has moved to issue its first decisions under its new unfair deactivation jurisdiction for gig workers. Importantly, this new jurisdiction applies and commenced in parallel with a new unfair termination jurisdiction for regulated road transport contractors.

On 26 August 2024, a new jurisdiction was established in the FWC that empowers the FWC to deal with disputes over an eligible ‘gig worker’s’ unfair deactivation from a digital labour platform, or the unfair termination of an eligible road transport contractor’s services contract by a road transport business. When determining whether a deactivation or termination is unfair, the FWC will consider several matters, including whether it was consistent with the Road Transport Industry Termination Code or the Digital Labour Platform Deactivation Code as applicable.

Unfair deactivation jurisdiction

The earliest date for eligibility for unfair deactivation applications to the FWC for regulated ‘gig workers’ was 26 February 2025.

Workers are only eligible if, amongst other matters, they have been **performing work** through or by means of that digital labour platform, or under a contract, or a series of contracts, arranged or facilitated through or by means of the digital labour platform, **on a regular basis for a period of at least 6 months** (s.536LD(c)).

First decision

On 9 May 2025, the FWC decided that an Uber driver was not eligible to seek unfair deactivation remedies as he had not been performing work for a period of at least 6 months: *Ibrahim Jibril* [2025] FWC 1289.

The driver had entered into a services agreement with Rasier Pacific Pty Ltd on 16 November 2024 and commenced performing work as a driver partner through the Uber driver platform on 26 November 2024. On 12 March 2025, Uber deactivated the driver's account. He had also worked on the Uber driver platform in Melbourne and Sydney during 2017 and 2019.

The driver applied for relief on the basis that the deactivation was unfair under s.536LU of the FW Act and argued his earlier period of work during 2017 and 2019 should be included for the purposes of eligibility.

The FWC concluded a person must have been performing work on the relevant platform for a period of at least 6 months, not for a cumulative total of 6 months over time. Additionally, the FWC only has regard to the most recent period of work. The most recent period of work was for a period less than 6 months.

Second decision considers the expression "*performing work on a regular basis*"

On 6 June 2025, DP Saunders dismissed an application by an Uber Eats driver seeking remedies under the unfair deactivation jurisdiction on the basis he had not been performing work on the Uber delivery app on a regular basis for a period of at least six months: *Mr Priyansh Singh Panwar v Portier Pacific Pty Ltd* [2025] FWC 1578.

DP Saunders noted that work performed before 26 August 2024 was not relevant for the purposes of determining eligibility. The driver had performed work for Uber on a regular basis in the periods from 26 August 2024 until 17 October 2024, and later from 25 December 2024 until 23 April 2025 (when his account was deactivated). In the period between 17 October and 25 December he did not work as he was ill, and his doctor had advised him not to drive while he was using his anti-depressant medication. The nine-week absence was extensive and almost one-third of the relevant period. This led DP Saunders to find that although the driver had performed work on the Uber platform on a regular basis, this was over two separate periods, the most recent of which was less than six months.

This decision provides guidance on the meaning of "performing work on a regular basis" that is set out below.

What does "performing work on a regular basis" mean?

While the expression "*performing work on a regular basis*" is not defined in the FW Act (and the new Digital Platform Labour Platform Deactivation Code provides only non-exhaustive examples), DP Saunders confirmed it is intended to imply some "*form of repetitive pattern*".

Further, DP Saunders said that although the word "regular" is not being used as a synonym for "uniform", "constant", "frequent" or "often", the frequency with which a person works may be relevant to the regularity of the performance of their work. If a person works frequently or often (e.g. six days a week), it is likely that they will be regarded as performing work on a regular basis. This does not however require the work be performed frequently or often and DP Saunders provided the following example at [13]:

> "*a person who works from 6am until 6pm every Thursday is likely to be regarded as performing work on a regular basis even though the work may not be considered to be performed frequently or often. Conversely, if a person performs work sporadically, occasionally or on an ad hoc basis, they would not be regarded as performing work on a regular basis*."

DP Saunders also noted the illustrative examples of circumstances in which work is performed on a regular basis that are set out in the Explanatory Statement to the Digital Labour Platform Deactivation Code as providing guidance on the meaning of the expression.

DP Saunders also rejected the submission made by Uber that the FWC should consider whether an applicant had a "*reasonable expectation of continuing work on a regular basis*" in assessing whether he was protected from unfair deactivation. This concept comes from section 384(2) of the FW Act, which is concerned with when casual employment service counts towards a period of employment for the purpose of determining the minimum employment period under the unfair dismissal provisions of the FW Act.

According to DP Saunders, Parliament has elected not to include the concept of a reasonable expectation of continuing work in Part 3A-3 of the FW Act. This tells strongly against the argument that a reasonable expectation of continuing work on a regular basis is relevant to an assessment of whether a regulated worker is protected from unfair deactivation.

Return to Executive Summary

PART 2 - WAGES AND BARGAINING

Annual Wage Review Decision 2024-25

The Annual Wage Review, formerly the national wage case, is the process by which an Expert Panel of the FWC determines the level of annual increases in minimum wages, both under the award system and for employees not covered by awards. It is also influential in some enterprise agreement negotiations.

Roughly 23 to 25% Australian employees are subject to increased minimum wages under this process each year.

On 3 June 2025, the Expert Panel of the FWC handed down its decision. Key elements of the decision include the following:

- Award minimum wages will be increased by 3.5 per cent.
- The National Minimum Wage will be increased to $948.00 per week, or $24.95 per hour.
- Junior, apprentice and trainee wage rates will be adjusted proportionately.
- Wage-related allowances and expense-related allowances will be increased in accordance with the usual formulas. This includes the allowance for a recognised furniture carter engaged in removing and/or delivering furniture under the *Road Transport and Distribution Award 2020*, which increased to $26.15 per week.
- The increases will be operative from the first full pay period on or after 1 July 2025.

Ai Group was a central participant in this process, advancing economic, labour market and legislative arguments in favour of appropriate approaches to minimum wage setting which balance making changes in the cost of living with employers' capacities to pay, and with the overall state of the economy. Ai Group made several substantial written submissions and appeared before the Expert Panel in its final day of public consultations.

We identified a raft of significant moderating factors that should be taken into account by the Expert Panel this year. These include current adverse and uncertain economic conditions (particularly in sectors where there is significant direct award dependence), a return to a more moderate inflationary environment and associated moderation in cost of living pressures, persistently poor productivity outcomes, weakness in the private sector labour market, the cumulative burden of successive high annual wage review decisions and the implementation of a further increase in superannuation guarantee obligations from 1 July this year (below).

We also play a critical role in ensuring any decision is accurately applied to modern awards, and that our members are aware of and can apply any increase in their minimum wage obligations.

AFRA members wanting information or assistance relating to the application of the decision and wage increases should contact the Ai Group Workplace Advice Line on 1300 55 66 77.

Future proceedings: FWC to review professional classifications in modern awards

Following the implementation of legislative changes through the Secure Jobs Better Pay Act, there is an expanded requirement for the FWC to consider the need to achieve gender equality in setting modern award minimum rates of pay. This includes giving consideration to ensuring equal remuneration for work of equal or comparable value and addressing any gender-based undervaluation of work.

During the 2024-2025 Annual Wage Review proceedings, the ACTU made submissions that the FWC should express its provisional view on the future priorities of awards and occupations that should be in scope. The ACTU identified a large number of priority jobs, including hairdressers, beauty therapists, receptionists and sales assistants. Ai Group argued the FWC should prioritise resolution of the current 'priority awards' rather than expanding the proceedings as proposed by the ACTU.

The FWC ultimately indicated that it will pursue further proceedings to address any gender-based undervaluation in modern awards. The focus of the proceedings will be significantly narrower than proposed by the ACTU. It will be directed at professional classifications, being classifications requiring a university degree, which have not yet been reviewed under the gender undervaluation proceedings. We will advise members further in relation to future proceedings once they are initiated by the FWC, and their relevance to work subject to road transport and clerical awards in particular.

Return to Executive Summary

Superannuation Guarantee Increase – 1 July 2025

The minimum Superannuation Guarantee rate employers must pay for each eligible employee increases to 12% of their ordinary time earnings (OTE) on 1 July 2025.

Return to Executive Summary

ABS Wages Data

On 14 May 2025, the ABS released its seasonally adjusted Wage Price Index (**WPI**), for the March 2025 quarter. The WPI measures changes in the price of labour, unaffected by compositional shifts in the labour force, hours worked or employee characteristics.

Seasonally adjusted, the WPI rose 0.9% this quarter. Private sector wages rose 0.9% and were the main contributor to growth, while public sector wages rose 1.0%.

Annual wage growth was 3.4% in the March quarter 2025, up from 3.2% in the December quarter 2024, but lower than the same period last year (+4.0%).

Over the 12 months to March, private sector wages rose 3.3%, unchanged from December quarter 2024. This remains the lowest annual rise for the sector since June quarter 2022 (+2.7%).

In the March quarter 2025, enterprise agreements made the largest contribution to quarterly wages growth (54%) of the three methods of setting pay, which are categorised under this index as being awards, enterprise agreements or individual agreements (e.g., contracts of employment). In the previous December quarter 2025, individual arrangements had the largest contribution (54%) as compared to enterprise agreements (43%).

In original terms, the largest industry contributors to quarterly wages growth were Health care and social assistance (+1.4%) and Education and training (+1.3%). Retail trade, Accommodation and food services and Information media and telecommunications, all recorded the lowest quarterly rise in wages (+0.1%). Electricity, gas, water and waste services recorded the highest through the year wage growth (+4.4%). Finance and insurance services recorded the lowest through the year wage growth (+2.5%).

Return to Executive Summary

Enterprise Agreement Wage Outcomes

On 27 June 2025, the Department of Employment and Workplace Relations published its Trends in Federal Enterprise Bargaining Report: March quarter 2025.

The Average Annualised Wage Increase (**AAWI**) for federal agreements approved in the December quarter 2024 was **3.8%.** This compares with 4.8% in the December quarter 2024, 3.9% in the March quarter 2024 and an average of 3.4% for the preceding five years (March quarter 2020 to December quarter 2024).

For convenience we have replicated below the table summarising the most recent AAWI changes for approved agreements in the key sectors most relevant to our members.

Industry sector or type of agreement	**AAWI % for agreements approved in the March 2025 quarter**	**Change from December 2024 Quarter**
All sectors	3.8%	Down 1.0% (from 4.8%)
Private sector	3.9%	Down 0.1% (from 4.0%)

Industry sector or type of agreement	AAWI % for agreements approved in the March 2025 quarter	Change from December 2024 Quarter
Industries		
Transport, postal and warehousing	4.0%	Unchanged
Manufacturing	3.8%	Down 0.4% (from 4.2%)
Construction	5.5%	Down 0.3% (from 5.8%)
Clerical	6.3%	Down 0.1% (from 6.4%)
Health Care/Social Assistance	3.3%	Down 2.3% (from 5.6%)
Retail trade	4.6%	Up 1.0% (from 3.6%)

Return to Executive Summary

PART 3 – POST ELECTION POLICY AGENDA

*With the re-election of the Albanese Government, and the new Parliament set to sit from late July, attention now turns to the prospect of further changes to the workplace relations system, including the Fair Work Act 2009 (Cth) (**FW Act**) and other legislation impacting members.*

Following the election, a new Minister for Employment and Workplace Relations has been appointed, the Hon Amanda Rishworth MP. The Minister issued a short statement welcoming her appointment and comes to the portfolio, having been Minister for Social Services and playing a leading role in the administration of, and reform of, the NDIS. The Minister represents the South Australian electorate of Kingston. The Minister is a psychologist and prior to her election also worked as an official of the SDA. Interested members may wish to read her first speech to the Parliament which she made in 2007.

In contesting the election, the now re-elected Government made a limited set of policy announcements – both during the campaign, and directly before the election was called.

Government Priorities

Penalty Rates

The Government indicated it intends to "*legislate to protect penalty rates in awards, ensuring the wages of around three million workers do not go backwards*". This is directed to counteracting various cases currently before the FWC that are seeking exemption rates. This includes Ai Group proposals for exemption rates in awards such as the Clerks Award. It may also inadvertently affect current proceedings considering the extent to which awards should be amended to remove impediments to working from home arrangements.

We expect change in this area to be a priority for the new Government.

On 2 June 2025, the FWC issued a statement in relation to an employer association application to vary the *General Retail Industry Award 2020* (**Retail Award**), including to include an exemption rate.

The FWC confirmed it had received a letter from Minister Rishworth, advising of the Government's intention to legislate as soon as possible to protect penalty rates in modern awards from being reduced or removed and the FWC sought submissions from interested parties in relation to the ARA's variation application.

Ai Group submitted that the FWC should not defer its consideration of the application to include an exemption rate clause in proceedings AM2025/9. The longstanding approach of the FWC is to determine matters based on the law as it stands, without regard to proposed legislative amendments, and in the context of these proceedings where the Full Bench has already heard evidence and submissions in relation to this matter and has reserved in its decision.

Non-Compete Clauses

On 25 March 2025, the Australian Government announced a proposal to ban non-compete clauses in employment contracts for workers earning less than the high-income threshold in the FW Act (previously $175,000 and $183,100 from 1 July). It would also make changes to competition laws to 'close loopholes' in respect of wage-fixing that caps workers' pay and conditions without their knowledge and agreement and to ban 'no-poach' agreements.

The Government also indicated it will further consider and consult in respect of both non-solicitation clauses, and in respect of non-compete clauses for high-income workers. The proposed reforms for non-compete clauses would take effect from 2027, operating prospectively.

Importantly, the Government has indicated it will consult on policy details including exemptions, penalties and transitional arrangements. To assist Ai Group advocacy in relation to this, AFRA members are invited to share their views and any practical examples or insights regarding why non-compete clauses are important. Please email wrconsultation@aigroup.com.au to provide your views or to arrange a discussion with Ai Group's workplace relations policy team.

Preventing employers cancelling employer-funded paid parental leave – still birth/early infant death

Prior to the election, then Minister of Employment and Workplace Relations, Murray Watt, committed to legislating to prevent employers from cancelling employer-paid parental leave entitlements for parents dealing with stillbirth or early infant death. We anticipate implementation of this commitment a priority for the re-elected government.

'Payday superannuation'

At the time of the 2023 Budget, the Government announced an intention to implement 'payday superannuation' for employers' lodgement of superannuation contributions.

The Government announced that "*from 1 July 2026, employers will be required to pay their employees' super at the same time as their salary and wages*".

The Government's stated reasons for this change to employers' long-standing arrangements for making super contributions on employees' behalf include:

- "*By switching to payday super, a 25-year-old median income earner currently receiving their super quarterly and wages fortnightly could be around $6,000 or 1.5 per cent better off at retirement*."
- "*More frequent super payments will make employers' payroll management smoother with fewer liabilities building up on their books*."
- "*Payday super will also make it easier for employees to keep track of their payments, and harder for them to be exploited by disreputable employers*."
- "*The change will particularly benefit those in lower paid, casual and insecure work who are more likely to miss out when super is paid less frequently*."

In March 2025 the Government announced a very brief period of consultation on draft legislation and regulations to implement payday superannuation.

Under the proposed model, payday superannuation would be implemented as a requirement that contributions for employees have been received by superannuation funds within a specified period (usually 7 days) from the day on which employees are paid wages. This would replace the long standing requirement that contributions be made at least quarterly.

Ai Group members have identified various practical problems with this proposal. In particular, there is significant concern that the seven days in which contributions must be made into funds, and received by funds, is inadequate.

Ai Group made a submission emphasising the need to minimise any administrative burden on employers. Ai Group is also seeking to engage with Government to ensure that any changes to superannuation are appropriately balanced and practical, able to be reliably complied with, and suitably supported through explanatory information and resources.

Any views from AFRA members on the proposed superannuation changes would be welcome to wrconsultation@aigropup.com.au.

Albanese Government – Previous Policy Announcements

In public announcements and direct engagement, the Government has focused on its commitment to implement the policy agenda it took to the recent election and to addressing matters associated with the implementation of changes passed during the last term.

In considering the scope of *possible* additional workplace relations changes during this term of government, it may also be relevant to recall some of Labor's previous policy announcements which were not comprehensively dealt with during the previous Parliament:

Portable leave entitlements

In the 2021 Secure Australian Jobs Plan, prior to the election of the Albanese Government in 2022, Labor indicated an intention to "*consult with state and territory governments, unions and industry to develop, where it is practical, portable entitlement schemes for Australians in insecure work*."

National labour hire licencing

Both the ALP's 2021 Secure Australian Jobs Plan policy and outcomes of the 2022 Jobs & Skills Summit included commitments by an Albanese Government to work towards a national labour hire licensing scheme.

This would be likely to take the form of mandatory licensing for labour hire providers, and potentially also obligations and liabilities for host enterprises using labour hire services. This would either replace or be harmonised with existing state-based licensing schemes that apply in some jurisdictions.

As of mid-2024, indications were that states, territories and the Commonwealth were working towards harmonised approaches through an implementation group led by the state of Victoria.

Key questions being addressed are understood to include:

- The core requirements of labour hire licensing, who will be required to be licensed or register under any scheme, and other design considerations such as license fees, penalties and sanctions, and reporting obligations.
- The role of harmonised or model legislation in implementing national labour hire licencing, and the extent to which existing licencing schemes will inform any national requirements.
- The role of a national agency or regulator and the organisation and objectives for such a body, as well as any role to be played by state and territory agencies.

Members will be updated on any further developments as they come to light.

Government procurement

The Government's 2021 policy also included a commitment to introduce a Secure Australian Jobs Code (**Code**), directed at ensuring government procurement is "*being used to support secure employment for Australian workers*".

The Code would establish guidelines with respect to:

- The fair treatment of workers, including job security.

- Fair and reasonable wages and conditions.
- Ethical and sustainable practices such as ensuring environmentally sustainable outcomes.
- Compliance with the *Workplace Gender Equality Act 2012* (**WGEA Act**).
- The consideration of local industry workforce capability and capacity, particularly in regional Australia.

Again, AFRA and Ai Group Members will be updated on any further developments.

Artificial intelligence, privacy and surveillance

In 2024, a first tranche of amendments to the *Privacy Act 1988* (Cth) (**Privacy Act**) passed Parliament. Government has proposed, but not yet progressed, a second tranche of changes that may extend the scope and reach of the Privacy Act to organisations with an annual turnover of less than $3 million AUD and remove or change the current employee records exemption.

In February 2025, the Federal Inquiry into the Digital Transformation of Workplaces recommended significant changes in workplace relations, surveillance and work health and safety laws to address what was described as a "*very concerning and excessive use of technology-enabled surveillance and data-collection by employers*." Government has not yet responded but is expected to seek to implement the recommendations.

Concerns about workplace surveillance have also been recently the subject to a Victorian Inquiry and Report. A Victorian Parliament Committee recommended making changes to workplace surveillance, privacy and work health and safety laws to address what it described as a "*very concerning and excessive use of technology-enabled surveillance and data-collection by employers*".

The union movement is increasingly pushing for a regulatory response to workplace surveillance and increased use of AI. Further government engagement with emerging issues in these areas is expected under the new parliament, which Ai Group is well positioned to engage with through our appointment to the Attorney General's Artificial Intelligence Working Group.

Ongoing legislative reviews

One process which will continue is the automatically programmed review of several tranches of amendments to the FW Act, including changes made by the following:

- *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth)* (**Secure Jobs Better Pay Act**)
- *Fair Work Legislation Amendment (Closing Loopholes) Act 2023 (Cth)*
- *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024 (Cth)*

Secure Jobs Better Pay Act

The first stage of this process is already complete, with a panel of reviewers having reported to Government on the operation of Secure Jobs Better Pay Act. Ai Group contributed substantial submissions to this process and met with the reviewers.

However, the final report of the review has not yet been released publicly. Nor is there yet any indication of any proposed changes to the FW Act following this review.

Further Legislative Reviews

The two further reviews are currently scheduled to be undertaken of the Closing Loopholes amendments:

- A review of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* must commence no later than December 2025, and report within six months (by June 2026).
- A review of the of the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* must commence no later than late February 2026 and again must report within six months (by the end of August 2026).

Once again following the reporting, it will be up to the Minister to determine when final reports are released, provided that she does so within 15 sitting days of receiving the report.

Return to Executive Summary

Announced priority priorities of other interests - Australian Greens and ACTU Priorities

Beyond the re-elected Government, both the Greens and ACTU announced policy priorities during the election campaign or shortly thereafter, including most relevantly:

The Australian Greens

- **Reproductive leave** - providing 12 additional days of paid leave per year, above the existing 10 days' paid personal and carers' leave standard.
- **4 days' working week** – supporting a national four-day work week test case through the FWC, to reduce working hours to a four-day week, with no loss of pay. Also establishing a National Institute for the Four-Day Work Week to 'plan and guide implementation'.
- **Leave for casuals** - extend pro-rata entitlements to sick leave, annual leave, and carer's leave to all employees, including casual workers.
- **Roster justice** - amend the Fair Work Act to 'prevent unpredictable, unfair, and short-hours rostering, require employers to provide roster changes within regulated notice periods, and strengthen rights to refuse shifts that 'conflict with worker availability or well-being'.

Other Greens' priorities include:

- **Industry and national bargaining** - workers should be free to collectively bargain at whatever level they consider appropriate and with whoever has real control over their work, whether at a workplace, industry, sector or other level.
- **Widening bargaining matters and scope for industrial action** - Workers should be free to determine what matters relevant to their social, economic and environmental interests they want to bargain about.

- **Rights to strike at any time** - Workers should have the right to engage in industrial action, including the right to strike, consistent with international law and not limited to artificially restricted bargaining periods.
- **Changing creditor arrangements in insolvencies** – amend insolvency laws to ensure all outstanding wages are paid as the first priority from a company's remaining assets, ahead of both taxes and secured creditors.
- **Superannuation for juniors** – remove the current requirement for an employee under 18 to work 30 hours per week before SGC superannuation becomes payable. (There is also an SDA / ACTU campaign on this).

The ACTU

The ACTU's reported immediate priorities for the second term of the Albanese Government include the following:

- **Underpayment Tribunal** - a new tribunal for employees to claim backpay for underpayments, establishing a simpler process than the current one through a Federal Court.
- **Junior Rates** - legislate to remove junior wages for employees over 18 across the retail, fast food and pharmacy sectors if unions fail to convince the FWC to abolish them.
- **Apprentice Rates** – legislate to remove apprentice rates (and this was reiterated in the ACTU's submissions to the 2024-25 Annual Wage Review).
- **Penalty Rates** - a new law to stop employers from scaling back penalty rates in workplace awards at the FWC.
- **Minimum Standards for Contractors** - expand the gig worker minimum standards to all independent contractors.
- **Reproductive Leave** - expand the National Employment Standards to insert 10 days' reproductive leave. (Note, the Greens are seeking 12 days).
- **Lockouts** - water down employers' capacity to lock out workers during industrial disputes. The focus of this agenda has been on calls for employer response action to be 'proportionate' to action taken by employees.
- **Casual Loading** - review the casual loading once new casual employment changes had been bedded down.

The ACTU is also prioritising a response to the increased workplace adoption of AI.

Return to Executive Summary

PART 4 – LEGISLATIVE DEVELOPMENTS

Changes Effective From 1 July 2025

- The high-income threshold in unfair dismissal cases increases from $175,000 to $183,100;
- The compensation limit for unfair dismissal cases increases from $87,500 to $91,550 (for dismissals occurring on or after 1 July 2025).
- The contractor high income threshold increases from $175,000 to $183,100.
- The Superannuation Guarantee increases to 12%.
- The amount of available flexible paid parental leave increases to 120 days (24 weeks) (for children born or adopted after this date).
- The amount of available flexible unpaid parental leave increases to 120 days (24 weeks) (for children born or adopted after this date).

Return to Executive Summary

Proposed Changes - Psychological Injury (NSW)

On 9 May 2025, the NSW Government established an inquiry into and report on proposed changes to liability and entitlements for psychological injury. The inquiry had a truncated period for submissions, which were due on 15 May.

Ai Group's submission welcomed the prospect for changes that would address the unsustainable increase in claims associated with psychological injuries and the resulting projected increase in NSW workers' compensation premiums for many of our members. Ai Group supported the NSW Government's objective of achieving this by focusing on the prevention of, timely treatment for and successful return to work of workers who sustain work-related psychological injuries.

However, while Ai Group supported sensible measures to address the rise in psychological injury claims, Ai Group was not given the opportunity to consider the related draft industrial legislation that will create a bullying and sexual harassment jurisdiction within the NSW Industrial Relations Commission (**NSW IRC**). Ai Group pressed the need for the NSW Government to consult on any such draft industrial legislation to ensure the jurisdiction has appropriate guardrails and does not unduly burden employers.

The inquiry reported back on 23 May 2025, and recommended:

- The Government take note of the evidence received throughout the course of the inquiry when preparing the final bill(s) as introduced into the Parliament.
- The NSW Legislative Council take note of the evidence received throughout the course of the inquiry when the final bill(s) is introduced in the House, and where appropriate, consider

amendments in the committee stage of the debate on the bill(s) that address stakeholder concerns.

On 27 March, Minister Cotsis introduced two bills: Industrial Relations and Other Legislation Amendment (Workplace Protections) Bill 2025 (**IR Bill**) and the Workers Compensation Legislation Amendment Bill 2025 (**WC Bill**).

IR Bill

Amongst other changes, the IR Bill proposes to empower the NSW IRC to conciliate, arbitrate and make orders concerning the bullying of employees at work and persons sexually harassing employees, prospective employees and PCBUs. The IRC may make orders, including stop orders and orders for compensation capped at $100,000.

The amendments to the IR Act that relate to bullying do not at this point apply to workers who may apply for a stop bullying order under the FW Act. Similarly, the new prohibition on sexual harassment in connection with work does not include a national system employee within the meaning of the FW Act. At a high level, this means these new jurisdictions would generally only be available to NSW public sector employees, and local government employees.

The IR Bill also proposes making wording changes to the *Work Health and Safety Act 2011* (Cth). These amendments relate to the union right to prosecute for breaches of WHS laws. New South Wales is the only Australian jurisdiction that has this right in the WHS laws. At present a union can only initiate a prosecution for a category 1 or category 2 offence. Both of these offences relate to a WHS breach that "*exposes an individual to a risk of death or serious injury or illness*".

The proposed changes could be problematic as they will remove this limitation, allowing unions to initiate a prosecution for any breach of the WHS legislation. It will also make it easier for them to commence prosecutions and will allow the court to "*direct that a portion of the fine or other penalty imposed in the proceedings be paid to the registered organisation*" [that brought the proceedings].

The IR Bill The IR Bill passed both houses on 26 June, with further amendments, and awaits Royal Assent. The amended bill was referred back to the Legislative Assembly.

WC Bill

The WC Bill proposes making various amendments to the *Workers Compensation Act 1987* (NSW), including in relation to liability and entitlements for psychological injuries and the process of assessing the degree of permanent impairment. Those changes include:

- Requiring a primary psychological injury be caused by a "*relevant event*" to be compensable.
- Defining a "*relevant event*" as "being subjected to an act of violence or a threat of violence, indictable criminal conduct, witnessing a traumatic incident or a dead or seriously injured person at the scene of a traumatic incident, experiencing vicarious trauma, being subjected to sexual harassment, racial harassment, bullying or excessive work demands;".

- A stepwise increase in permanent impairment threshold for psychological injury claims for determining weekly payments beyond 130 weeks, access work injury damages and access to lump sum compensation benefits for non-economic loss.

The WC Bill also amends the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) to provide special provisions applying to a claim for bullying, excessive work demands, sexual or racial harassment (**relevant conduct**) and which prescribe that the insurer must either accept a claim for relevant conduct or dispute liability within 42 days of it being made. If an internal review does not resolve a liability dispute, an employee may make an application to the NSW IRC to determine if the relevant conduct occurred. If still unresolved with the insurer, the dispute may then be referred to the Personal Injury Commission for determination.

The WC Bill was considered by the Legislative Assembly and was passed with some amendments on 3 June. The amended Bill was to be considered in the Legislative Council on 5 June. Before the debate commenced it was proposed that the Bill be sent to the Public Accountability and Works Committee for inquiry and report by 23 June. It was finally agreed that the inquiry would occur, with the Committee setting its own timeframe for reporting.

Return to Executive Summary

Victorian Government Bill - Wage Theft

On 1 April 2025, the Victorian Government introduced the Wage Theft Amendment Bill 2025.

The purpose of the Bill is to amend the *Wage Theft Act 2020* (Vic) to:

- Repeal the wage theft offences and related provisions.
- Rename the Wage Inspectorate Victoria as the Workforce Inspectorate Victoria.
- Confer new functions on the Workforce Inspectorate Victoria, including managing complaints in relation to public construction.
- Change the title of the Act to *Workforce Inspectorate Victoria Act 2020*.
- Provide for any necessary transitional provisions.

This Bill follows the commencement of the Federal wage theft offence on 1 January 2025.

Return to Executive Summary

PART 5 – FWC CASES / DECISIONS

FWC Working From Home Case

Ai Group has previously updated members on the FWC's own-motion proceedings aimed at developing a 'working from home term' to be inserted into the Clerks Award. The FWC has identified that this clause may serve as a template for inclusion in other awards.

The FWC engaged Swinburne University of Technology to undertake research to assist the FWC in considering the matter and it conducted the research through two separate surveys, one for employees and another for employers. On 26 May 2025, the FWC issued a statement confirming that the research was complete. The findings were published in the Swinburne University Research Report - Working from Home Surveys (**Report**).

In relation to the ***employer*** survey, the key findings from the Report include the following:

- Working from home (**WFH**) is widely available and is accessible for clerical employees in the private sector, including part-time and casual workers.
- The vast majority of requests to work from home are approved in full or in part. Where requests have been refused, the most common reason was that the employee's job could not be performed remotely.
- Most employees are permitted some freedom around the ability to vary working hours when they WFH.

In relation to the ***employee*** survey, the key insights from the Report include the following:

- Two-thirds of employees are able to WFH from home to some extent.
- When WFH requests were refused, the most common reasons cited by employees were management preference for in-office work, the job role required regular in-person interactions with clients/customers and the job could not be performed from home.
- 98% of employees attended to personal matters during work hours during work time when they WFH.
- The most common benefit associated with WFH was time saved.
- Just 1 in 5 employees are required to record their precise start and finishing times for the day, raising concerns about whether employers are meeting record keeping obligations and reinforcing our contention that such requirements are not workable in the context of many WFH arrangements.

The FWC published a research reference list and data profile on 30 May 2025.

The FWC has agreed to provide Ai Group with access to the data obtained through the survey as not all of the survey questions were addressed in the report.

Next steps: Proposals, submissions and evidence

The FWC has issued directions requiring interested parties to lodge, by 18 July 2025:

- Any proposed variations to the Clerks Award.
- Written submissions.
- Any evidence in addition to the Report.

We have previously identified a range of ways in which the Clerks Award is operating as a barrier to employers agreeing to reasonable working from home arrangements. In various respects, the Clerks Award is completely out of step with the realities of both current working practices and the desired level of flexibility that many employees want in order to help them balance their work and personal commitments. It was written at a time when work was primarily office-based.

Ai Group will continue to argue that whilst awards should be varied to remove any barriers to the implementation of mutually agreeable WFH arrangements, they should not reflect inevitable union calls to grant employees a new right to work from home.

Ai Group has recently been participating in confidential and without prejudice FWC-facilitated negotiations with the ACTU and ASU to see whether a consensus can be reached on the content of the working from home term. Regretfully, some of the communications in that matter appear to have been inappropriately leaked to the media, notwithstanding that they were strictly confidential and without prejudice.

The ASU has also mischaracterised Ai Group's approach to these proceedings. This has culminated in significant media attention. See Ai Group's media release in relation to the matter and the transcript of an interview Innes Willox gave to ABC Radio National.

Members with any questions or concerns about the matter should speak to a member of Ai Group's workplace policy team.

Return to Executive Summary

Ai Group Application to vary the Clerks (Private Sector) Award – Exemption Rate

On 31 July 2024, Ai Group filed an application in the FWC to vary the Clerks Award to introduce an 'exemption rate' provision.

An exemption rate is an award clause which removes the obligation to comply with certain award terms (including hours of work, penalty rates and overtime) in respect of an employee earning at or above a particular rate of pay.

Many employees covered by the Clerks Award are paid a salary that exceeds the wages that would be payable to the employee if they were paid by the hour. In such cases, employers are still required to comply with various other award provisions, including those relating to hours of work, overtime and penalty rates.

There are also associated obligations under the FW Act to keep records in relation to these matters, as well as separate requirements under the annualised wage arrangement clause (i.e., clause 18 of the Clerks Award) if it applies to the employee.

There are a range of benefits of having an exemption rate provision. In particular, it would avoid many of the onerous and problematic consequences that flow from the FW Act recordkeeping provisions and the annualised wage arrangement clause.

On 19 February 2025, the FWC varied the directions it had issued in this matter.

The separate exemptions rate applications by the Australian Business Industrial and NSW Business Chamber Ltd in relation to the Clerks Award and *Banking, Finance and Insurance Award 2020 (BFI Award)* are now being heard together with this application.

Ai Group filed its submissions in response to the ABI and NSW Business Chamber applications on 19 February and 11 March 2025. Ai Group also proposed that an exemption rate clause be included in the BFI Award.

Unions submissions are due 15 August 2025. Ai Group must file submissions and evidence in reply on 29 August 2025. A report back to the FWC is listed on 3 September 2025.

Return to Executive Summary

Flexible Work Requests

Full Bench of the FWC quashes initial decision upholding refusal of request despite the employer having had reasonable grounds

A Full Bench of the FWC quashed a first instance decision, in which the Commissioner had accepted the respondent employer's refusal of a flexible working request. (*Naden v Catholic Schools Broken Bay Limited as Trustee for the Catholic Schools Broken Bay Trust* [2025] FWCFB 82).

The employee, a full-time Religious Education Coordinator, had requested to return from parental leave to temporarily work three days per week on certain days for terms one and two of 2025, resuming her full-time role in term three. The employer refused the request, with the parties being unable to reach agreement on any other options including a return to a part-time classroom teaching role.

The Full Bench said that four requirements must be met under section 65A(3) of the FW Act:

1. The employer must have held discussions and genuinely tried to reach agreement about the request.
2. The discussions must not have resulted in agreement.
3. **The employer must have had regard to the consequences of the refusal on the employee.**
4. The refusal must be based on reasonable business grounds.

The Full Bench agreed with the Commissioner's finding that the employer had reasonable business grounds for its refusal, had held discussions and had genuinely attempted to reach agreement. However, according to the Full Bench, the Commissioner had failed to appreciate the significance of the employer not having had regard to the consequences of the refusal for the employee. On that basis, the Full Bench redetermined the dispute, finding that the employer was not entitled to refuse the employee's request. The Full Bench made orders that the employer was required to implement the flexible working arrangement in accordance with the employee's request.

This decision highlights that employers must consider all four requirements when considering a request for a flexible working arrangement. In relation to the particular requirement of having regard to the consequences of the refusal on the employee, the employer must ensure:

- It discusses this with the employee and has evidence to that effect.
- The written response not only includes the reason for the refusal but also how the employer has had regard to the consequences of the refusal for the employee.

Return to Executive Summary

Employer appeals the ordering of a flexible working arrangement which contravenes an applicable enterprise agreement

In the decision of *May v Paper Australia Pty Ltd* [2025] FWC 799, Commissioner Yilmaz considered an application to deal with a dispute in relation to a request for a flexible working arrangement under the FW Act.

In summary:

- An employee requested to change his working arrangements under section 65 of the Fair Work Act 2009.
- The employer refused the request on the basis that accommodating it would contravene the applicable enterprise agreement (the hours provisions prevented the employee's proposed roster).
- The Commissioner agreed the provisions of the enterprise agreement would be contravened if the arrangement were implemented but determined that s.65 overrode the provisions of the enterprise agreement such that the impugned provisions had no effect.
- The Commissioner ordered the employer to grant the request.

If this decision and order stands, it could have broad implications for employers in relation to requests for flexible working arrangements. It implies that employers and employees can depart from the terms of an award or enterprise agreement in order to implement a flexible work arrangement pursuant to section 65 of the FW Act. Given the potential significance of the decision, guidance from a Full Bench of the FWC is warranted.

The employer has appealed this decision. Given its potential significant to industry, Ai Group has intervened in the proceedings and has filed submissions in the matter outlining the basis for contention that the Commissioner's approach was in error. The Full Bench's decision is reserved.

Return to Executive Summary

FWC Grants First Voting Request Order For a Proposed Multi-Enterprise Agreement

If an employer seeks to put a multi-enterprise agreement to a vote, it must first obtain written approval from all relevant employee organisations before holding the vote.

If written approval is not given by each employee organisation, an employer may apply to the FWC for a voting request order under s.240A of the FW Act.

If the FWC makes a voting request order, the employer is then permitted to ask its employees to vote for a proposed multi-enterprise agreement.

First decision on voting request order – multi enterprise agreement

On 13 June 2025, the Full Bench of the FWC published its first decision in which it granted an application made by Sydney Trains and NSW Trains for a voting request order.

The decision permits Sydney Trains and NSW Trains to put its proposed multi-enterprise agreement to a vote, marking the end of a long-running, complex and highly contested bargaining process. The process started for a proposed single-enterprise deal but then morphed into bargaining for a proposed multi-enterprise agreement, after the FWC made a single interest employer authorisation in December 2024.

The decision provides insight on what the FWC will consider when determining an application for a voting request order.

When will the FWC make a voting request order?

The FWC will make a voting request order under s.240B of the FW Act if it is satisfied that:

- Each employee organisation's failure to provide written approval to allow an employer to ask its employees to vote, was *unreasonable in the circumstances* (s.240B(a)).
- Asking the employees to vote would not be *inconsistent with or undermine good faith bargaining* (s.240B(b)).

The Full Bench observed the explanatory memorandum to the Secure Jobs Better Pay Act provided "little assistance" to it when determining if it would make a voting request order.

"Unreasonable in the circumstances"

In relation to determining whether a refusal to agree was unreasonable in the circumstances, the Full Bench said it would apply a broad value judgment.

This required the FWC to balance the interests of affected parties with regard to the objects of the FW Act and Part 2-4. In particular, it must conduct an objective assessment of the reasonableness of the stance taken by the employee organisation having regard to the whole circumstances relating to the bargaining. The question is not whether the FWC believes it is reasonable for the vote to be conducted. Instead, it is whether the organisation's failure to agree was unreasonable.

Applying this approach the Full Bench concluded that the ETU's refusal was unreasonable in the circumstances for the following reasons:

- **Duration of process**.

  The bargaining process has been lengthy, complex and heavily contested. In-principle agreement had been reached with the assistance of the FWC in relation to almost every matter at issue. The remaining matters were limited to wording of a one draft clause and the ETU's new Trades Uplift Claim.

- **Immaterial change sought**.

  The wording alterations sought by the ETU as a reason for its refusal to agree to a vote were trivial and did not change the effect of the particular provision.

- **A new claim recently introduced after a long period of bargaining**.

  The Trades Uplift claim was only advanced after more than 12 months of bargaining on 2 June 2025 and it was not reasonable to refuse approval to explore a claim so recently raised.

- **Beneficial employees and for those affected by the bargaining**.

  The proposed deal was highly beneficial, with substantial pay increases which were backdated for employees not having received a pay rise since 1 May 2023, alongside other improvements. Additionally, it would bring to an end a period of long-running and heavily contested bargaining which had caused disruption to the people of NSW and to the economy.

"Good faith bargaining"

The FWC is informed by the good faith bargaining requirements in section 228 when assessing whether making a voting request order would be inconsistent with or undermine good faith bargaining. However, it has a prospective, future focused consideration that means a past failure to comply with the good faith bargaining requirements would not be definitive.

In the circumstances of this matter, the Full Bench found the employers had not breached the good faith bargaining requirements such as by excluding it from negotiations.

The Full Bench determined that it should make a voting request order.

See: Applications by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia; Application by Sydney Trains and NSW Trains [2025] FWCFB 117 (13 June 2025).

Return to Executive Summary

PART 6 – INQUIRIES, CONSULTATIONS AND REPORTS

Inquiry Into Workplace Surveillance (Victoria)

On 14 May 2024, the Victorian Legislative Assembly referred an inquiry into workplace surveillance to the Legislative Assembly Economy and Infrastructure Committee. The inquiry considered workplace surveillance laws in Victoria (and other jurisdictions), how surveillance data was handled and employee privacy.

Ai Group made a submission and gave evidence at a public hearing. On 13 May, the inquiry report was tabled in the Legislative Assembly.

The report made several findings, including:

- Workplace surveillance is used extensively by employers in Victoria often without employees being aware of it and the data collected may be used for reasons other than the stated specific purpose, including by AI.
- Constant monitoring may intensify work and create OHS risks, impinge on worker privacy, and undermine collective bargaining efforts.
- Existing Victorian workplace surveillance laws and those in the ACT and NSW are not best practice and federal laws such as the FW Act and the *Privacy Act 1988* (Cth) are inadequate.
- There are insufficient protections under the *Privacy Act 1988* (Cth) or the *Privacy and Data Protection Act 2014* (Vic) of employees' personal information collected through workplace surveillance.

It also made several recommendations to increase the level of oversight on an employer's use of information collected in the workplace, including those set out below which may be of most interest to members:

- To introduce "principles-based workplace surveillance legislation that is technology neutral, defines a workplace as wherever work occurs, and places a positive obligation on employers to prove through a risk assessment that any surveillance they conduct is reasonable, necessary and proportionate to achieve a stated legitimate objective".
- To require employers to consult with workers before introducing new surveillance and then to give workers two weeks' written notice of new surveillance, and specify the methods, scope, timing, purpose, along with details of data use and storage.

- To oblige employers who use workplace surveillance to have a relevant policy (as is currently the case in NSW and the ACT).
- To restrict covert surveillance to cases where a worker is suspected of unlawful activity, the employer has obtained a court order to undertake the surveillance, and an independent surveillance supervisor has been appointed to the case.
- To require employers to take all reasonable steps to prevent surveillance of workers while at work by third parties, without the workers' consent.
- To prohibit employers from selling workers' personal data or any data about them collected through surveillance to third parties.
- To introduce a new information privacy principle modelled on the Australian Privacy Principle 1.2 and oblige employers to comply – which imposes obligations to manage personal information in an open and transparent way.
- To require employers to give workers access to their workplace surveillance data on request, and to notify them of data breaches.
- To only collect biometric data for a legitimate purpose that cannot be achieved by less intrusive means and to define such data as "sensitive information" under the *Privacy and Data Protection Act 2014*.
- To appoint the Office of the Victorian Information Commissioner, WorkSafe Victoria or another body as a regulator to oversee the workplace surveillance legislation and undertake compliance and enforcement activities.

The Victorian Government has not yet responded to the report.

Reviews in other jurisdictions

Workplace surveillance has increasingly been on government agendas across Australia and for the ACTU. Key issue being raised include the extent to which employers consult with employees and how collected data is used and stored.

Most recently, the Government passed the first tranche of its amendments to the *Privacy Act 1988* (Cth), which partly addressed its response to the Attorney General's Statutory Review of the Privacy Act 1988 (see January 2025 Significant Workplace Relations Issues Report). We expect that the Government will look to introduce further amendments, including making changes to the current small business exemption and employee records exemption (see our November 2024 Significant Workplace Relations Issues Report). These changes, if made, would significantly broaden the scope and extent to which the Privacy Act regulates the use of data in the workplace, including the collection and use of data acquired through surveillance and AI workplace tools.

A Federal inquiry into the Digital Transformation of the Workplace also recently reported back in February 2025 and identified gaps in Australia's regulatory frameworks and workplace collection of data. The report made a raft of recommendations for changes to workplace relations, privacy and work health and safety laws and stated there was a "*very concerning and*

excessive use of technology-enabled surveillance and data-collection by employers" (see April 2025 Significant Workplace Relations Issues Report for more detail about the recommendations). The Federal Government is also considering other related changes, including implementing mandatory guidelines for the use of AI in "high risk" areas such as workplace relations – see our submission here. Ai Group continues engage in these issues and has been appointed to the Attorney General's Artificial Intelligence Working Group.

The NSW and Queensland Governments in 2022 and 2023 have also each conducted inquiries in relation to workplace surveillance in recent years. Those inquiries each similarly recommended changes but at this stage, those changes have not yet been implemented.

Return to Executive Summary

PART 7 – OTHER DEVELOPMENTS

Federal Court Finds Employee Holding Political Opinion Was Unfairly Dismissed For Social Media Post

The Federal Court recently found Ms Lattouf's employment was unlawfully terminated following public complaints about her social media posts concerning the Israel/Gaza conflict. Ms Lattouf was engaged as a casual employee to present the Sydney Mornings radio program for the ABC for five shifts from 18 to 22 December 2023.

Ms Lattouf had previously shared content critical of the actions of both Israeli forces and Hamas. Despite ABC's advice to avoid controversial posts, she reposted a Human Rights Watch video on Instagram.

On becoming aware of this, the ABC told Ms Lattouf she would not be required for her two remaining shifts, and she was to leave the premises. It did not identify the policies she was alleged to have breached, and did not give her any opportunity to defend herself against the allegation of misconduct. The termination of her employment was widely publicised.

Ms Lattouf claimed her dismissal contravened section 772(1)(f) of the FW Act, which prohibits the termination of employment based on the employee's political opinion. She also argued the ABC had contravened their enterprise agreement by failing to inform her of the specific misconduct allegations or allowing her to defend herself.

On 25 June 2025, the Federal Court ruled that ABC unlawfully terminated Ms Lattouf's employment due to her political opinions, breaching section 772(1) of the FW Act. The Court awarded her $70,000 for non-economic loss. The Court also found the ABC had breached the applicable enterprise agreement, with penalties up to a maximum of $990,000 to be determined in later proceedings. The Court rejected Ms Lattouf's allegations that the reason for her dismissal included her race or national extraction.

Lattouf v Australian Broadcasting Corporation (No 2) [2025] FCA 669.

Return to Executive Summary

High Court Dismisses Constitutional Challenge to CFMEU Administration

On 18 June 2025, the High Court dismissed the constitutional challenge by two ex-CFMEU officials to amendments made to the *Fair Work (Registered Organisations) Act 2009* (Cth) (**FWRO Act**) and the FW Act by the *Fair Work (Registered Organisations) Amendment (Administration) Act 2024* (Cth) and the *Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination* determined under s 323B(1) of the FWRO Act that operated to place the Construction and General Division of the CFMEU (**C&G Division**) into administration.

The plaintiffs had been the Divisional Branch Secretary and Divisional Branch Assistant Secretary of the Construction and General Queensland-Northern Territory Divisional Branch of the CFMEU until removed from those offices on 23 August 2024 under the scheme.

This decision means that during the administration of the C&G Division of the CFMEU and its branches under Pt 2A of Ch 11 of the FWRO Act, which is ongoing, the Administrator has and will continue to have powers of control, management and disposition of property of the CFMEU previously used solely or predominantly for the purposes of the C&G Division or any of its branches.

The ex-CFMEU officials unsuccessfully argued that the changes were invalid on the following four bases:

- That the impugned legislative provisions are unsupported by a head of Commonwealth legislative power.
- That the impugned legislative provisions and/or the Scheme infringe the implied freedom of political communication.
- That the impugned legislative provisions infringe Ch III of the Constitution.
- That the impugned legislative provisions effect an "acquisition of property" within the meaning of s 51(xxxi) of the Constitution otherwise than on just terms.

Interested members can access the judgment and Ai Group media release.

Return to Executive Summary

Mable Admits to Unfair Contract Terms after ACCC Investigation

Since November 2023, changes to the Australian Consumer Law (**ACL**) prohibit businesses from proposing, using, or relying on unfair contract terms in standard form contracts with consumers and small businesses.

Online services platform Mable Technologies Pty Ltd (**Mable**) has admitted to breaching the ACL by using unfair contract terms when connecting people seeking care support to independent support workers. The breaches were admitted in a court-enforceable undertaking accepted by the ACCC.

Support services facilitated through Mable include social support, domestic support, nursing services and allied health services. Clients using the platform include participants on the National Disability Insurance Scheme (**NDIS**), the elderly and other people requiring support.

The unfair contract terms were in place between 9 November 2023 and 22 August 2024. These terms included the potential for Mable to receive a minimum penalty fee of $5,000 from clients and support workers in particular circumstances. For example, a support worker who leaves the Mable platform would be liable to pay the penalty fee if, within 12 months of leaving, they continued their care arrangement with a client they were introduced to through the platform.

The terms also provided for a client's 'service log' (similar to an attendance record or timesheet) to be automatically deemed approved unless the client disputed it within 24 hours without providing a contractual right for the client to opt-out or dispute the invoice for the relevant services once the service log was deemed to have been accepted. Other terms allowed Mable to change some of its fees and terms without reasonable notice. Mable also included terms which sought to limit its liability for claims and losses.

The ACCC has announced its 2025/26 Compliance and Enforcement Priorities and as part of this will be prioritising improving compliance by NDIS providers with their obligations under the ACL. It will also be undertaking enforcement activities in relation to unfair contract terms in consumer and small business contracts.

Members are also reminded that from 26 August 2024, independent contractors may be eligible to apply to the FWC if they think their services contract contains an unfair contract term. The new jurisdiction applies if the contractor performs work under a services contract with a constitutional corporation and the contractor does not earn more than the contractor high income threshold (previously $175,000 and increasing to $183,100 from 1 July 2025). Contractors who are not eligible to apply to the FWC for a remedy can apply to a court for a review of their services contract under the *Independent Contractors Act 2006* if they think the contract is harsh or unfair.

Return to Executive Summary

Net Zero Economy Authority Consultation - Closure of the Eraring Power Station

In 2024, the Government passed the *Net Zero Economy Authority Act 2024* (Cth) and the *Net Zero Economy Authority (Transitional Provisions) Act 2024* (Cth).

This created a legal framework for Australia's transition to a net zero emissions economy and established the Net Zero Economy Authority (**Authority**). The Authority has various roles, including facilitating the transition of affected workers to new employment under an Energy Industry Jobs Plan (**EIJP**).

The EIJP may be applied to certain coal-fired and gas-fired power stations (and related employers with a commercial relationship with these power stations) when notice of closure is given by the power station.

The Authority is currently consulting on the scheduled August 2027 closure of Origin Energy's black coal-fired Eraring Power Station south of Newcastle. In this consultation it will consider the effects on workers and business, and what supports are already being provided to workers to help them to prepare for new employment. The Authority is inviting submissions from workers at the power station and at businesses in the supply chain whose operations may be impacted, companies that might be interested in hiring workers who lose their jobs, first nations representatives in the region, community groups and unions and employer associations. It is consulting on-site in June and will meet with other stakeholders in June and July.

Following this consultation, the Authority will decide if it will ask the FWC for a determination to apply an EIJP framework to businesses affected by the Eraring shut down. If the Authority applies to the FWC for a determination it will do so in the second half of this year.

If the FWC determines a EIJP framework should be applied, there will be transition obligations that will be imposed on employers, including some employers in the supply chain. This may include obligations such as arranging and paying for career planning or financial advice or permitting paid time off work or flexible working arrangements to get that advice.

Members who would like more detail about the Net Zero Economy and the obligations it imposes on employers can contact Scott Barklamb at Ai Group (scott.barklamb@aigroup.com.au).

Return to Executive Summary

Further Key Matters

Matter	Status
Delegates' Rights Case – Judicial Review of variations to several modern awards	Ai Group was a respondent in applications for judicial review lodged by the Mining and Energy Union and the Construction, Forestry and Maritime Employees Union. The unions are seeking that the variations to a number of modern awards which inserted the model delegates' rights term be quashed, and that the FWC be required to re-exercise its powers to insert a delegates' rights term into those awards. Both applications were heard 17-18 March. The decision has been reserved. The matter has significant potential implications for the validity of the delegates' rights term inserted into awards last year. The model term will be subject to review by the FWC at a future time after 1 July 2025.

Matter	Status
Multi-employer agreement – Early childhood education and care – Roping in applications	Further variations have been approved by the FWC, with this agreement now covering 299 employers and approximately 40,000 employees. The FWC has created a monthly schedule to process applications to vary the agreement to add employers and their employees to the agreement's coverage.
Three applications for judicial review of a single interest employer authorisation which was granted by the FWC in relation to three black coal mining employers in NSW	Federal Court of Australia – decision reserved following a two-day hearing on 17 and 18 March 2025.

Return to Executive Summary

PART 8 – WORKPLACE BEHAVIOURS AND EQUALITY

Employers and persons conducting a business or undertaking (PCBUs) must take reasonable steps to eliminate or prevent, unlawful workplace behaviours, including bullying, harassment and discrimination, as far as possible, and to provide a safe and respectful workplace.

In recent years, an obligation was introduced under the *Sex Discrimination Act 1984* (Cth) requiring employers and PCBUs to prevent workplace sexual and gender-based harassment, often described as the "positive duty". This has been reinforced by the introduction of a civil remedy offence under the FW Act that prohibits workplace sexual harassment and under which an employer will be liable for the behaviour if it fails to take reasonable preventative steps.

Additional and overlapping obligations exist under other laws, including state and territory work health and safety legislation and anti-discrimination and equal opportunity laws.

Key organisations that are active in compliance and enforcement in relation to the positive duty and unlawful workplace behaviours include the Australian Human Rights Commission, the Fair Work Ombudsman and state/territory work health and safety regulators – each of which may investigate non-compliance with the positive duty and may be able to take enforcement action, including by commencing legal proceedings in some instances. Government procurement may also require organisations to take actions to demonstrate they are satisfying the positive duty if they wish to provide goods or services or be eligible for grants, including by providing gender equality data to the Workplace Gender Equality Agency and setting and satisfying gender equality targets under the *Workplace Gender Equality Act 2012* (Cth).

Ai Group continues to engage actively for its members in this area, including through its appointment to the Federal Government's Respect at Work Council, as an appointed member representing employers on Safe Work Australia, as an appointed member of the Victoria

Government's Sexual Harassment Taskforce and its appointment to the Fair Work Ombudsman's National Advisory Group and various FWO sector reference groups. Ai Group also consults with and provides feedback on behalf of business a wide variety of other forums, including to promote and support business education that will enable business compliance.

Members who would like to talk about their obligations are encouraged reach out to the Workplace Relations Policy Team on wrconsultation@aigroup.com.au.

Return to Executive Summary

New Report Calls for Stronger Measures to Combat Sexual Harassment

On 25 June 2025, the Australian Human Rights Commission (**AHRC**) released a report on systemic barriers faced by people who experience workplace sexual harassment. The report proposes reforms. See: Speaking from Experience Report.

This report is the outcome of a project which satisfies recommendation 27 of the 2020 Respect@Work Report. Recommendation 27 was to establish a disclosure process that enables victims of historical workplace sexual harassment matters to have their experience heard and documented with a view to promoting recovery. The Australian Government committed to provide $2.6 million over 3 years from 2022-23 to the AHRC to facilitate this process. The AHRC did so, through the Speaking from Experience project, which has culminated in the delivery of this report. The report makes 11 recommendations for reforms, including these proposed changes likely to be of most relevance to members:

- **Increasing WGEA's role**, including by expanding data that WGEA will collect from employers to include attributes such as disability, LGBTIQA+, First Nations and CALD (culturally and linguistically diverse). The report also recommends that numeric targets to be added to each gender equality indicator (**GEI**) – at the moment numeric targets are not included for gender indicators 5 and 6. GEI 5 measures how, when and how often employers engage with their employees on issues of workplace gender equality. GEI 6 measures employer policies, strategies and actions to prevent and respond to sexual harassment, harassment on the ground of sex or discrimination in the workplace.
- **Conduct a legislative review of inconsistencies** in legislation, awards, regulatory policy and practice for working-age children and young people.
- **Restricting the use of non-disclosure agreements** by amending the *Sex Discrimination Act 1984* (Cth) and relevant industrial laws to restrict their use in workplace sexual harassment cases.
- Amending legislation to allow more **information sharing between regulators**.
- Introducing **civil penalties** for breaches of the positive duty to eliminate sexual harassment (i.e. at the moment there are none).

Return to Executive Summary

Positive Duty to Eliminate Disability Harassment and Discrimination

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**Disability Royal Commission**) made 222 recommendations to the Government in its final report. Some of these recommendations included changes to the *Disability Discrimination Act 1992* (Cth).

On 31 July 2024, the Government published its response. This included accepting, in principle, the 15 recommendations related to the *Disability Discrimination Act 1992*.

Key recommendations which have been approved in principle and are likely to be of most interest to members include the following:

- **Reversing the onus of proof** so it is the alleged discriminator who must prove the unfavourable treatment of a person with a disability was **not** because of that disability.
- Increasing the obligation to make '***adjustments'***, by removing references to 'reasonable' and introducing a standalone duty to make adjustments unless it would impose unjustifiable hardship on the person.
- Introducing a **positive duty** on all duty-holders to eliminate disability discrimination, harassment and victimisation based on that introduced under the *Sex Discrimination Act 1984 (Cth)* in respect of sexual and gender-based harassment.

As part of the Government's response to the Disability Royal Commission's Report, it committed $6.9 million to the review and modernisation of the *Disability Discrimination Act 1992* and the Attorney-General's Department has been asked to lead this review.

The Ai Group will engage in this process and AFRA members are encouraged to contact the Workplace Relations Team via email at wrconsultation@aigroup.com.au if they wish to share their experiences or discuss this.

Return to Executive Summary

NSW Law Reform Commission Consultation – Anti-Discrimination Act 1977 (NSW)

In June 2023, the Attorney General has asked the NSW Law Reform Commission to review the *Anti-Discrimination Act 1977* (NSW). The Commission called for preliminary submissions on 20 July 2023 to assist it in identifying key issues of community concern as well as areas for further research and consideration.

Ai Group lodged a submission arguing the Act should:

- Work harmoniously with reforms made to anti-discrimination and workplace laws made by the Commonwealth Government.

- Provide a contemporary and nationally consistent regulatory approach to 'special measures' to support and encourage employers to both build diverse workplaces and address historical disadvantage faced by certain groups;
- Ensure that any amendments relating to sexual harassment do not further complicate the complex regulatory interaction between the Sex Discrimination Act 1984 (Cth), the Fair Work Act 2009 (Cth) and the Work, Health and Safety Act 2011 (NSW), including regulations and codes of practice around psychosocial hazards and the regulatory focus of the Safe Work NSW Respect@Work Taskforce;
- Maintain well-understood concepts of direct and indirect discrimination;
- Maintain current approaches to discrimination, harassment and vilification (rather than adopting positive duties on employers), in light of recent WHS regulatory developments requiring employers (and persons conducting a business or undertaking (PCBUs) to eliminate or control risks relating to psychosocial hazards such as discrimination, harassment and vilification.
- Recognise that the Australian Human Rights Commission is the primary national body and regulator in conducting inquiries into systematic discrimination for persons and organisations in NSW.

Having reviewed the preliminary submissions, the Australian Human Rights Commission has recently released the first consultation paper, with further submissions due by 15 August 2025.

Ai Group will make a further submission and encourages any members who would like to raise any issue or comment in relation to this review to reach out to the Workplace Relations Policy Team by email at wrconsultation@aigroup.com.au.

Return to Executive Summary

PART 9 – MODERN SLAVERY

Australia's *Modern Slavery Act 2018* (Act) is a framework that currently largely requires certain large businesses operating in Australia to describe how they identify and address modern slavery risks in their global supply chains and operations.

In particular, the Act requires entities with annual consolidated revenue of at least $100 million to submit annual modern slavery statements. These statements must address seven mandatory criteria, including detailing the risks of modern slavery in their operations and supply chains, and the actions taken to address those risks. Businesses with consolidated revenue of less than $100 million can also be impacted by reporting obligations through their supply chain engagement with larger entities.

The Act has recently been amended to establish the first Australian Anti-Slavery Commissioner, and Mr Chris Evans was appointed on 11 November 2024. Mr Evan's office is primarily responsible for education and awareness raising, supporting and engaging with people with

lived experience of modern slavery, supporting Australian businesses in addressing risks of modern slavery in their operations and supply chains, and advocacy and research.

Operating in parallel with the Commonwealth Act, is the NSW *Modern Slavery Act 2018* (NSW Act). The NSW Act requires its government agencies and local councils to take reasonable steps to ensure goods and services are not products of modern slavery and to publish annual modern slavery statements that requires reporting by NSW government agencies and local councils. It does not impose obligations on private sector organisations. However, entities wishing to provide goods or services to the NSW Government may need to comply with these requirements to be considered as eligible for government procurement.

The NSW Act establishes a separate office of NSW Anti-slavery Commissioner. The current appointment is Mr James Cockayne.

The NSW Anti-slavery Commissioner is an independent office which has broad oversight over the NSW government to monitor its policies and action in combating modern slavery, issue codes of practice and maintain a public register that identifies government agencies that do not comply and State owned corporations who have failed to report under the Commonwealth Act. The NSW Anti-slavery Commissioner must regularly consult with the Auditor-General and the NSW Procurement Board to monitor the effectiveness of due diligence procedures in place to ensure that the goods and services by government agencies are not the product of modern slavery. He must also promote public awareness and provide advice on steps organisations can take to reduce the risk of modern slavery in their supply chain.

Ai Group is actively engaged to represent member's interests in this area, including through our appointment to the Commonwealth Anti-Slavery Member Reference Group.

Return to Executive Summary

Commonwealth Commissioner Foreshadows Additional Mandatory Due Diligence and High Risk Declarations

Professor McMillan's final report from his independent review of the Modern Slavery Act 2018 (Cth), made 30 recommendations. In 2024 the Government agreed or agreed in principle to 25 of these and noted 5 others, including:

- Noting the recommendation to lower the reporting threshold.
- Noting the recommendation to introduce an obligation to have a due diligence system and to explain the activities taken in accordance with that system in the annual modern slavery statement.
- Agreeing in principle (in part) to the introduction of penalties for non-compliance in relation to the modern slavery statement and the requirement to have a compliant due diligence system.

- Agreeing in principle (in part) to provide for the making of high risk declarations of a region, location, industry, product, supplier or supply chain that is regarded as carrying a high modern slavery risk.
- Agreeing to amend the Guidance for Reporting Entities to provide tailored guidance to small and medium sized entities.

The Government and the Australian Anti-Slavery Commissioner will be consulting in relation to the implementation and further consideration of reforms arising from its response and Ai Group will engage in this consultation. Please contact Louise McGrath via Industry.Policy@aigroup.com.au if you wish to provide input.

In a recent speech at the 2025 Australian Council of Superannuation Investors Conference, the Anti-Slavery Commissioner highlighted these key areas for reform:

- First, the Government agreed in principle to the introduction of **penalties for non-compliant businesses** in response to the Report. These penalties would only be applied for failing to submit a statement, providing false information in a statement, or failing to comply with a request from the Minister to fix or correct a non-compliant statement. The Attorney General's Department is scheduled to begin consultation on this later this year.
- Secondly, **mandatory due diligence**. While the Government only noted this recommendation in its response to the Report, the Commissioner observed the Government did acknowledge its importance and agreed to consult on how enhanced due diligence requirements on modern slavery would align with broader global trends towards human rights due diligence.
- Third, the Government has said it supported the development of **high risk declarations**, which are written declarations that a region, industry, product or supplier is regarded as high risk. The Commissioner indicated it will play a key role in developing this proposal as consistent with its function to identify and address risks of modern slavery in Australian entities' operations and supply chains.

Return to Executive Summary

NSW Commissioner Issues Guidance on Slavery Risks in Construction

The NSW *Modern Slavery Act 2018* (**MS Act**) applies to NSW public buyers.

The MS Act does not directly impose obligations on private sector organisations. However, there may be down-stream obligations imposed on entities supplying services or products to the NSW Government, including to identify products and services with higher modern slavery risks and to take steps to address those risks.

The Office of the NSW Anti-slavery Commissioner provides guidance for covered entities, however much of this may assist private sector organisations more generally in addressing modern slavery risks.

On 26 May, the Office of the NSW Anti-slavery Commissioner published its updated its Inherent Risk Identification Tool (**IRIT**) that is used in conjunction with the NSW Anti-slavery Commissioner's Guidance on Reasonable Steps to Manage Modern Slavery Risks in Operations and Supply Chains.

The IRIT included new categories that may assist our members who are seeking to risk assess modern slavery risks, including in the following procurement categories:

- A range of construction materials and components, including steel, concrete, timber, stone and asphalt, as well as electrical, plumbing and HVAC inputs.
- Mobile phones and telecommunications.
- Renewable energy.
- Oil and gas.
- Security services.
- International freight.
- Facilities management: cleaning services.
- Artificial intelligence and data training.

The Office of the NSW Anti-slavery Commissioner has also issued a guide: Modern Slavery Risks in Construction: Overview. This is likely to be of interest for our members in the construction industry who may be required to consider modern slavery risks.

We note that the Federal Anti-Slavery Commissioner supports an uplift in obligations on private sector entities under the Commonwealth *Modern Slavery Act 2018* as discussed above.

Return to Executive Summary

NATIONAL WORKPLACE RELATIONS POLICY AND ADVOCACY TEAM

This report has been prepared by Ai Group's National Workplace Relations Policy and Advocacy Team. The Team represents the interests of Ai Group and AFRA Members through:

- Protecting and representing the interests of Members in relation to workplace relations matters.
- Leading and influencing the workplace relations policy agenda.
- In collaboration with Members, developing policy proposals for worthwhile reforms to workplace relations laws.
- Making representations to Government and Opposition parties in support of a more productive and flexible workplace relations system.
- Writing submissions, preparing evidence and appearing in major cases in the Fair Work Commission.
- Representing Members' interests in modern award cases and reviews.
- Representing Members' collective interests in significant cases in Courts.
- Representing individual Members in significant cases in the FWC and Courts.
- Keeping Members informed and involved in workplace relations developments.
- Providing forums for Ai Group Members to share information on best practice workplace relations approaches, and to influence policy developments.
- Liaising with regulators including the Fair Work Ombudsman and Departmental officials.
- Writing submissions and appearing in numerous inquiries and reviews carried out by a wide range of bodies including Parliamentary Committees, Royal Commissions, the Productivity Commission, the Australian Human Rights Commission, the Australian Law Reform Commission, and others.
- Opposing union campaigns which would be damaging to competitiveness and productivity.

Ai Group welcomes and values your input and support.

Should you wish to discuss any of the issues in this report, please contact Ai Group's National Workplace Relations Policy team at wrconsultation@aigroup.com.au.

CONTACT US

1300 55 66 77

aigroup.com.au

info@aigroup.com.au

linkedin.com/company/australian-industry-group