

# ACTUS WORKPLACE LAWYERS

## Insights into Current Workplace Relations Issues



**6 March 2024**

Welcome to the March edition of Actus Workplace Lawyers' *Insights into Current Workplace Relations Issues*. Please get in touch if you would like to discuss any of the issues covered in this edition or the workplace relations services or support that Actus Workplace Lawyers could provide to your business.

### **Operative dates of 'Closing Loopholes' changes to the Fair Work Act**

So many amendments are being made to the Fair Work Act, due to the Government's Closing Loopholes Act and Closing Loopholes (No 2) Act, it is difficult for employers to keep up. [Read more](#)

### **New right to disconnect**

Operative from 26 August 2024, the Fair Work Act will give employees a 'right to disconnect'. An employee will have the right to refuse to monitor, read or respond to contact, or attempted contact, from an employer outside of the employee's working hours unless the refusal is unreasonable. [Read more](#)

### **New delegates' rights provisions – Important implications for bargaining**

The Fair Work Act has been amended to give new rights to workplace delegates. These new rights will have important implications for both modern awards and enterprise bargaining. [Read more](#)

### **\$10 million in penalties imposed on Commonwealth Bank for underpaying staff**

The Commonwealth Bank of Australia (CBA) has been fined more than \$10 million for underpaying a group of employees between 2015 and 2021.

Amongst other contraventions, CBA was held to have breached a better off overall clause in its 2014 and 2016 enterprise agreements. The clause required that, on an annual basis, CBA must calculate the entitlements of each employee under the relevant award and compare this to the remuneration paid under the enterprise agreement. Where a shortfall occurred, the employee was entitled to a top-up payment within a month of the end of the relevant period. CBA failed to carry out this reconciliation process. [Read more](#)

## **Sickness can be a 'disability'**

The Federal Circuit and Family Court has decided that an employee's sickness can be a 'disability' for the purposes of the general protections in the Fair Work Act. The decision has important implications for the rights of an employer to terminate an employee after a lengthy absence due to personal illness. [Read more](#)

## **Intractable bargaining developments**

The Closing Loopholes (No 2) Act has amended the intractable bargaining provisions in the Fair Work Act to prevent the Fair Work Commission from making any determination that reduces any of the entitlements in a previous enterprise agreement (other than agreed terms and terms that provide for a wage increase). The amendments are unfair upon employers and give the unions an incentive not to reach agreement with employers on enterprise agreement terms. [Read more](#)

## **High Court refuses to grant special leave to appeal the BHP public holidays decision and the Compass 'ordinary and customary turnover of labour' decision**

In December 2023, the High Court of Australia refused to grant special leave for the relevant employers to appeal the BHP public holidays decision and the Compass 'ordinary and customary turnover of labour' decision. This means that the decisions of the Full Court of the Federal Court stand.

The BHP public holidays decision was outlined in an Actus Workplace Lawyers [article of 7 November 2023](#).

The Compass 'ordinary and customary turnover of labour' decision was discussed in an Actus Workplace Lawyers' [article of 9 August 2023](#).

## **Enterprise bargaining wage outcomes**

The Fair Work Commission's latest fortnightly enterprise agreement [statistical report](#) (published on 26 February) shows that the average annualised wage increase (AAWI) in agreements lodged for approval between 13 September and 26 January was 3.9%.

This is consistent with the latest [Trends in Federal Enterprise Bargaining Report](#) published by the Department of Employment and Workplace Relations, which shows that the AAWI for private sector enterprise agreements approved in the September 2023 quarter was 3.9%.

Should you wish to discuss any of the issues in this report or require any legal advice or assistance, please contact Stephen Smith, Principal of Actus Workplace Lawyers at [stephen.smith@actuslawyers.com.au](mailto:stephen.smith@actuslawyers.com.au). If any other members of your staff would like to receive this regular report, please advise of the details through this link: <https://actuslawyers.com.au/contact-us>

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