Working Women's Centre NSW
Women's Legal Service NSW

Submission to the Department of Employment and Workplace Relations in response to the Closing Loopholes review

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About Women's Legal Service NSW

Women's Legal Service NSW (**WLS NSW**) advocates for an end to gender-based violence and for gender equality in Australia. As a state-wide specialist women's legal service, we assist women across NSW by providing legal advice and representation from our trauma-informed, holistic legal practice across a range of practice areas including family law, domestic/family and sexual violence, compensation and victims support for victims of crime, discrimination, employment and sexual harassment. We prioritise women who are experiencing deep and persistent disadvantage.

Our specialist programs include:

- First Nations Women's Legal Program, led by First Nations staff and supported by a First Nations Women's Consultation Network,
- Women's Rights, and
- Working Women's Centre.

All three programs focus on responding to legal issues faced by women, with a particular focus on responding to gender-based violence and addressing women's safety, economic security and intersecting discrimination.

We advocate for systemic change through policy and law reform, strategic litigation, and providing education and training to the legal profession, the community services sector and other key stakeholders.

About the Working Women's Centre NSW

The Working Women's Centre NSW (**WWC**) addresses a critical service gap in protecting a woman's right to work safely and free from discrimination, as well as advancing women's employment rights. It provides trauma-informed legal advice and representation, alongside education, training and law reform initiatives to ensure the law better reflects the needs of working women.

Acknowledgements

We acknowledge the Traditional Custodians of the lands on which we live and work across NSW. We pay deep respects to Elders past and present. This is, was and always will be Aboriginal land. We also acknowledge the many women subjected to gender-based violence and workplace exploitation with whom we work, and whose voices inform our advocacy in the hope for positive change.

Contributions

This submission has been drafted by Leigh Gordon, Emily Jol and Emily Gray.

Opening comments

1. We thank the Department of Employment and Workplace Relations for the opportunity to comment on the Closing Loopholes review.
2. The WWC at WLS NSW provides advice, support and representation to women who are experiencing issues related to employment, such as discrimination, sexual harassment, unfair dismissal, unpaid wages or superannuation, and difficulty accessing flexible work arrangements or family and domestic violence leave. We advocate for gender equality and safety in the workplace and economic security for women throughout NSW and Australia.
3. WLS NSW has worked with over one hundred thousand women, and the WWC draws on this experience to apply a feminist analysis to social and legal issues in employment, and determine where we can make the most impactful and positive change.
4. Secure employment is critical to women's financial independence. Women are overrepresented in non-standard employment and more likely to work precariously to balance unpaid caring responsibilities. Gender-based violence also has a disproportionate and severe impact on women's workforce participation, with one in six working women estimated to have previously experienced or be currently experiencing violence.[1]
5. The Closing Loopholes amendments and Paid Family and Domestic Violence Leave Act provide additional protections for precarious workers in the face of prevalent and persistent rates of exploitation. However, some of the new provisions have unintended consequences and do not comprehensively consider the gendered manifestations of workplace exploitation.
6. We welcome this review as an opportunity to strengthen the Closing Loopholes amendments by addressing the gendered nature of workforce participation and the barriers that prevent women from accessing the benefits of the new provisions.

[1] Safe and Equal, *Understanding Family Violence as a Workplace Issue* (Web Page, 2026) <https://safeandequal.org.au/training-events/supporting-businesses-workplaces/family-violence-workplace-issue/>.

Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth)

Providing ten days of paid family and domestic violence leave in a 12-month period for full-time, part-time and casual employees

7. For women who are supported by their employers to access and make use of this new entitlement, the operation of the amendment is appropriate and effective. Women in supportive workplaces are not forced to choose between their personal safety and financial stability, and can access necessary support services and leave violent relationships without sacrificing pay or job security by way of this new entitlement.[2]

8. However, a workplace in which women are supported to take family and domestic violence leave, and supported to return to work when it is safe to do so, is not a reality for many working women in NSW. The "mere existence of the entitlement does not guarantee a turning point" in the recognition of family and domestic violence as a workplace issue, nor in the implementation of workplace protections and entitlements.[3]

9. The operation of the amendment is only appropriate and effective for women who know about this new entitlement, who work for employers that are aware of the entitlement and understand how to facilitate employee access to it, and who do not encounter significant barriers in applying to take paid family and domestic violence leave.

10. Further amendments are needed to ensure that both working women and their employers are aware of this entitlement, that employers understand how to properly and confidentially facilitate access to this entitlement, and to remove the significant barriers which still exist for many women in safely and successfully accessing paid family and domestic violence leave.

Barriers to accessing paid family and domestic violence leave

11. Despite the high prevalence of family and domestic violence in Australia, uptake of this entitlement has been significantly lower than expected because of a

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[2] Australian Industrial Transformation Institute, 'Independent Review of the Operation of the Paid Family and Domestic Violence Leave Entitlement in the *Fair Work Act 2009*' (Report to the Department of Employment and Workplace Relations, August 2024) 12, citing Fair Work Commission, *Family and Domestic Violence Leave Review 2021* (AM2021/55) [2022] FWCFB 2001 (16 May 2022).

[3] Ludo McFerran, 'Paid Domestic and Family Violence Leave: A Turning Point in Recognising DFV as a Workplace Issue?' (Opinion Piece, October 2022).

combination of individual, organisational and systemic factors.[4] These factors include stigma, fear of disclosure, confidentiality concerns, limited awareness of the entitlement, inconsistent employer processes and onerous evidentiary requirements.[5]

12. Section 106B(2) of the *Fair Work Act 2009* (Cth) (**FWA**) defines family and domestic violence as "violent, threatening or other abusive behaviour by a close relative of a person, a member of a person's household, or a current or former intimate partner of a person". The inclusion of the words "current or former" only in relation to a victim-survivor's intimate partner has serious potential unintended consequences.

13. A woman may experience violence by a member of her household who is not her close relative or her current or former intimate partner. A woman who takes the proactive step of extracting herself from that shared household to protect herself from further violence, and then applies to her employer for paid family and domestic violence leave to address the ongoing impacts of the violence she escaped, should unambiguously be eligible to access the entitlement. However, the imprecise wording of the definition means that her coverage may not be assured.

14. A woman who has escaped the shared household where she was experiencing violence by a housemate may not be eligible for paid family and domestic violence leave if her employer applies a strictly literal reading of section 106B(2) on the basis that the perpetrator is no longer a member of her household and is not otherwise captured by the definition. In our view, such an interpretation is unduly literal, impermissibly narrow and contradictory to the beneficial purpose and broad intended application of the paid family and domestic violence leave provisions in the FWA. However, it is nonetheless *an* available interpretation on the face of section 106B(2) which some employers may take up to limit the number of employees in their employ who can access paid family and domestic violence leave.

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[4] Renata Casado, Kantha Dayaram and Mihajla Gavin, *Efficacy of Paid Family and Domestic Violence Leave in Australia: A Review of the Effectiveness of Paid Family and Domestic Violence Leave Entitlement Since its Implementation as a National Employment Standard in Australia* (Report, 2025) 9; Department of Employment and Workplace Relations, *Australian Government Response to the Independent Review of the Operation of the Paid Family and Domestic Violence Leave Entitlement in the Fair Work Act 2009 (Cth)* (Report, 25 February 2025) 10–11; Department of the Prime Minister and Cabinet, *Family and Domestic Violence Leave: Research Findings for the Independent Review of the Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* (Report, August 2024) 16–19.

[5] Casado, Dayaram and Gavin (n 4) 8; Department of the Prime Minister and Cabinet (n 4) 20.

15. We are concerned that the wording of section 106B(2) could have the effect of adversely encouraging women who are experiencing family and domestic violence to remain in violent living arrangements so that they do not risk disentitling themselves from paid family and domestic violence leave. This is starkly at odds with the beneficial purpose and broad intended application of these provisions. Urgent amendments to section 106B(2) are needed to ensure that "family and domestic violence" is defined inclusively and beneficially.

Recommendation 1

We recommend changing the first part of the definition of "family and domestic violence" in section 106B(2) of the FWA so that it is defined as "violent, threatening or other abusive behaviour by a close relative of a person, a *current or former* member of a person's household, or a current or former intimate partner of a person".

16. For a woman experiencing family and domestic violence who needs to access this leave entitlement, sections 106B(1) and 107(3) of the FWA oblige her, while she is actively experiencing and trying to keep herself safe from violence, to:

    a. disclose to her employer the fact that she is experiencing family and domestic violence, and that she needs to do something to deal with the impacts of the violence;

    b. justify to her employer why it is impractical for her to do those tasks outside of her working hours; and

    c. provide evidence that would satisfy a reasonable person that she is experiencing family and domestic violence, that she needs to do something to deal with the impacts of the violence and that it is impractical for her to do those tasks outside of her working hours.

17. The emotional burden on women to disclose to their employers deeply personal and often very traumatic experiences of family and domestic violence is a significant barrier to accessing paid family and domestic violence leave. The requirement to pre-emptively justify why it is impractical for her to manage the impacts of the violence outside of her working hours compounds this burden.

18. Women who are victim-survivors report a strong social and professional stigma surrounding family and domestic violence, alongside feelings of shame,

embarrassment and fear of being judged by coworkers or facing repercussions at work if they disclose their experiences and seek access to this entitlement.[6]

19. Victim-survivors also report privacy and confidentiality fears, especially for women like our client base working in small businesses, in businesses with limited or no human resources (**HR**) capacity, or who are part of small religious, ethnic and/or cultural communities.[7]

20. Working women are not always aware that they have and can access the entitlement to take family and domestic violence leave – and even where they are, there is no guarantee that the employer has the same level of knowledge about this or other employee entitlements.

Recommendation 2

We recommend simplifying the notice requirements for the taking of family and domestic violence leave under sections 106B(1) and 107(3) of the FWA, so that a victim-survivor only needs to disclose that she is experiencing family and domestic violence and needs to do something to deal with the impacts of the violence, and need not pre-emptively justify why she cannot manage the impacts of the violence outside of her working hours.

21. The evidentiary requirements for women applying to take family and domestic violence leave are equally burdensome,[8] and there is very little consistency between employers as to what constitutes sufficient evidence.[9] Women do not all experience family and domestic violence in the same way, nor always in ways which have straightforward effects that can be easily documented.[10] Our casework experience has been that employers are not aware that the evidentiary requirements are only enlivened if evidence is required by the employer.[11]

22. There is likewise a very broad spectrum of what employers consider to be "evidence that would satisfy a reasonable person",[12] with some employers requiring

[6] Casado, Dayaram and Gavin (n 4) 9–10.
[7] Ibid 9, 11.
[8] Ibid 13; Working Women's Centre SA, Working Women Queensland and NT Working Women's Centre, Submission No 56 to Senate Standing Committees on Education and Employment, Review of the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022, 3–4; Department of the Prime Minister and Cabinet (n 4) 23–24.
[9] Department of the Prime Minister and Cabinet (n 4) 23–24.
[10] Working Women's Centre SA, Working Women Queensland and NT Working Women's Centre (n 8) 3–4.
[11] *Fair Work Act 2009* (Cth) s 107(3).
[12] Ibid.

significant medical and other documentation that extends far beyond what we would consider necessary to satisfy a reasonable person. We are concerned that employers appear to have unilateral discretion to decide the circumstances in which it is appropriate to require an employee to provide evidence of family and domestic violence, and what type/s and the amount of evidence she must produce before she can access paid family and domestic violence leave.

23. Clarifications to the evidentiary requirements in section 107 of the FWA which clearly set out the circumstances in which employers may require an employee to provide evidence of family and domestic violence, what type/s of evidence employers can lawfully request from victim-survivors and the amount of evidence necessary to satisfy the reasonable person test would partly alleviate the burden imposed on victim-survivors trying to access this entitlement.

24. Amendments of this kind would also empower victim-survivors to challenge unreasonable directions by an employer to provide onerous, excessive or unduly personal evidence or details of their experiences of family and domestic violence.

Case study

Rachna* experienced escalating family and domestic violence by her partner during her employment. The violence escalated in part because one of Rachna's coworkers, who knew Rachna and her partner outside of work, claimed to Rachna's partner that she was having a workplace affair. Rachna tried to take paid family and domestic violence leave to deal with impacts of the violence that arose during her working hours, but Rachna's employer first did not know about the leave and told her to take annual leave, and then challenged her need to take the family and domestic violence leave. Rachna's employer also inappropriately pressured Rachna to provide detailed information about her situation before deciding whether Rachna could take paid family and domestic violence leave.

**Not her real name.*

Case study

Lovisa* experienced family violence by her sibling. Her sibling's child experienced similar violence, and was placed with Lovisa indefinitely. Around the time of the violence and the placement of Lovisa's niece in her care, Lovisa applied to take paid family and domestic violence leave. Although Lovisa's employer granted this request, and

permitted Lovisa to take five additional days of paid family and domestic violence leave above and beyond the legal entitlement, the employer first required Lovisa to provide a daily breakdown of what she needed to attend to on each day of leave and how it was connected to her and her niece's experiences of family violence. The detailed information Lovisa's employer required from her created a barrier to Lovisa accessing paid family and domestic violence leave. The evidence requested was far beyond what was needed to satisfy a reasonable person of her eligibility for the leave and compounded the traumatic impacts of Lovisa's experience of family violence.

**Not her real name.*

Recommendation 3

We recommend that section 107 of the FWA be amended to clearly set out the circumstances in which employers can require evidence of family and domestic violence, and what type/s and amount of evidence they can lawfully require.

25. We consider that education and awareness campaigns directed at both employee and employer groups are critical to the effective operation of this new entitlement. It is especially important that any such campaigns devote targeted resources to women who are less likely to know about this entitlement and more likely to experience family and domestic violence, including First Nations women, women with a disability, migrant women, women in precarious or unstable employment, and women in regional, remote and rural areas.

26. Education is required across employer industries and sectors because around one-third of women experiencing family and domestic violence find information about this entitlement through their employer.[13] We consider that a specific campaign to educate small businesses is crucial, because small businesses are less likely to know about this new entitlement and less likely to have the HR or administrative resources to effectively implement appropriate policies and processes for women needing to take paid family and domestic violence leave. Small businesses themselves share this view that they need dedicated support to "embed this entitlement as an understood feature of the workplace relations framework".[14]

[13] Department of the Prime Minister and Cabinet (n 4) 13: 31% of women surveyed found information about paid family and domestic violence leave through work colleagues, and 20% of women surveyed found information about paid family and domestic violence leave through workplace materials provided to them.
[14] Department of Employment and Workplace Relations (n 4) 11.

27. Paid family and domestic violence leave cannot be assessed as effective or appropriate if working women are not aware of this new entitlement, nor if employers do not have sufficient knowledge or internal resources to properly implement a paid family and domestic violence leave policy and facilitate safe and confidential access.

Recommendation 4

We recommend that the Government funds education and awareness campaigns about family and domestic violence leave for women (especially First Nations women, women with a disability, migrant women, women in precarious or unstable employment, and women in regional, remote and rural areas), and for employers (especially small businesses).

Fair Work Legislation Amendment (Closing Loopholes) Act 2023 (Cth)

Compliance and enforcement: Criminalising wage theft

28. We welcome the provisions of the Closing Loopholes legislation that make it a criminal offence for employers to intentionally underpay wages or other entitlements that employees are legally owed under the FWA, a modern Award or an Enterprise Agreement.

29. Underpayment of wages is an issue that is of particular relevance to our client base, many of whom are women who are more likely to face workplace exploitation, be employed in insecure work and encounter barriers to accessing remedies. Women who are at particular risk of chronic wage underpayment, or wage theft, include migrant women, women with a disability, First Nations women, young women,[15] older women, and women from culturally and linguistically diverse backgrounds.

30. For migrant women, chronic underpayment and wage theft is an all too common occurrence.[16] Unscrupulous employers have been able to take advantage of gaps in the system to intentionally and chronically underpay migrant workers. They have used insecure work arrangements, engaged in conduct amounting to sham contracting, and taken advantage of workers' visa status to discourage the reporting of wage theft.

31. Whilst it is too early to assess the effectiveness of the new wage theft provisions in practice, we suggest that in order to prevent the exploitation of migrant workers, and for these provisions to be effective at deterring employers, the provisions need to be accompanied by a suite of other changes targeted towards leveling the playing field for migrant workers (as outlined at paragraph 32 below).

32. There is an urgent need for the wage theft provisions to be complemented by "better and more accessible processes for wage recovery, better resourced support services, and a guarantee that migrants' visas will not be jeopardised if they report wage theft".[17] This includes: establishing a dedicated wage theft tribunal; that more resources are allocated to proactive detection of wage theft and exploitation by

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[15] John Howe and Tom Dillon, *Underpaid and Overlooked: The Wage Crisis Facing Young Workers in Australia* (Final Report of the Fair Day's Work Project, July 2025). The survey of young workers across Australia that informed this report found that one-third reported wage theft or financial exploitation.
[16] Bassina Farbenblum and Laurie Berg, *International Students and Wage Theft in Australia* (Report, June 2020); Laurie Berg and Bassina Farbenblum, *Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey* (Report, November 2017).
[17] Bassina Farbenblum and Laurie Berg, 'Wage Theft in Silence: Why Migrant Workers Do Not Recover Their Unpaid Wages in Australia' (2018) *University of New South Wales Law Research Series* 1.

employers and regulatory bodies; that the Fair Entitlements Guarantee be expanded to include migrant workers; and that the Fair Work Ombudsman (**FWO**) is better resourced to assist workers with underpayment calculations, which can be complex, time-consuming and unwieldy.

33. We also emphasise the importance of ensuring that criminal prosecutions should not create any procedural or practical impediment to individual wage recovery using the civil process.

Recommendation 5

We recommend that a new wage theft tribunal be established, facilitating individual wage recovery via mediation and enforceable orders.

Recommendation 6

We recommend that the Government invests in stronger proactive detection of wage theft and workplace exploitation, and that there is an onus on employers to detect and eradicate underpayment of workers.

Recommendation 7

We recommend that the eligibility requirements of the Fair Entitlements Guarantee should be expanded to include migrant workers.

Recommendation 8

We recommend that the FWO is better resourced to assist workers with underpayment calculations.

Recommendation 9

We recommend that criminal prosecutions should not create any procedural or practical impediment to individual wage recovery using the civil process.

34. Wage theft cannot be prosecuted if it cannot be seen, and it cannot be seen if workers do not feel safe enough to be able to report it. The WWC has supported the introduction of the Workplace Justice Visa and Strengthening Reporting Protections pilot, but has continued to advocate for an expanded list of Accredited Third Party certifiers in order for the scheme to be effective and accessible to migrant workers who need it the most.

Recommendation 10

We recommend that access to the Workplace Justice Visa and Strengthening Reporting Protections pilot is expanded, firstly by expanding the list of Accredited Third Party certifiers to include community legal centres as well as unions.

35. As Bargon and Featherstone noted in Redfern Legal Centre's 2019 submission to the Attorney-General on wage theft:

> *"Migrant workers' acceptance of exploitation, their perception of the hurdles of recovering stolen wages, their ongoing fears of removal, coupled with their anticipation of a poor outcome mean that criminalisation reforms do not address the issue at hand – accessing justice with the likelihood of resolve."*[18]

36. We need legislation that ends the misuse of insecure work arrangements (such as engaging workers as casuals or independent contractors when they should be employees, paying wages in cash, failing to pay superannuation, etc.), and a more robust process for protecting migrant workers when they come forward to report workplace exploitation, underpayment or wage theft.

Regulated labour hire arrangement orders: Closing the labour hire loophole

37. Labour hire arrangements have a "genuine" and "critical" role in facilitating short-term employment within fluctuating industries, such as cleaning, horticulture and tourism.[19] However, these arrangements have become an avoidance strategy through which some employers circumvent the minimum pay and condition obligations of direct employees.[20] Migrant workers make up more than half of labour

[18] Sharmilla Bargon and Regina Featherstone, Redfern Legal Centre Submission to the Attorney-General on Improving Protections of Employees' Wages and Entitlements: Strengthening Penalties for Non-Compliance (31 October 2019) 4.
[19] McKell Institute, *Licensing Labour Hire: Promoting a National Labour Hire Licensing Scheme Which Protects Australian Horticulture Workers and Supports Businesses* (Report, February 2025).
[20] Ibid.

hire employees,[21] and are at higher risk of exploitation due to visa conditions that rely on their employer.[22]

38. Following prolonged advocacy, the *Same Job Same Pay* legislation came into effect in November 2024, allowing the Fair Work Commission to make a regulated labour hire arrangement order (**RLHAO**) following an application by an eligible employee or union.[23] Where there is a RLHAO, a protected rate of pay is guaranteed for labour hire employees that aligns with direct employee entitlements where an Enterprise Agreement accords a higher rate of pay than an Award.

39. The reforms are a necessary intervention to prevent labour hire firms from engaging in deceptive and exploitative practices. However, we are concerned that there are limitations within the legislation that may prevent the most vulnerable workers from accessing the protected rate of pay.

Barriers to access imposed by application-based protection model

40. The Department of Employment and Workplace Relations estimated that just 66,446 out of 319,000 active labour hire employees (around one-fifth) would have been eligible to be covered by a RLHAO at the time of the Bill's consultation.[24] The application-based protection model relies on those eligible employees or unions to have sufficient resources to bring cases to the Fair Work Commission. Industries that commonly utilise labour hire arrangements, such as horticulture and cleaning, have lower union membership density.[25] This disproportionately impacts women, who tend to work in sectors characterised by lower wages, smaller rates of union membership and limited bargaining power driven by the historic undervaluation of feminised work.[26]

41. The reliance on an application raises concerns about the consistency of the RLHAO provision across industries, with access to the benefits of the reform beyond the

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[21] Australian Bureau of Statistics, *Labour Hire Workers, December 2024* (Web Page, 4 April 2025) <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/labour-hire-workers/dec-2024#hours-worked-and-underemployment>.
[22] McKell Institute (n 19) 15.
[23] *Fair Work Act 2009* (Cth) s 306E(7).
[24] Department of Employment and Workplace Relations, *Annexures to Certification Letter OBPR22-02409: Closing the Labour Hire Loophole* (Report, 23 August 2023) 18.
[25] Anthony Forsyth, 'Closing the Labour Hire Loophole: Legislative Enshrinement of the "Same Job, Same Pay" Principle for Australian Labour Hire Workers' (2024) 37 *Australian Journal of Labour Law* 135, 154.
[26] Parliament of Australia, Senate Finance and Public Administration References Committee, *Gender Segregation in the Workplace and its Impact on Women's Economic Equality* (Report, 7 June 2017) ch 4, 33–38.

reach of the most vulnerable workers.[27] Granting the Fair Work Commission power to freely issue RLHAOs without an application would allow for a targeted and consistent approach to regulating labour hire that is not reliant on union density or resources.

42. Academics have suggested that implementing the *Same Job Same Pay* principle as a safety net entitlement under the National Employment Standards would have been effective in ensuring labour hire employees have an automatic entitlement to Enterprise Agreements.[28] Alternatively, including mandatory coverage for labour hire employees under Enterprise Agreements could also assist in improving access to the protected rate of pay.

Recommendation 11

We recommend that the FWA be amended to ensure that all Enterprise Agreements have a mandatory coverage provision that covers any worker, including labour hire contractors, doing that classification of work for the host employer, whether a direct employee or not.

Difficulty regulating safety, bullying and discrimination

43. The Victorian Inquiry into Labour Hire and Insecure Work found that labour hire workers commonly face health and safety issues, including sexual harassment, uncompensated injury and discrimination.[29] Vulnerability is compounded for women, particularly migrant women, who are at higher risk of experiencing workplace abuse. It has been considered common practice that labour hire firms, typically in regional, remote and rural areas, will "blacklist" workers who raise complaints about pay and mistreatment.[30]

44. The separation between a labour hire firm's legal responsibility and a host employer's practical control of the workplace creates difficulty in ensuring a safe workplace for labour hire employees. Limited transparency and obscured

[27] Ibid.
[28] Ibid.
[29] Department of Economic Development, Jobs, Transport and Resources, *Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report* (Final Report, October 2016) 20, 130.
[30] Anna Boucher and Gourvika Kumar, Submission No 40 to Parliament of NSW Modern Slavery Committee, Inquiry on Modern Slavery Risks Faced by Temporary Migrant Workers in Rural and Regional New South Wales, 6.

responsibility for decision making means that labour hire firms may inadvertently discriminate against labour hire employees based on the instructions of the host.

45. While the RLHAO seeks to ensure parity of wages and entitlements, we encourage the Government to also give consideration to the additional safety risks and vulnerabilities experienced by women engaged in labour hire work. The WWC has assisted clients engaged as labour hire employees who experienced sexual harassment and discrimination in the course of their work for the host employer by direct employees of the host. We acknowledge that there are avenues to pursue such claims under anti-discrimination legislation, however, consider it important to highlight the FWA remedies that are not available for labour hire employees. In our experience, the complexity of these arrangements has created an insurmountable barrier for women to bring complaints and hold host employers accountable for discriminatory practices.

Case study

Allira* was employed as a casual pick packer by a labour hire firm who contracted labour to a courier company. Allira's employment contract was with the labour hire firm; she did not have an employment contract with the courier company. She worked full-time hours packing and lifting heavy boxes for a period of ten months. Allira became pregnant and informed her supervisor at the courier company she was no longer able to lift heavy items, and requested to be placed on light duties. The courier company declined her request, and told the labour hire firm that Allira was no longer required at work because of a reduction in work volume. No other casuals had changes made to their hours, and Allira believed this was an excuse to not have to accommodate her request.

Allira sought assistance from the WWC because she wanted to take action against the courier company to prevent them from treating other people the same way. We advised Allira that the FWA does not provide a straightforward pathway for making a complaint about the courier company's conduct as the host employer. Allira was not legally considered to be an employee of the courier company, and the contractor relationship was between Allira's employer and the courier company – not between Allira herself and the courier company.

**Not her real name.*

Modern slavery risk persists in the absence of uniform national regulation

46. Labour hire has been inextricably associated with an increased risk of modern slavery. In the 2024–2025 financial year, reports of modern slavery in NSW

increased by 116% despite the *Same Job Same Pay* reforms. Half of those reports came from migrant workers on temporary visas. The increase was directly correlated with an increase in labour hire firms operating in NSW to avoid the licensing restrictions present in Victoria and Queensland.[31]

47. Labour hire firms are not regulated in NSW or obliged to operate under a RLHAO. Whilst not explicitly the subject of this review, we strongly advocate for the Government to establish uniform national labour hire regulations to prevent unscrupulous employers from establishing deliberately exploitative firms in NSW to take advantage of the lack of restriction and oversight.

Recommendation 12

We recommend that the Government implements a uniform national labour hire regulation scheme.

Provide stronger protections against discrimination, adverse action and harassment

48. We have long advocated for and welcome the inclusion of "subjection to family and domestic violence" as a standalone protected attribute under the FWA. However, its effectiveness is limited by the language chosen for the protected attribute, and by the consequences produced by inconsistencies between the FWA as amended and State and Federal discrimination legislation.

49. As we set out in our submissions to the review of the *Anti-Discrimination Act 1977* (NSW), the protected attribute of "subjection to family and domestic violence" excludes from protection women who experience sexual violence outside of intimate and/or family relationships.[32] On its present formulation, working women who experience, for example, sexual harassment, sexual assault or image-based abuse by a coworker or acquaintance with whom they are not in an intimate or family relationship, and who experience discrimination, adverse action and/or harassment because of their subjection to that sexual violence, are not protected from such unlawful action by way of this protected attribute.

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[31] Department of Communities and Justice, *Modern Slavery Rises as Labour Hire Escapes Scrutiny, Says NSW Anti-Slavery Commissioner* (Media Release, 31 October 2025) <https://lpab.nsw.gov.au/content/dcj/dcj-website/dcj/legal-and-justice/our-commissioners/anti-slavery-commissioner/news-and-media/modern-slavery-rises-as-labour-hire-escapes-scrutiny--says-nsw-a.html>.

[32] Women's Legal Service NSW, Submission No 209 to NSW Law Reform Commission, Review of the *Anti-Discrimination Act 1977* (NSW) (September 2025) 34–35.

50. We advocated in those submissions, and reiterate our call here, for the protected attribute to be framed inclusively as "subjection to gender-based violence".[33] This could be supplemented with a non-exhaustive list of examples of relevant violence, for example: "gender-based violence, such as family, domestic or sexual violence".[34] The term "gender-based violence" is more precise, makes clear that the violence is a social problem that requires comprehensive rather than individualised responses, and is inclusive of all people impacted by patriarchal and gendered power structures, including non-binary people.[35]

Recommendation 13

We recommend that the protected attribute of "subjection to family and domestic violence" in section 351 of the FWA be reframed as "subjection to gender-based violence, such as family, domestic or sexual violence".

51. Women who experience unlawful treatment at work because they have experienced family and domestic violence cannot consistently point to this explicit statutory protection to support their claims of unlawful treatment at work. Even with the introduction of this protected attribute as a standalone protected attribute, the general protections provisions of the FWA do not extend to conduct that is not unlawful under any anti-discrimination law in force in the relevant jurisdiction.[36]

52. This limitation on the protection means that working women in NSW (along with several other States, as set out at paragraph 54 below) are unable to utilise the general protections provisions of the FWA to claim discrimination or other forms of adverse action in their employment because they have been subjected to family and domestic violence. An employee is afforded protection only if she seeks to exercise her statutory entitlement to family and domestic violence leave. If the employer responds adversely to this request, Part 3-1 of the FWA protects the exercise of the leave entitlement as a workplace right but not the status or circumstance of being impacted by family and domestic violence. This creates the

[33] Ibid.
[34] Ibid 34.
[35] United Nations Committee on the Elimination of Discrimination Against Women, *General Recommendation No 35 on Gender-Based Violence Against Women, Updating General Recommendation No 19* (2007) 4 [9]; Department of Social Services, *National Plan to End Violence Against Women and Children 2022–2032: Ending Gender-Based Violence in One Generation* (Report, 2022) 36.
[36] *Fair Work Act 2009* (Cth) s 351(2).

unsatisfactory outcome where the substantive vulnerability itself is not protected but rather its ancillary procedural manifestation only.

53. The unintended consequence is that working women wanting to avail themselves of this protection must argue either that:

    a. subjection to family and domestic violence is a characteristic that generally appertains to women, and therefore that the unlawful conduct amounts to sex discrimination, as is the case for working women making complaints of discrimination to the Australian Human Rights Commission or Anti-Discrimination NSW; or

    b. the employer's conduct amounts to disability discrimination, if they can demonstrate a disability arising from the trauma of the violence such as mental illness.

54. Working women across Australia do not enjoy equal access to this new protection. Eligible women working in the ACT, the Northern Territory and South Australia can make a complaint under the FWA;[37] their counterparts in NSW, Queensland, Tasmania, Victoria and Western Australia cannot. Working women across Australia all have this legal protection at work, but very few working women can in fact assert this protection in response to unlawful treatment in employment.

55. Recent changes to the general protections pathway in the Fair Work Commission compound the difficulties women face in asserting this protection at work. Changes to the Form F8 – General Protections Involving Dismissal application form implemented in November 2025 mean that an employee seeking to make a general protections complaint after being dismissed must now:[38]

    a. make submissions about being represented by a lawyer or paid agent at conciliation at the time of lodging her application, in many cases before the employee has had the opportunity to seek legal advice or confirm representation because of the strict 21-day deadline that applies to dismissal applications; and

[37] Working women in the ACT are protected from discrimination on the ground of "subjection to domestic or family violence": *Discrimination Act 1991* (ACT) s 7(1)(x). Working women in the Northern Territory are protected from discrimination on the ground of being "subjected to domestic violence": *Anti-Discrimination Act 1992* (NT) s 19(1)(jb). Working women in South Australia are protected from discrimination on the ground of "being, or having been, subjected to domestic abuse": *Equal Opportunity Act 1984* (SA) s 85T(1)(g).
[38] Fair Work Commission, 'Reforms to General Protections Dismissal Application Processes' (President's Statement, 12 November 2025).

b. explain which general protections provisions of the FWA the employee says the employer has breached, rather than ticking the relevant boxes that may apply as was previously the case.

56. The amendment to the form to remove the tick-a-box format is particularly problematic for our clients. General protections matters are inherently complex legal matters that raise mixed questions of fact and law, and the applicable legislation is not immediately accessible nor easily understandable for many workers. This is especially so for women applying on the ground of subjection to family and domestic violence, who have the additional burden of making a legally challenging argument that the unlawful conduct they have experienced because they have been subjected to family and domestic violence constitutes sex discrimination (as set out at paragraph 53(a) above).

57. Furthermore, we are seeing increasingly restrictive practices by the Fair Work Commission in conciliating general protections matters, including the denial of opening statements, legal representation and interpreters. As of 23 February 2026, the General Protections Benchbook has been removed from the Fair Work Commission website, and any applicants wishing to lodge a general protections claim must first complete a screening quiz. If they do not get the answers to the quiz correct, they are blocked from lodging a claim. Some of the quiz questions oversimplify complex legal issues without providing corresponding explanations, by making questions such as whether an employee has been made genuinely redundant or has been forced to resign by her employer's conduct simple "yes/no" questions. General protections claims as a remedy are increasingly inaccessible and inadequate. These obstacles to access and understanding are compounded for First Nations women and migrant women.

58. Further amendments are needed to ensure the FWA applies consistently to working women across Australia and does not lock women out of accessing this protection on a legal technicality. We acknowledge that complementary amendments to State and Federal legislation are required to ensure further amendments to the FWA on this basis are effective in their operation. Without equal access for working women across all jurisdictions, any assessments of the effectiveness of this new protected attribute necessarily come with significant caveats.

Recommendation 14

We recommend that section 351 of the FWA is amended so that "subjection to family and domestic violence" applies regardless of whether the conduct would constitute

unlawful discrimination under any other Commonwealth, State or Territory law. This would enable all working women in Australia (those in NSW and the other States listed at paragraph 54 above) to avail themselves of the new protected attribute, rather than being limited by the scope of State anti-discrimination laws.

Fair Work Amendment (Closing Loopholes No. 2) Act 2024 (Cth)

Extend the powers of the Fair Work Commission to set minimum standards for "employee-like" workers

59. Digital platform work is labour facilitated by an app or website that allocates jobs based on location and demand. Platforms generally identify as labour marketplace providers rather than employers, but many take fees from workers who are ostensibly considered independent contractors.[39]

60. Women commonly engage in digital platform labour due to its flexibility, and work with no income security, minimum entitlements, superannuation guarantee or access to workers compensation in the case of injury.[40] Access to flexibility that accommodates for caring responsibilities comes at the expense of adequate pay, safe working conditions, secure employment and career progression.[41]

61. Increasingly, digital platforms are being used to facilitate support work within the care and disability sectors.[42] Publicly funded disability and aged care services utilise digital platform models to retain profit by reducing the cost of labour, supervision and legal regulation. The triangular arrangement between platforms, clients and carers obscures the working relationship and enables business owners to maximise profits by evading the costs and obligations of being an employer by construing care workers as independent contractors.[43]

62. The ambiguity in the characterisation of digital platform labour compounds with gender inequality to expose workers to hazards not typically experienced by employees of independent contractors. Women constitute a majority of digital platform care workers and are largely required to be responsible for their own safety, with platform providers doing very little to ameliorate the risks involved in "cash-for-care" work.[44]

63. The expansion of Fair Work Commission powers to set Minimum Standard Orders in the *Fair Work Amendment (Closing Loopholes No. 2) Act 2024* (Cth) for "employee-

[39] Fiona Macdonald, *Unacceptable Risks: The Dangers of Gig Models of Care and Support Work* (Centre for Future Work at The Australia Institute, May 2023) 4.
[40] Ibid.
[41] Ibid.
[42] Ibid 6.
[43] Ibid 17–18.
[44] Penelope Williams, Robyn Mayes, Maria Hameed Khan, Trish Obst and Paula McDonald, *Gendered Dimensions of Digital Platform Work: Review of the Literature and New Findings* (Research Report, Centre for Decent Work and Industry, Queensland University of Technology, March 2023) 28; Macdonald (n 39) 4.

like workers" was a positive step towards protecting workers engaged in digital platform or gig work. However, we are concerned about the efficacy of the reforms as Minimum Standard Orders are not mandatory and rely on a proactive application to the Fair Work Commission and a subsequent determination. Currently, the only binding Minimum Standard Orders we are aware of cover road transport contractual chain orders.[45] To our knowledge, no Minimum Standard Order applications have been made for disability and aged care support workers.

64. The FWO has identified the heavily feminised aged care and disability sectors as priority sectors for enforcement and compliance. Granting the Fair Work Commission powers to voluntarily make Minimum Standard Orders would facilitate a strategic and targeted approach to protecting vulnerable workers without reliance on an application. Our client base is not aware of the option of proactively applying for a Minimum Standard Order before we advise them of this pathway, and the nature of our client base means working women are often not confident to navigate the application process without assured legal representation.

65. Further, we note that the deactivation protections for employee-like workers outlined in the *Digital Labour Platform Deactivation Code* are framed in a way that excludes digital platform support workers from protection.[46] The triangular relationship between platform, client and carer renders workers more vulnerable to "dismissal" than deactivation. There are no protections for care workers who are dismissed by clients, even though the volume and continuous service period of work performed under the platform would render them eligible for remedies for unfair deactivation under the *Digital Labour Platform Deactivation Code*.[47]

Case study

Min* is a migrant, single mother who is a support worker providing support services to elderly clients. Min uses a digital platform to connect with potential clients, and had been engaged to provide services to an elderly couple, Peter and Polly, since October 2023. Peter and Polly told Min they wanted to stop receiving services from her. Min contacted our service advising she had been "dismissed" in March 2025, and wanted to know what she could do about the termination.

[45] Fair Work Commission, 'Regulated Worker Minimum Standards Cases' (Web Page, 2025) <https://www.fwc.gov.au/work-conditions/regulated-worker-and-road-transport-contractual-chain-standards/regulated-worker-minimum-standards-cases>.
[46] *See Fair Work (Digital Labour Platform Deactivation Code) Instrument 2024*.
[47] Ibid.

Min had already lodged an unfair dismissal application to the Fair Work Commission against the digital platform by the time she came to us for advice. The platform had raised a jurisdictional objection on the basis that Min was not an employee and therefore ineligible for unfair dismissal remedies. Before speaking with our service, Min was unaware that she was an independent contractor and not an employee, and unaware of the unfair deactivation application to the Fair Work Commission she would have been eligible to seek remedies under within 21 days of deactivation. By the time Min came to us for advice, she was well out of time to lodge such a claim.

**Not her real name.*

Recommendation 15

We recommend granting the Fair Work Commission powers to grant Minimum Standard Orders to allow for strategic and targeted protective mechanisms for vulnerable employee-like workers, especially those undertaking digital platform care work.

Amending the definition of "casual employee" and providing the employee choice pathways

66. Women are overrepresented in casual employment and are twice as likely as men to work precariously to balance family and unpaid caring responsibilities.[48] The statistics are even starker for women who are more likely to work in precarious or insecure jobs, including First Nations women, migrant women, women with a disability, young women, older women and women in regional, remote and rural areas.

67. We support the amended definition of "casual employee" in section 15A of the FWA. The explicit inclusion in section 15A(2)(a) of the factor for consideration of "the real substance, practical reality and true nature of the employment relationship" places the true nature of the employment relationship at the centre of this assessment, rather than the previous definition which effectively limited the analysis to the written contract.

68. The previous exclusion of post-contractual conduct created a mechanism for employers to misclassify employees as casual at the commencement of their

[48] Iain Campbell and Sara Charlesworth, 'The National Employment Standards: An Assessment' (2020) 33(1) *Australian Journal of Labour Law* 36, 41; Workplace Gender Equality Agency, *The Gender Pay Gap by Age Group* (Research Brief, June 2022).

employment, allowing employers to enjoy the benefits of long-term employees with regular and systematic hours of work whilst avoiding paying the entitlements and obligations of permanent employment.[49]

69. Our experience with our client base is often the converse scenario: a woman commences (typically) permanent part-time employment, and without warning is directed by her employer to detransition from permanent part-time to casual employment status, often under the guise of redundancy processes.

Case study

Deepti* has been working for a small regional hotel for almost a decade. She works regular part-time hours between March and November, but has an on-call work arrangement between December and February during the hotel's down season. Deepti has never had a written contract, but she knows she is a part-time employee because she accrues annual leave on her pay slips. One day, Deepti's employer hands her a written contract and asks her to sign it on the spot. The contract is for part-time employment but the details of Deepti's employment are not filled out, including her regular hours of work and whether Deepti is guaranteed a minimum weekly number of hours. Deepti is worried that her employer will say she is a casual employee if she does not sign the blank contract, but she is equally worried about what terms and conditions her employer will populate the blank contract with if she signs it without pushing back.

**Not her real name.*

Case study

Alma* works part-time as a youth leader. She worked 16 hours per week for the first two months of her employment, but with her employer's agreement in writing, has been working 32 hours per week for around nine months. Alma is the primary carer for two young children. Alma's employer emails Alma to tell her that it is unilaterally reducing her weekly hours of work back to 16 hours per week, because this is what Alma's original contract says. Alma tells her employer that she does not agree to the change, but she knows that she has to work according to the new reduced roster if she wants to keep her job. Alma does not know if her employer is going to unilaterally change other terms of her employment at the same time as reducing her work hours. When Alma tells her

[49] WEstjustice, South-East Monash Legal Service and JobWatch, Submission No 141 to Senate Standing Committees on Education and Employment, Review of the Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023 (6 April 2023) 4.

employer that she does not agree to the change, Alma's employer offers to make a "redundancy" payment to her, but only if Alma signs a deed of release.

**Not her real name.*

70. We likewise welcome the introduction of the employee choice pathways to permanent full-time or part-time employment, and in particular that the pathways enable working women to proactively assert their eligibility to transition to permanent employment. However, the effectiveness of the new employee choice pathways is limited by employee awareness of the pathways and how to make use of them. Only a very small number of our clients can confidently navigate online legal information and research their legal entitlements; for the vast majority, there is no meaningful awareness of or knowledge about the new employee choice pathways. This is especially so for working women in small businesses, for whom the employee choice pathways only came into effect in late August 2025.

71. We consider that educational resources are needed to ensure that employees are aware of the employee choice pathways, including the eligibility requirements, understand that the employee choice pathway provisions in the FWA comprise several workplace rights which are protected from adverse action, and can make informed decisions about whether or not to take up the employee choice pathways.

Recommendation 16

We recommend the Government funds education campaigns about the employee choice pathways for women (especially First Nations women, women with a disability, migrant women, women in precarious or unstable employment, and women in regional, remote and rural areas), and for employers (especially small businesses).

72. We are also concerned that there are no penalties which may be imposed on an employer that:

    a. does not respond to an employee's notification under section 66AAB of the FWA that she believes she is no longer a casual employee, either at all or in the form legislated by section 66AAC;

    b. does not consult with the employee about the notification before responding to her notification in accordance with section 66AAC(3);

c. rejects the employee's notification even though the employer does not have fair and reasonable operational grounds for doing so in accordance with section 66AAC(4); and/or

d. reduces and/or varies an employee's hours of work, changes an employee's pattern of work or terminates an employee's employment to avoid any right or obligation the employer otherwise owes to her in accordance with section 66L.

73. Employees have some protection by way of section 66L(3) of the FWA, which says that an employee notifying an employer under section 66AAB or receiving a response from an employer under section 66AAC is covered by the general protections provisions in Part 3-1 of the FWA.

74. However, our view is that these protections are neither sufficient nor foolproof, particularly where an employer can successfully argue that they were genuinely but mistakenly motivated in the action they took by a misunderstanding of fact or law.[50] Recent changes to the general protections pathway in the Fair Work Commission (as set out in paragraphs 55–57 above) mean it is harder for employees seeking to avail themselves of these protections to make a strong general protections complaint (assuming the employee is aware of the protections at all). Cost consequences attaching specifically to the employee choice pathways, and failures by an employer to adhere to their obligations in respect of the pathways, are needed.[51]

Recommendation 17

We recommend introducing specific cost consequences in the FWA attaching to the employee choice pathways, including in relation to an employer's obligations under sections 66AAC and 66L.

Right to disconnect

75. The right to disconnect provides an employee with protection against adverse action where she makes a reasonable refusal to communicate with her employer outside of working hours. Driven by a policy rationale of preventing underpayments

[50] This is the work of the term "because" in the test articulated by section 340(1) of the *Fair Work Act 2009* (Cth).

[51] Equivalent submissions were made by WEstjustice, South-East Monash Legal Service and JobWatch before the amendments were enacted into law: WEstjustice, South-East Monash Legal Service and JobWatch (n 49) 5.

and addressing the blurred distinction between work and private life arising from the increase in hybrid work, the right to disconnect has the potential to facilitate better working conditions for women, particularly those undertaking unpaid caring responsibilities.[52]

76. The positive implications of the new provision have become evident, with research identifying a gradual decrease in unpaid overtime work for full-time employees. However, concerns have been raised about the efficacy of the right to disconnect for part-time and casual workers. In the year following the implementation of the right to disconnect, research found that for every seven hours of work, part-time employees work for an hour with no pay.[53]

77. This is likely to disproportionately impact women, who are overrepresented in casual employment and are twice as likely as men to work precariously to balance family and unpaid caring responsibilities.[54]

Case study

Kayla* worked as a casual retail assistant for an athleisure clothing store. Staff were required to do workouts at gyms, go to saunas or attend community fitness events wearing the company-branded clothing, and post about it on social media. The company maintained that this was an optional perk of the job. In reality, staff were expected to attend these activities outside of work hours but were not paid. The company also required its retail staff to be members of five different WhatsApp group chats and to read, monitor and respond to messages outside of rostered working hours.

Kayla has endometriosis and following a flare up could not participate in the exercise activities. Shortly after this, she noticed a reduction in her allocated shifts. When she asked her manager about this, he said that he gave preference for shifts to staff participating in these unpaid out-of-hours activities. Kayla's complaints about this were unheard. She was subsequently dismissed, ostensibly because of a downturn in trade.

The WWC assisted Kayla with a court claim against the company alleging a breach of the general protections provisions of the FWA. We alleged that Kayla's endometriosis was a

[52] Jackson Livori, 'The Right to Disconnect: Finding the Right "Off Switch" for Employers and Employees' (2025) 25 *University of Queensland Law Journal* 13, 13.
[53] Centre for Future Work at The Australia Institute, *Go Home On Time Day 2025: As Full Timers Disconnect, Part Timers are Doing More Unpaid Overtime* (Media Release, 19 November 2025) <https://australiainstitute.org.au/post/go-home-on-time-day-2025-as-full-timers-disconnect-part-timers-are-doing-more-unpaid-overtime/>.
[54] Workplace Gender Equality Agency (n 48).

physical disability, and that the company took adverse action against her by reducing the number of shifts allocated to her because of, or for reasons that included, Kayla's disability and her exercise of workplace rights, by making complaints and inquiries in relation to her employment in contravention of sections 351(1) and 340(1) of the FWA. Kayla also sought compensation and penalties in respect of the company's failure to comply with provisions of the *General Retail Industry Award 2020*, in that the company indirectly prevented her from exercising her right to disconnect.

The company argued in defence that participation in the exercise activities was voluntary but did not address the issue of whether participation had bearing on the company's allocation of work to Kayla and/or to her co-workers.

**Not her real name.*

78. The right to disconnect does not prohibit an employer from contacting an employee outside of work hours. Instead, it provides the employee with a workplace right to reasonably refuse to engage with or monitor that contact. In our experience, this is difficult to exercise as a standalone right. This is also reflected in recent case law that sees the right to disconnect raised as ancillary to a claim for adverse action or unfair dismissal.[55] Further, especially in workplaces where there is a culture of out-of-hours responsiveness, what is considered "reasonable" is ambiguous.

79. The inclusion of the right to disconnect in modern Awards allows an employee to file a Form F92 – Application to Deal With a Dispute About the Employee Right to Disconnect with the Fair Work Commission to request a section 333P "stop order" that prevents the employer from requiring an employee to monitor, read or respond to contact outside working hours. If an employer fails to comply with that order, only then will an employee be eligible to make a court claim seeking remedies. This avenue is only available to active employees, and provides little incentive to pursue as it requires ongoing dispute resolution with one's employer which has the potential to render the working relationship untenable.

Case study

Mari* worked as an accountant at a mid-tier firm for three years. She was the only woman and parent on her team. Outside of working hours, her colleagues routinely replied to emails and texts. Due to her caring responsibilities, she was unable to keep up with these communications, and as such missed out on promotion opportunities. Mari

[55] See, for example, *Bianca Knott v Tru Ninja Pty Ltd* (U2025/16425) where the right to disconnect was raised alongside an unfair dismissal, but no determination was made on that basis.

raised this with her employer, who stated her refusal to monitor communications outside of work was unreasonable as she was the only staff member who refused, and it hindered the team's ability to progress urgent work. Mari filed a Form F92 and the Fair Work Commission issued a "stop order" to her employer.

Mari was no longer required to monitor communications outside of hours, but was excluded from important projects and meetings within work hours. Her employer stated that this was because the projects may have required out-of-hours communications to meet urgent deadlines. The workplace culture became so uncomfortable that Mari resigned.

**Not her real name.*

80. In the absence of a section 333P "stop order", as in our client's case, employers can continue practices that disrupt the right to disconnect with no consequence until an employee is sufficiently resourced and confident to make an application. Despite our client's claim, we know her ex-employer continues to engage in what appears to be a common practice of retail companies expecting employees to monitor and engage with group chats outside of working hours.

81. Since the implementation of the right to disconnect, the Fair Work Commission has received just seven applications, with no published decisions available at the time of writing.[56] It is unclear whether those applications were filed by employees who were seeking remedies for a breach of their right to disconnect, or by employers who have claimed an unreasonable refusal to respond. In our view, the small volume of applications is indicative of the complexity of the provision and the reliance on alternate mechanisms through which to obtain a remedy for adverse action.

82. As we await test decisions, we recommend that the Fair Work Commission provides guidelines on the right to disconnect, outlining the operation of the provision and industry-specific guidance as to what is considered "reasonable" in the context of the right.

[56] 'Why Have So Few Right to Disconnect Applications Been Made?' *Lawyers Weekly* (Web Page, 17 November 2025) <https://www.lawyersweekly.com.au/biglaw/43318-why-have-so-few-right-to-disconnect-applications-been-made>.

Recommendation 18

We recommend that the Fair Work Commission publishes additional guidelines on the right to disconnect.

This submission has been endorsed by:













