

**Colin
Biggers
& Paisley**

HR Highlights Series

Post-Election Employment Law

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Agenda

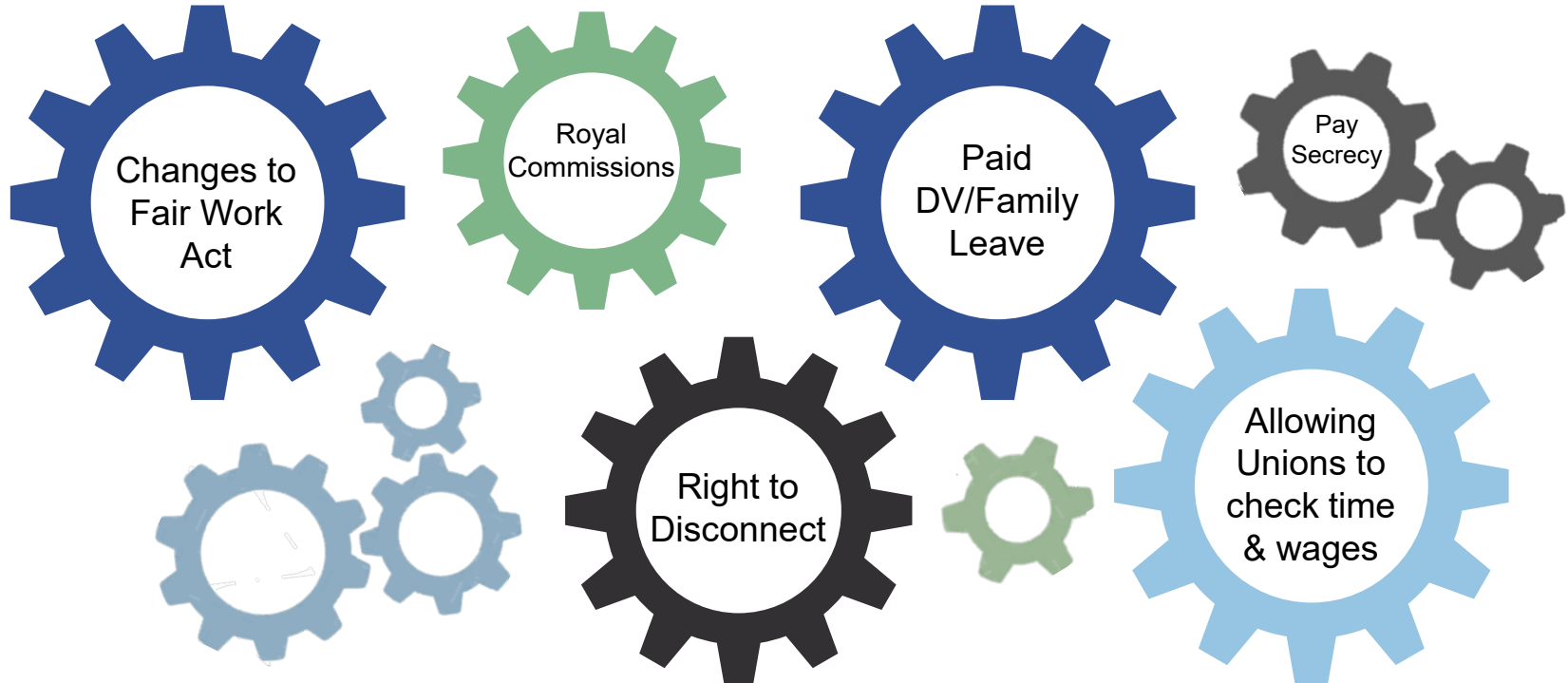


1. What did we see last term?
2. What has the Labour government promised?
3. What can we expect to see next term?
4. What are the key takeaways and next steps for your workplace?

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What Did We See Last Term?

Last Term...



Changes to the Fair Work Act

Respect at Work

*Sex Discrimination and
Fair Work (Respect at
Work) Amendment Act
2021*

Secure Jobs, Better Pay

*Fair Work Legislation
Amendment Act (Secure
Jobs, Better Pay) Act 2022*

Paid Family and Domestic Violence Leave

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

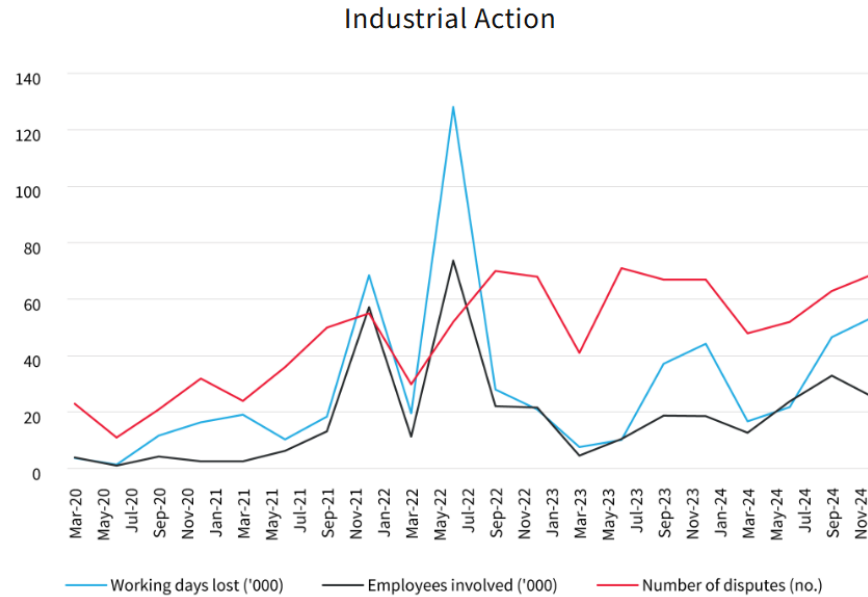
Protecting Worker Entitlements

*Fair Work Legislation
Amendment (Protecting
Worker Entitlements) Act
2023*

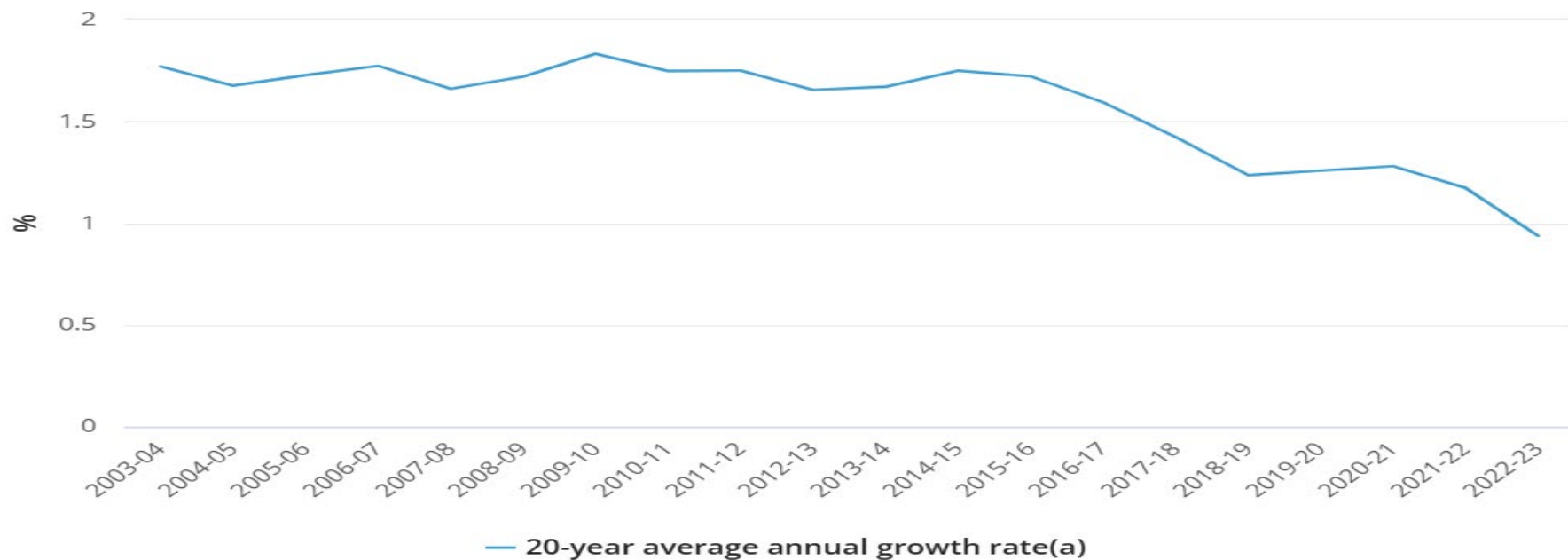
Closing Loopholes

*Fair Work Legislation
Amendment (Closing
Loopholes) Act 2023 and
(Closing Loopholes No. 2)
Act 2024*

Industrial Action



Productivity growth



Multi Employer Bargaining

Key aspects of multi-employer bargaining

Collective bargaining: Several employers negotiate with a union or employee group together to reach a single enterprise agreement for all applicable workers

Industry-wide approach: Streamline negotiations, more consistent conditions across an industry

Potential benefits: Might lead to better pay and conditions, particularly in low paid industries

Types of multi-employer bargaining

- **Single-interest employer agreements:** Where employers have a common interest (e.g., franchisees).
- **Supported bargaining agreements:** Agreements negotiated with the support of the Fair Work Commission.
- **Co-operative workplace agreements:** Agreements where employers agree to co-operate in bargaining.

Obligation to Prevent Sexual Harassment

- In 2022, a positive duty to eliminate sexual harassment was introduced under the *Sex Discrimination Act 1984* (Cth)
- **All** Australian organisations now have a legal obligation to actively eliminate, as far as possible, sexual harassment, sex discrimination and other relevant unlawful conduct
- The Human Rights Commission may investigate and enforce the positive duty
- The ***Guidelines for Complying with the Positive Duty under the Sex Discrimination Act*** recommends seven steps for preventing and responding to sexual harassment:
 1. Leadership
 2. Culture
 3. Knowledge
 4. Risk Management
 5. Support
 6. Reporting & Response
 7. Monitoring, Evaluation & Transparency



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What Has Labor Promised?

Picking through the Press

Minister Watt: **No substantial industrial relations or employment policy announced.** Focus on the “foundations” and getting “real wages rising, employment growing and inflation falling”. If re-elected ALP would continue its work “to build Australia’s future”.

Draft review into **Secure Jobs, Better Pay reforms** was **issued** in **January**. Recommended improvements around fixed term contract limits. Final report yet to be released.

Legislate to protect penalty rates in awards from annualization.

Treasurer Chalmers: **Ban non-compete clauses** for workers earning below the Fair Work Act’s \$175,000 high-income threshold (excluding superannuation and indexed annually), operating prospectively from 2027



Ban on Non-Compete Clauses



Ban on non-compete clauses for workers earning less than \$175,000.



Projected increase of the wages of affected workers by up to 4% or \$2500 annually.



However, employers will suffer the repercussions (higher staff turnover, weakened protective measures).

What else might we see?



FWO active
in compliance



Focus on
positive duty



Focus on
psycho/social

Wage Theft Guidance - Resources

Voluntary Small Business Wage Compliance Code:

Outlines compliance expectations and steps to take to minimise prosecution, including,

- Taking reasonable efforts to understand correct rates of pay and entitlements for employees
- Process for ascertaining the right information about employee entitlements (e.g., role descriptions and classifications, progression and qualifications, hours of work)
- Seeking information, advice and guidance in relation to the payment of wages and entitlements.
- Provides tools, checklists and tips for compliance, record keeping and staying informed by subscribing to the Fair Work Ombudsman's (**FWO**) email updates or joining an employer association.

Compliance and Enforcement Policy: Outlines the FWO's approach to criminal and civil liability.

- Expectation of self reporting of broad/systemic non-compliance as soon as possible
- Exclusion from reporting unintended, isolated errors resulting in underpayments for less than 12 months
- Expands the matters FWO expects employers to report on
- Employers must be able to demonstrate consideration of the guidance, development and investment in robust compliance and audit systems to ensure compliance
- Complex Reporting guide to be released this year
- Guidance also on enforceable undertakings/cooperation agreements

Cooperation Agreements



Promotes Self-Reporting

Cooperation agreements encourage employers to self-report intentional non-compliance with pay obligations, fostering transparency and accountability.

Safe Harbour for Employers

These agreements provide a safe harbour for employers from potential criminal prosecution for failing to meet minimum pay rates under Fair Work Instruments.

Small Business Exemption

Small business employers adhering to the Code are already shielded from criminal prosecution for failing to meet minimum pay rates.

Caveats

Agreements are reached at FWO's discretion, after self-reporting, but no protection from civil liability, only criminal

Major Cases

Road transport' minimum standards order and contractual chain order regime

- Direct and indirect impacts across the economy

FWC Review of part-time employment provisions to make model part time clauses

FWC Review of model consultation clauses

- Union wanting consultation before a definite decision

SDA Application to remove junior rates from retail, fast food awards

- Could flow onto other awards

Cost of Living Relief

Limiting non-compete clauses: Expected to boost wages and mobility

Aged care workforce: Investment of \$2.6 billion for further pay rises for aged care nurses from 1 March 2025

Childcare workers: Investment of \$3.6 billion to support a historic wage increase for early childhood education and care workforce

Student debt: Commitment to decrease student debt by 20% and increase the amount earned before required to repay loans.

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**What Can We
Expect To See
This Term?**

Crystal ball gazing



Reproductive Leave

Possible increase to paid parental leave

Regulation of AI

Expanding portable leave

IR Reform

Increasing Wages

Whistleblower Reform

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Key Takeaways & Next Steps

Key Takeaways

1. We are still waiting to see the detail of any IR/Employment reforms
2. Watch the regulators. They have clearly signalled their intention:
 - Wage Theft
 - Sexual Harassment
 - Psycho-Social Safety
3. Understand those expectations
4. Changes we know that are coming: ban on non-compete clauses under \$175,000



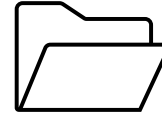
Next Steps



Review Contracts and Payroll



Employee Retention and
Engagement



Update Codes of Conduct
around psycho/social and
harassment

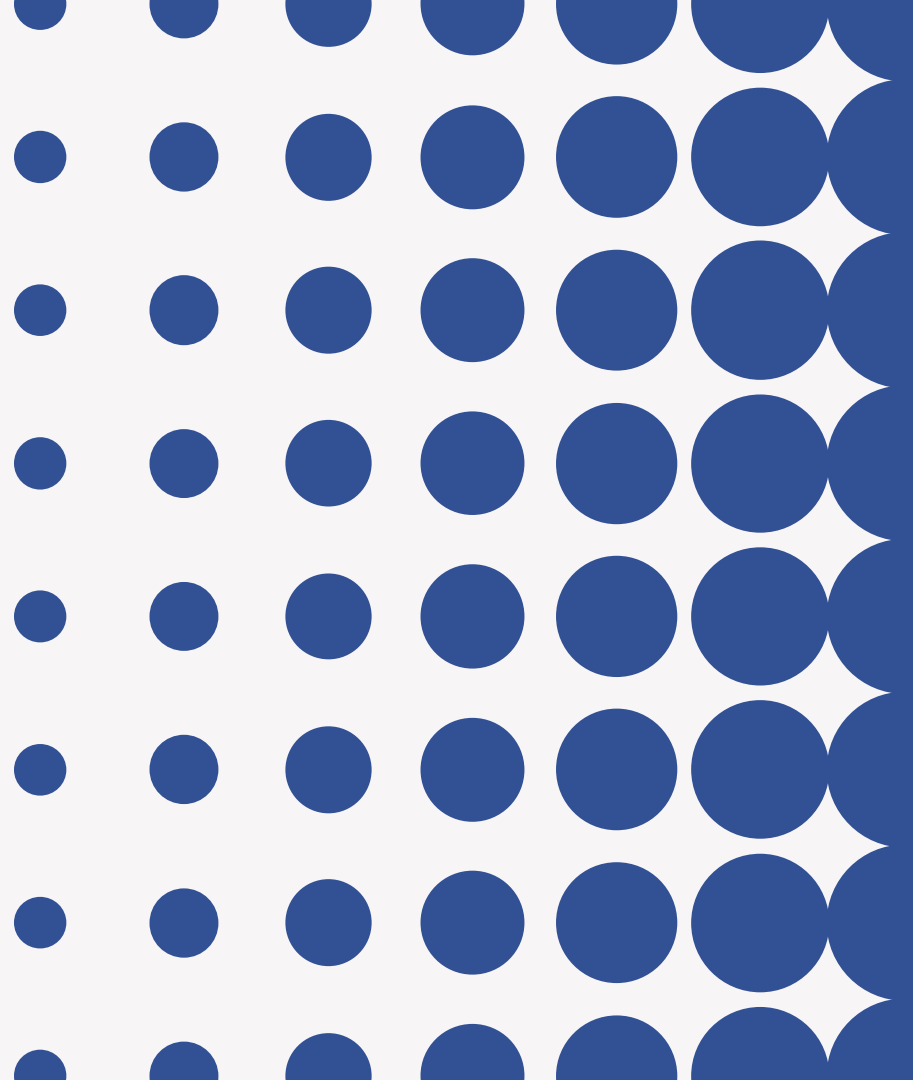
Strengthen or Insert
Confidentiality Provisions in
anticipation of reform in 2027

Alternative Protection Measures

Update Privacy Agreements

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Questions?



Presenters



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Thank you.

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