

October 2025

# A VISION IN THE WORKPLACE

## Our October edition of Vision includes:

- The Victorian Government’s bill to legislate NDA ban;
- The Federal Court’s decision that the Fair Work Ombudsman has the power to hold franchisors to account for the conduct of their franchisees; and
- A tribunal in Queensland awards sexually harassed worker \$140,000 in damages.



## \$150,000 Penalty for Unlawful Dismissal

A tribunal in Queensland has awarded a sexually harassed and assaulted worker \$140,000 in

damages. The worker was employed by Oishi Teppanyaki & Café Pty Limited as a waitress and worked split shifts. The owner of the café contravened s 119 of the *Anti-Discrimination Act 1977* (Qld) by non-consensually touching the waitress and locking the doors to the café to refrain her from leaving.

In the Queensland Industrial Relations Commission, the worker sought costs and compensation for the pain and suffering that was caused to her.

The Queensland police charged the owner with several offences, one of which he plead guilty.

### Holding

Deputy President Hartigan awarded the worker \$140,000 in general damages, \$10,000 in aggravated damages and \$26,434 in costs.

Deputy President Hartigan described the conduct as “*a serious and gross violation*” of the worker’s right to be free from sexual harassment. And said that the conduct “*is an abuse of the power dichotomy and trust inherent in the employment relationship*”.

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## Key Takeaways

Employees and employers should be aware of their rights and obligations, specific to anti-discrimination laws.

If you have any questions about this matter and what it could mean for you as an employee or an employer, please do not hesitate to contact Nick Stevens, Josh Hoggett, Evelyn Rivera or Ayla Hutchison.



## Victorian Government to Legislate NDA Ban

The Allen Labor Government has introduced the *Restricting Non-Disclosure Agreements (Sexual Harassment at Work) Bill 2025 (the Bill)* to the Victorian Parliament. The Bill seeks to limit the use of non-disclosure agreements (**NDA**s) in the settlement of workplace sexual harassment matters, marking the first legislation of its kind in Australia and one of the few globally.

### Non-Disclosure Agreements

NDA's are contractual provisions that restrict parties from disclosing specified information, traditionally used to protect trade secrets and confidential business information. However, they

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have become increasingly common in workplace sexual harassment settlements, often preventing victims from speaking opening about their experiences. This has led to criticism by some commentators that NDAs perpetuate a ‘culture of secrecy’, shielding perpetrators, discouraging employer accountability and silencing victims.

## Key Features of the Bill

The Bill seeks to rebalance power by allowing NDAs only where it serves the victim’s interest. It aims to promote transparency and accountability in workplace conduct, while still preserving confidentiality when requested by the complainant. Key measures of the Bill include prohibiting NDAs unless expressly sought by the complainant, requiring an information statement and review period before signing, banning employer pressure or influence, allowing disclosure to approved bodies such as Victorian police and legal and medical professionals, and enabling workers to terminate an NDA after 12 months with notice.

Premier Jacinta Allan has stated that the legislation ensures victims ‘have a voice’ and prevents misconduct from being concealed. The Bill follows recommendations made by the Victorian

Ministerial Taskforce on Workplace Sexual Harassment. The Allen government first announced its intention to introduce such reforms in 2022 and conducted consultations throughout 2024 to refine the framework.

If enacted, the Bill will significantly reshape how workplace sexual harassment settlements are managed in Victoria. Employers should review their current settlement practices to ensure compliance with the proposed framework.

If you have any questions about the proposed reforms or the implications for your organisation’s employment practices, please do not hesitate to contact Nick Stevens, Josh Hoggett, Evelyn Rivera or Ayla Hutchison.

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## Liability of Franchisors for Underpayments by Franchisees

In the recent decision of *Bakers Delight Holdings Ltd v Fair Work Ombudsman* [2025] FCAFC 144 (**the Decision**), the Federal Court of Australia (**the Court**) has held that the Fair Work Ombudsman (**the FWO**) has the power to hold franchisors to account for the conduct of their franchisees, namely, breaches of the underpayment provisions of the *Fair Work Act 2009* (Cth) (**the FW Act**).

### Overview

Proceedings were brought by the FWO against Make Dough Enterprises Pty Limited (**Make**

**Dough**), a retail bakery operating under the franchised brand “Baker’s Delight” in three locations across Tasmania. Accordingly, the FWO brought proceedings on the basis of alleged underpayment of workers amounting to approximately \$1.2 million, a civil remedy provision of the FW Act. Proceedings were originally brought against the directors of Make Dough, being the franchisee.

However, the FWO also listed the franchisor, being Bakers Delight Holdings Limited (**Bakers Delight**), as a respondent, alleging a contravention of section 558B of the FW Act. Section 558B of the FW Act is a form of accessorial liability, which makes a ‘responsible franchisor entity’ liable for a franchisee’s contravention of workplace law or civil remedy provision, and the franchisor was aware or should have been reasonably aware of the contravention.

Making a finding against Make Dough and Bakers Delight, Bakers Delight sought to challenge the decision with respect to the operation of section 558B, in particular, what the FWO was required to prove about Make Dough’s contraventions of the civil penalty provisions.

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## Holding

The appeal put forward by Bakers Delight was dismissed. It was determined that the FWO's has the power to hold franchisors to account for franchisees' underpayments.

The Full Court in its ruling stated that s 558B of the FW Act "should be approached no differently to the accessorial liability provision in s 550", which describes that "a person involved in a contravention is treated in the same way as an actual contravention". Therefore, the FWO can rely on the "reverse onus of proof" where there is a presumption the employer has contravened the workplace law if it fails to keep proper records and disprove the allegation, in accordance with s 557C of the FW Act.

In total, the FWO alleged that Bakers Delight is liable as the responsible franchisor for the sum of \$642,162.66.

## Key Takeaways

Franchisees should be aware of their obligations owed to their employees, and franchisors should be aware of the actions taken by their franchisees.

If you have any questions about this matter and what it could mean for you as an employee or a franchisee, please do not hesitate to contact Nick Stevens, Josh Hoggett, Evelyn Rivera or Ayla Hutchison.

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