

# A VISION IN THE WORKPLACE

## Our April edition of Vision includes:

- Errant paid agents to be ousted under new code;
- Courts Back Union Enforcement as Woolworths Penalised for Enterprise Agreement Breaches; and
- Neurodivergence Data Collection Crucial to Inclusion.



## Errant Paid Agents to be Ousted Under New Code

The Fair Work Commission's (FWC) President, Adam Hatcher, has released a draft code of conduct for paid agents and is now seeking feedback from stakeholders. The proposed code introduces stronger compliance measures, including potential bans or the revocation of appeal rights for agents who breach their obligations.

Paid agents are not lawyers, yet they charge fees to represent individuals. Unlike lawyers in the legal profession, paid agents are not subject to minimum standards of conduct, experience or qualification. While many may act professionally, a lack of regulation has allowed agents to engage in practices that harm clients or disrupt the Commission's processes.

Concerns heightened in early 2024 following several matters in the FWC involving paid agents from Employee Dismissals. These cases prompted President Hatcher to establish a working group, which consulted widely and produced five recommendations, each of which he accepted.

The release of the draft code, paid agent fact sheet and pre-conciliation disclosure form implements two of these recommendations. Under the proposed code, agents must obtain permission to appear, give clients a written costs agreement, ensure settlement funds are paid directly to clients, refrain from obstructing settlement discussions, act ethically and professionally, and communicate honestly and respectfully with all parties.

The fact sheet aims to inform individuals considering paid agent representation, while the disclosure form, required before unfair dismissal conciliations and general protections conferences, obliges agents to confirm compliance and disclose their fees upfront.

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The push for reform was reinforced by the Commission's findings in the *Howell* matter, where Employee Dismissal failed to inform its client that the agreed settlement amount would not cover its own fees. President Hatcher described Employee Dismissal's conduct as "*misleading and unethical*," and a Full Bench of the FWC later refused permission to Employee Dismissal to represent 46 workers in related applications.

The working group's approach sought to balance stronger protections for vulnerable applicants with the need to preserve access to assistance for those who cannot secure legal representation. The proposed code aims to enforce that balance through clear standards and serious consequences.

The Commission is inviting feedback on the draft materials until 4:00pm on 9 April 2026, with submissions to be sent to [consultation@fwc.gov.au](mailto:consultation@fwc.gov.au).

If you have questions about how these changes may affect you as an employee or franchisee, please contact Nick Stevens, Paul Chapman, Evelyn Rivera, Ayla Hutchison or Dragana Prtenjak.



## Courts Back Union Enforcement as Woolworths Penalised for Enterprise Agreement Breaches

- A series of recent penalty decisions against Woolworths have highlighted a message that courts are increasingly willing to spell out: large employers cannot dismiss compliance failures as minor, localised, or merely "technical".

In proceedings brought by the Australasian Meat Industry Employees' Union, Woolworths Group Limited admitted multiple breaches of its enterprise agreements affecting three part-time employees in Perth. The admissions included failures to provide standard rosters and guaranteed hours, unpaid overtime, unauthorised variations to contracted hours and unlawful payroll deductions.

A panoramic view of a city skyline at night, with numerous skyscrapers illuminated with lights.

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The Court imposed penalties totalling \$233,250 notwithstanding Woolworths' arguments that the contraventions arose from store-level rostering and onboarding practices and were promptly rectified once proceedings were commenced. Judge Sandy Street was clear that remediation after the fact did not neutralise the seriousness of the conduct, particularly where breaches persisted for months and directly affected employees' income certainty.

Importantly, the Court rejected any suggestion that the contraventions were so minor as to warrant little or no penalty. His Honour stated that employees are entitled to expect that organisations of Woolworths' size have systems capable of ensuring compliance with industrial instruments.

One of the more striking elements of the judgment was the Court's focus on governance and accountability. While accepting that senior management did not deliberately engage in or endorse the conduct, Judge Street expressed disappointment at the absence of evidence from Woolworths' senior leadership demonstrating organisational awareness of, and commitment to, compliance obligations with the *Fair Work Act 2009 (Cth)* ("the Act"), and relevant agreements and awards. The lack of what the Court described as evidence from the "corporate mind" weighed against the retailer when penalties were assessed.

Although the penalties represented around 5% of the statutory maximum, the Court ordered that the

full amount be paid to the AMIEU rather than the affected employees. In doing so, Judge Street emphasised that directing penalties to the union best served the remedial and deterrent purposes of the Act, particularly where enforcement action was driven by a union delegate acting on behalf of colleagues.

That aspect of the decision carries broader implications. It highlights judicial recognition of unions as key compliance enforcers within the industrial system and signals support for penalties that encourage proactive enforcement, rather than treating admitted breaches as issues resolved simply through back-pay.

For employers, the lessons are clear: breaches characterised as "technical" can still attract significant penalties. Decentralised or store level failures do not insulate corporate entities from responsibility, Courts expect senior-level commitment to compliance, and Early admissions and remediation reduce risk, but do not eliminate it.

For employees and unions, the case confirms the potency of enterprise agreements and the courts' willingness to back union-led enforcement with significant financial consequences.

Ultimately, the Woolworths' decisions serve as a reminder that compliance must be systemic, embedded and actively overseen, not merely assumed.

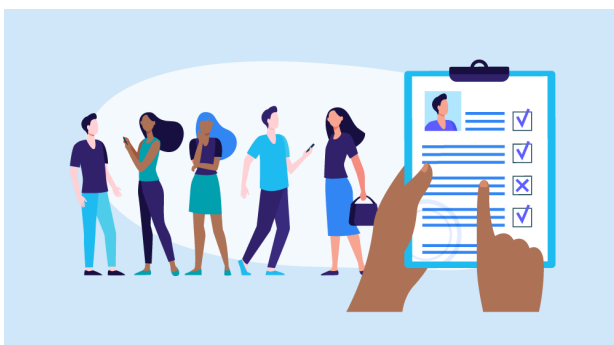
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Karki v Woolworths Group Limited [2026]  
FedCFamC2G 411

Ling v Woolworths Group Limited (No 2) [2026]  
FedCFamC2G 410

Dare v Woolworths Group Limited (No 2) [2026]  
FedCFamC2G 407

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## Neurodivergence Data Collection Crucial to Inclusion

New guidance released March 2026 by Diversity Council Australia (DCA) and Autism inclusion organisation, 'Amaze', has drawn attention to a significant gap in workplace diversity practices. While 15-20% of the global population is estimated

to be neurodivergent, very few employers collect any information which would help understand the needs, experiences and barriers faced by these employees.

According to DCA, failing to gather this data limits an organisation's ability to design effective support systems, identify structural barriers or measure whether its inclusion initiatives are making a meaningful difference. More importantly, the deliberate exclusion of neurodivergence questions can be interpreted by employees as a sign that their organisation does not consider neuroinclusion a priority. As awareness continues to grow, silence on the topic may send an unintended message of exclusion.

The guidance emphasises that neurodivergence covers a broad spectrum of cognitive and neurological differences, including autism, ADHD, dyslexia, dyspraxia, dyscalculia, Tourette syndrome and mental health conditions. Many individuals' self-identity based on their lived experience without a formal diagnosis, often due to financial, cultural or accessibility barriers. Recognising this diversity of experience is central to building data collection processes that are respectful, inclusive and fit for purpose.

The release focuses on helping employers establish a baseline approach. It stresses the importance of allowing employees to self-identify, being clear about how information will be used and protected

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and ensuring that any data collection method is genuinely accessible. Something as simple as tightly packed text can create barriers for employees with dyslexia, and vague or euphemistic language can confuse or deter many neurodivergent workers. DA also highlights the need for strong privacy protections, noting that non-anonymous neurodiversity information is treated as sensitive data under privacy laws and must be handled with strict care.

One of the strongest messages in the guide is that collecting neurodiversity data should never become a hollow exercise. Organisations are encouraged to use the insights meaningfully, whether through public reporting, benchmarking, co-designing neuroinclusion initiatives or implementing proactive workplace adjustments. The purpose is not to create another administrative process, but to give employers a clearer understanding of the structural barriers that neurodivergent employees face and how those barriers can be removed.

The guidance recommends asking two questions: one that establishes whether an employee identifies as neurodivergent, and another that explores the type of neurodivergence they identify with, such as autism, ADHD, acquired brain injury, learning and communication differences,

intellectual disability or mental health conditions. Employees should be able to select more than one option, recognising that co-occurring neurotypes are extremely common. As space for individuals to describe their neurodivergence in their own preferred terms is also encouraged. Importantly, this second question should only ever be asked in anonymous surveys, particularly in smaller organisations where individuals could be inadvertently identified.

DCA also stresses that neurodiversity should be addressed separately from disability in workforce surveys. Many people view the two categories as distinct. Combining them risks confusing the data or creating barriers to disclosure.

As workplace expectations continue to evolve, neuroinclusion is becoming a defining feature of modern employment culture. Employers who take proactive steps to collect respectful, transparent and accessible neurodiversity data will be better positioned to understand their workforce and to demonstrate genuine commitment to inclusion. The message from DCA is clear: neurodiversity cannot remain invisible in workplace reporting if organisations want to build an environment where all employees can thrive.

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