

A VISION IN THE WORKPLACE

Our March edition of Vision includes:

- The Victorian Government’s proposed legislation to legally entrench a right to work from home;
- FWC Confirms Constructive Dismissal After Flawed Process; and
- Introduction to our New Team Members



Victorian Governments Proposed WFH Legislation

The Victorian Government is proposing groundbreaking legislation to legally entrench a right for employees to work from home (WFH) “at least two days per week”, where their role can

reasonably be performed remotely, aiming to boost workforce participation and work–life balance.

Crucially for small businesses, no exemption by size will be made. Subsequently, all employers, including those with fewer than 50 staff or under \$10 million turnover, will be bound once the law passes. The policy, expected to be introduced later this year and debated in Parliament, has provoked strong small business and business lobbyist concern about added regulatory burden, compliance complexity and operational feasibility.

Key Points of the Legislation

The Government’s design statements indicate the reform will cover public and private sector workers in Victoria, creating a legally protected ability for employees to WFH two days per week for roles that can be performed remotely.

A key policy decision is that business size will not determine coverage, the right will apply “no matter the size of your workplace,” capturing an estimated 1.3 million Victorians employed by small businesses.

The Government frames the changes as supporting household budgets and workforce participation, particularly for parents, and as consistent with hybrid work practices already embedded in many workplaces. It also says the current position reflects consultation led by the government on which

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cohorts should be covered and whether any business size threshold should apply.

Key Takeaways and Implications

For small businesses, “regulatory burden” is less about a two-day entitlement and more about the processes required to implement it. Scott Veenker, Acting CEO of the Victorian Chamber of Commerce and Industry, argues the reform is an “additional impost,” noting many small businesses lack HR teams to interpret and apply new legal rights.

HR capability matters because HR typically converts legislation into policy, eligibility tests and defensible decisions, including defining “reasonableness” and managing disputes. Without this infrastructure, these tasks fall to owners and managers, increasing time costs, inconsistency risks and exposure to challenges.

A uniform entitlement also clashes with operational diversity. The Council of Small Business Organisations Australia notes many small businesses cannot support remote work due to customer service, on-site operational or security needs. Even with a “reasonable to work from home” test, employers may still face extra administrative work assessing roles and documenting refusals.

Legal uncertainty adds further complexity. State union groups have raised possible constitutional

issues given Victoria has referred most private-sector IR powers to the Commonwealth. If implemented through anti-discrimination-style amendments, businesses will also need to navigate how the new state entitlement interacts with the federal flexible work framework, potentially increasing rather than reducing complexity.

For employees who can “reasonably work from home,” hybrid arrangements would shift from a discretionary benefit to a protected right, significant for parents and carers balancing commuting and childcare. One area of contention is the proposed probation exemption. If retained, employees may need to attend onsite during probation and renegotiate hybrid patterns afterwards.

Premier Jacinta Allan frames the policy as boosting workforce participation, especially for parents, and supporting gender pay equity. She also cites CEDA data suggesting employees working five days a week from home is 20% more productive. Industrial Relations Minister Jaclyn Symes highlights cost-of-living benefits, arguing WFH reduces commuting costs without harming productivity.

Business groups, however, call the proposal an “overreach” that undermines organisational autonomy and increases compliance, particularly for small businesses. Some warn it may reinforce an

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“anywhere but Melbourne” hiring approach if Victoria is seen as a high-compliance state.

In practice, employers should expect a more formalised WFH decision process, with greater emphasis on documenting role requirements, reasonableness assessments and potentially more disputes where expectations differ.

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



FWC Confirms Constructive Dismissal After Flawed Process

- The Fair Work Commission’s (FWC) recent decision in *Courtney Sewell v dnata Airport Services Pty Limited* [2025] FWC 2823 (Sewell) serves as an important reminder of the risks employers face when workplace investigations fall short of proper processes. Irrespective of whether an employer acts promptly, any procedural or communicative flaws can still lead to findings of unfair dismissal. This case, coupled with the decision in *Adela Werner v SkinKandy VIC Pty Ltd* [2025] FWC 389, highlights an ongoing theme within the FWC, that mishandled investigations continue to expose employers to significant legal and reputational risk.

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Overview

On 9 March 2025, Ms Sewell reported that she had been sexually harassed by a colleague. While her Duty Manager initially prioritised her safety, the FWC found that she was not provided with clear information about how her complaint would be managed or what steps would follow. No meaningful escalation occurred until she took personal leave due to stress, after which Dnata Airport Services (DAS) commenced an internal investigation.

The investigation, however, failed to explore whether Ms Sewell had made contemporaneous disclosures to colleagues, despite two individuals later confirming she had spoken to them shortly after the incident. As this line of inquiry was not pursued, those witnesses were not interviewed and their evidence was excluded. The investigation ultimately concluded the allegations could not be substantiated.

Communication throughout the process was inconsistent. Ms Sewell was informed of the outcome verbally, while the alleged perpetrator received formal written findings. Ms Sewell was also rostered to work alongside the alleged perpetrator before eventually receiving written confirmation of the findings, despite requesting for it twice. When the findings were provided, the wording was

ambiguous, creating uncertainty as to whether the allegations were substantiated, partly substantiated or rejected.

Although DAS offered alternative work arrangements to Ms Sewell, each of which required significant compromise and failed to address her workplace concerns, including the sexual harassment complaints and her issues regarding DAS's practical working environment. Feeling unsupported and left without reasonable alternatives, Ms Sewell resigned on 30 April 2025.

Decision

Deputy President Beaumont found that Ms Sewell's resignation was not voluntary, but the direct result of DAS's mishandling of both the investigation and its aftermath. The FWC determined that DAS failed to establish a clear escalation pathway, did not proactively escalate a sexual harassment complaint, and conducted an investigation lacking depth and strategic inquiry.

It also communicated inconsistently with the parties and incorrectly assumed findings could not be made in the absence of witnesses or documentary evidence. The FWC was particularly critical of the unequal treatment of the complainant and the Respondent, including the manner in which the outcome was communicated. In these

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circumstances, it was reasonable for Ms Sewell to conclude she could not safely remain in her employment. Her resignation was therefore a constructive dismissal, and she was awarded \$36,468.39 in compensation.

Key Takeaways

This decision reinforces that workplace investigations must be procedurally fair, clearly communicated, and grounded in proper understanding of legal obligations. Investigators must assess credibility broadly including consistency of accounts and contemporaneous disclosures. The absence of witnesses does not preclude reasoned findings and the FWC expects investigators to critically engage with available evidence rather than defaulting to inconclusive outcomes.

Sewell highlights the importance of purposeful interviewing. Effective investigations require more than recording accounts. They demand active inquiry into potentially overlooked evidence. Failure to pursue obvious lines of inquiry risks excluding material evidence capable of influencing the outcome.

Consistent and transparent communication is equally critical. Parties should be informed in a timely manner, provided with written outcomes,

and treated equitably throughout the process. In matters involving sensitive allegations such as sexual harassment, employers must also consider the complainant's psychological safety, including rostering arrangements and ongoing workplace interactions.

Sewell serves as a reminder that a well-intentioned, but poorly executed investigations can expose employers to significant liability. Structured, transparent and legally compliant complaint processes are essential to mitigating unfair dismissal risk and maintaining a safe workplace. Employers uncertain whether their frameworks meet contemporary standards should consider seeking legal advice or specialist training.

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, Paul Chapman, Evelyn Rivera or Ayla Hutchison.

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Introduction to our New Team Members

Paul Chapman

We are delighted to welcome Paul Chapman to the team as our Special Counsel. Paul brings with him more than 20 years of legal experience, with a career spanning insurance litigation, commercial disputes, and complex advisory work. His depth of knowledge and long-standing commitment to excellence make him an exceptional addition to our practice.

Paul joins us from Toomey Pegg, where he spent almost 18 years in a progression of senior roles. Beginning as a Solicitor in 2008, he went on to become a Senior Associate in 2010 and was ultimately appointed Special Counsel in 2022. Across these roles, he worked on a wide range of matters requiring both technical precision and strong strategic insight. His leadership and ability to

guide clients through challenging disputes were highly regarded.

Before his time at Toomey Pegg, Paul built strong foundational experience at Moray & Agnew, working in CTP insurance litigation, and at Rankin Nathan Lawyers, where he progressed from Law Clerk to Solicitor over several years.

Academically, Paul is exceptionally accomplished. He holds a Bachelor of Laws (LLB) with First Class Honours and a Bachelor of Economics, both from Macquarie University, as well as a Graduate Diploma in Legal Practice from the College of Law.

Paul's extensive litigation background, his practical and commercial approach to problem-solving, and his long history of advising clients with clarity and confidence make him a tremendous asset to our team. We are excited to see the impact his expertise will bring to our practice and our clients.

Please join us in welcoming Paul Chapman to the team. We're delighted to have him on board.

Dragana Prtenjak

We are very pleased to welcome Dragana Prtenjak as one of the newest Solicitors joining our team. Dragana brings an impressive blend of legal experience, tribunal exposure, and a strong academic foundation that positions her as a valuable addition to our practice.

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Dragana joins us from the Fair Work Commission, where she has built a strong reputation over the past several years in a variety of Associate roles. Most recently, she served as Associate to Commissioner Ryan, having previously supported Deputy President Boyce and, before that, the wider Commission as an Associate. Her work in these roles has given her deep insight into federal workplace relations, decision-making processes, and the practical application of employment law in complex and sensitive matters.

In addition to her tribunal experience, Dragana has contributed to significant national work through her time at the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, first as a Paralegal and later as a Law Graduate. Her work in this space reflects both her legal capability and her commitment to justice and accountability.

Dragana began her early legal career as a Legal Secretary at Mark Brown & Associates, where she gained practical grounding in litigation support and legal administration. She has continuously built on that foundation with dedication, progressing quickly through increasingly demanding roles.

Academically, Dragana holds a Bachelor of Laws and Bachelor of Psychological Science from the

University of Wollongong, giving her a unique dual perspective on both legal frameworks and human behaviour. She completed her Graduate Diploma of Legal Practice through the College of Law in 2022.

Dragana is known for her professionalism, strong analytical skills, and genuine commitment to supporting fair and equitable outcomes. Her exposure to tribunal processes, investigative work, and client-focused legal practice makes her an excellent fit for our team.

Please join us in welcoming Dragana to the organisation. We're delighted to have her on board.

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