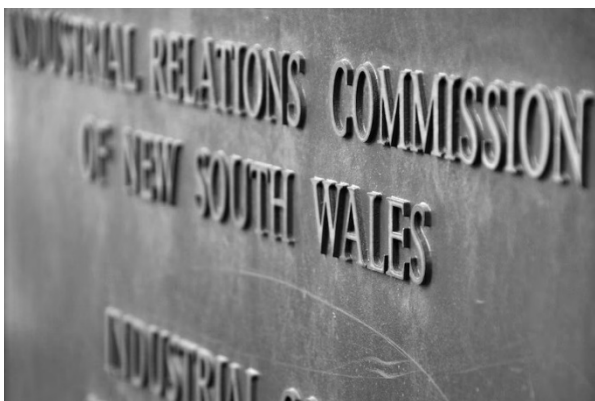


A VISION IN THE WORKPLACE

Our May edition of Vision includes:

- NSW Industrial Relations Commission Awards Major Pay Increases to Public Sector Nurses and Midwives;
- CCTV Surveillance No Threat to Casino Worker; and
- \$6k Compensation after WhatsApp Sacking.



NSW Industrial Relations Commission Awards Major Pay Increases to Public Sector Nurses and Midwives

In *New South Wales Nurses and Midwives' Association v Health Secretary* [2026] NSWIRComm 4 (**the Decision**), the NSW Industrial Relations Commission (**the Commission**) has found that the work of public sector nurses, midwives and

assistants in nursing has been historically undervalued. The Commission awarded heavily front-loaded wage increases of up to 28% over three years to almost 70,000 nurses and midwives across the NSW public health system.

The Full Bench (President Ingmar Taylor, Vice President David Chin and Commissioner Janine Webster) determined that assistants in nursing will receive increases of 28%, enrolled nurses 18%, and registered nurses and midwives 16%. Most increases apply upfront from 1 July 2025: 22% for assistants in nursing, 12% for enrolled nurses, and 10% for registered nurses and midwives. All classifications will also receive annual 3% increases in years two and three.

Key Issues

The central issue before the Commission was whether the circumstances justified a departure from ordinary wage-setting principles. The NSWNMA (**'Union'**) argued that nurses and midwives had experienced long-standing gender-based undervaluation, unrecognised increases in work value, and real wage decline during the COVID-19 pandemic due to cost-of-living pressures and public sector wage caps. The Union sought total increases of 35% over three years.

The Commission also considered the operative date of any increases. While the Union sought

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backdating to July 2024, the NSW Government opposed this on fiscal and industrial relations grounds.

Outcome

The Commission declined to backdate the increases to July 2024, instead determining that the first increase should apply from 1 July 2025. President Taylor stated this approach balanced fiscal impacts, provided certainty, and reflected delays caused by the Union's late commitment to arbitration.

The Commission found that prolonged industrial action, including action contrary to Commission recommendations and undertakings, delayed the outcome by at least eight months.

While the Commission accepted the core work value and gender undervaluation claims, it rejected the Union's claims to double sick leave entitlements and to reinstate a former flexible work arrangements policy. However, it accepted the Union's claim for a "cribbing away from home" allowance for Patient Transport Service nurses.

In justifying the scale of the increases, the Commission relied on three primary considerations. First, it found that nurses' and midwives' wages fell behind inflation during the COVID-19 pandemic, describing the resulting inflation as "extraordinary and unexpected" and warranting a one-off wage reset. Second, it

accepted that since 2009 there have been significant changes in the nature, complexity and demands of nursing work, satisfying the strict test for a work value increase. Third, it concluded that the work has been subject to historical gender-based undervaluation, particularly through the failure to properly recognise caring, communication and interpersonal skills which were historically treated as inherent female attributes rather than high-value professional competencies.

The Commission also relied on the Fair Work Commission's findings of gender-based undervaluation in aged care, supporting higher proportional increases for assistants in nursing and enrolled nurses to properly value their work and ensure compliance with federal minimum pay standards.

Key Takeaways

This Decision represents one of the most significant public sector remuneration decisions in NSW industrial relations history. It confirms that cost-of-living pressures, work value changes and gender-based undervaluation can justify substantial wage increases, particularly in female-dominated professions. The Decision is likely to influence future public sector and gender equity-based remuneration claims under the *Industrial Relations Act 1996* (NSW).

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



CCTV Surveillance No Threat to Casino Worker

- A recent decision of the Victorian Civil and Administrative Tribunal ('Tribunal'), reported by *Workplace Express*, provides a useful examination of how workplace surveillance interacts with protections against psychological harm. The case involved a Crown Melbourne ('Casino') employee who alleged that comments made by a manager about extensive CCTV coverage amounted to a threat or implied misuse of surveillance. The Tribunal rejected that characterisation, finding that the remarks did not constitute a threat and that

the existence or reference to CCTV, of itself, did not amount to unlawful or improper conduct.

The factual context was central to the Tribunal's reasoning. The employee had applied for flexible working arrangements, which were refused. During subsequent discussions, a manager referred to the Casino's extensive CCTV systems. The employee interpreted these remarks as suggesting that surveillance could be used against her if she challenged the decision. However, the Tribunal found that this interpretation was not objectively supported. Rather, the comments were understood as a poorly expressed explanation of the highly regulated operational environment in which the Casino operated. There was no evidence of any intention to intimidate the employee or to weaponise surveillance in response to her request.

From an employment law perspective, the decision turned on the distinction between subjective perception and legally cognisable detriment. The Tribunal acknowledged that modern workplaces, particularly in regulated industries such as gaming, rely heavily on surveillance for compliance, security and integrity purposes. The mere existence of these systems, or their reference in workplace discussions, does not of itself give rise to a breach of duty. What is required is evidence of misuse or conduct that objectively crosses the threshold into intimidation, adverse action, or recognisable psychological harm.

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The Tribunal emphasised that the appropriate test is an objective one. While an employee may feel uncomfortable or mistrustful when surveillance is mentioned in the context of a workplace dispute, the question is whether a reasonable person would view the conduct as threatening, coercive or retaliatory. In this case, that threshold was not met. The comments lacked sufficient specificity or context to support an inference of improper intent.

For employers, the decision offers both reassurance and caution. It confirms that CCTV and other monitoring tools used for legitimate operational purposes will not readily attract liability. However, it also highlights the importance of careful communication. Even neutral references to surveillance, if made during contentious discussions such as flexible work disputes, may be misconstrued if not handled sensitively.

For employees, the case illustrates the evidentiary burden involved in establishing claims of intimidation or adverse treatment linked to surveillance. Concern or anxiety alone is insufficient; there must be a clear nexus between the conduct and a form of legal detriment, such as an explicit threat, a pattern of behaviour, or tangible consequences.

More broadly, the decision reflects judicial reluctance to treat discomfort as unlawfulness, while reinforcing the ongoing need for clear governance and careful communication as

workplace surveillance becomes increasingly normalised.

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



\$6k Compensation after WhatsApp Sacking

A recent decision of the Fair Work Commission (FWC) reinforces that even where an employee engages in misconduct, a dismissal may still be found to be unfair if the employer fails to follow a proper and fair process.

In this case, a truck driver was dismissed following several incidents including placing pornographic material in a staff area, speeding and texting while driving, as well as making comments about the

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number of workplace WhatsApp groups. While the FWC accepted that some of that conduct, particularly the pornography and driving-related incidents, provided valid reasons for dismissal, not all the conduct relied upon was of such gravity as to be a valid reason for dismissal.

Crucially, the FWC found that the employer failed to meet basic procedural fairness requirements. The employee was not warned that his job was at risk, was not clearly notified of the reasons for dismissal before the decision was made and was not given an opportunity to respond. The dismissal occurred abruptly at the end of a shift, with little prior indication of its seriousness.

The FWC also raised concerns about written warnings produced during the proceedings, which the employee claimed he had never received. Considering inconsistencies in the evidence, including questions about whether relevant workplace policies existed at the time, the FWC gave no weight to these warnings and noted the possibility they may not have been genuine.

Despite the existence of some valid reasons for dismissal, the FWC found the dismissal harsh and unjust due to serious procedural deficiencies and awarded the employee \$6,676.16 in compensation.

Key Points

The decision reinforces that while misconduct may provide a valid reason for dismissal, employers must also follow a procedurally fair process. This includes notifying employees of concerns, issuing warnings where appropriate and allowing a genuine opportunity to respond before any termination decision is made.

The FWC was critical of the employer's "relaxed" approach to these obligations, particularly given the size of the business and its capacity to implement appropriate processes.

Key Takeaways and Implications

For employers, this decision highlights that a valid reason alone is not enough to ensure a dismissal is lawful. Procedural fairness remains a critical requirement and failures in processes can undermine an otherwise justified termination. Employers should ensure that disciplinary processes are structured, well-documented, and consistently applied, particularly when dealing with matters involving serious misconduct.

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

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