

A VISION IN THE WORKPLACE

Our June edition of Vision includes:

- Union Case for New Cochlear Deal Finally Heard;
- FWC Confirms “Confronting” Emails Do Not Necessarily Constitute Bullying; and
- School drop-off Challenges Require WFH “balance”.



Union Case for New Cochlear Deal Finally Heard

A bargaining dispute lasting almost two decades is almost unheard of.

The recent ruling of the Fair Work Commission (‘FWC’) however, has brought an end to a 17-year workplace standoff between Cochlear Limited Enterprises and the Australian Manufacturing

Workers’ Union (‘AMWU’). Certainly, the decision represents a gradual evolution of Australia’s entire industrial relations landscape, evidencing increased legislative and procedural complexity, despite the favourable outcome for workers.

The dispute showcases how enterprise bargaining in Australia has transformed into a strategically complex exercise. What began under one industrial framework, ultimately concluded under another – by virtue of successive amendments to the Fair Work Act 2009 (Cth) (‘FW Act’), shifting union influence and increasing scrutiny of bargaining conduct.

The scrutiny paved the way for a breakdown of the growing tension between operational flexibility and employee protections. Employers across heavily unionised sectors have spent the past two decades pursuing agreements that improve efficiency, reduce restrictive work practices and largely provide more adaptability in increasingly competitive markets. Simultaneously, employees and unions have fought to preserve job security and consultation rights that the workforce fears are gradually eroding through bargaining cycles.

The significance of this dispute lies not only in its duration, but in the legal environment through which it survived. Since the introduction of the FW Act, Australia’s bargaining system has steadily shifted toward stronger procedural oversight. “Good faith bargaining” obligations imposed more

A panoramic view of a city skyline at night, with numerous skyscrapers illuminated by lights, creating a vibrant and modern urban scene.

June 2026

A VISION IN THE WORKPLACE

rigorous standards on employer and union conduct, while recent reforms under the Albanese Government's Secure Jobs, Better Pay legislation significantly expanded the FWC's capacity to intervene in bargaining deadlocks through intractable bargaining determinations and arbitration powers.

In many respects, this dispute became a live demonstration of those broader reforms. A conflict that may once have remained entirely industrial increasingly became legal, procedural and reputational. Enterprise bargaining is no longer confined to wage outcomes alone; it now intersects with governance, regulatory compliance, workforce engagement and public perception.

The insider objections raised against the agreement also reflect another major shift within workplace law, the growing focus on whether enterprise agreements genuinely represent employee interests and informed consent. The FWC has become increasingly prepared to scrutinise voting processes, communication practices and bargaining transparency, particularly where allegations arise that workers were pressured, inadequately informed or insufficiently represented.

For employers, the dispute offers several important lessons. First, prolonged bargaining disputes carry consequences extending well beyond industrial disruption. They create operational uncertainty, increase legal exposure, consume management

resources and can significantly damage workplace culture. In an era of heightened public scrutiny and rapid media attention, unresolved industrial conflict can also evolve into a reputational issue affecting investor confidence, recruitment and stakeholder trust.

Second, the matter reinforces that compliance with bargaining requirements is no longer enough. Regulators and tribunals increasingly expect employers to demonstrate meaningful engagement, transparency and procedural fairness throughout negotiations. Employers who approach bargaining purely as a legal or tactical exercise may find themselves facing not only industrial resistance, but regulatory intervention.

For employees and unions, the dispute also serves as a caution. While sustained resistance can preserve workplace protections and extract concessions, disputes extending across decades inevitably produce fatigue, uncertainty and division within the workforce itself. Employees can remain trapped under outdated agreements for years while morale deteriorates and workplace relationships become entrenched in conflict. Even where workers ultimately secure favourable outcomes, the cost of prolonged industrial warfare can be substantial.

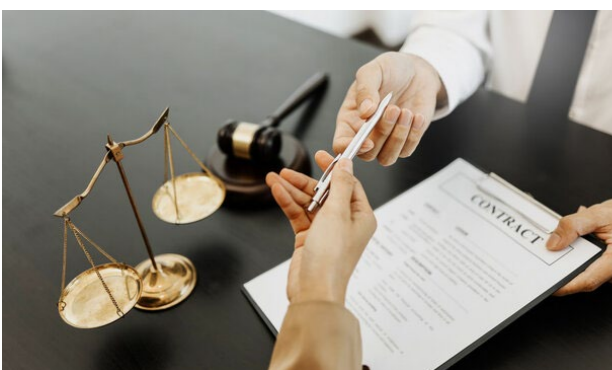
Perhaps most importantly, the dispute demonstrates how deeply workplace law and industrial relations now influence one another. Legislative reforms increasingly shape bargaining

A VISION IN THE WORKPLACE

behaviour, while major disputes simultaneously drive political pressure for further reform. The relationship has become cyclical: industrial conflict informs legal change, and legal change reshapes industrial conflict.

The approval of the agreement may finally close one of Australia's longest-running bargaining chapters, but its broader implications will endure. The case stands as a powerful reminder that enterprise bargaining in 2026 is no longer merely about wages and conditions. It is about governance, legitimacy, compliance, workforce trust and strategic risk, all unfolding under intense legal and public scrutiny.

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



FWC Confirms Confronting Workplace Emails Do Not Necessarily Constitute Bullying

- A recent Fair Work Commission ('Commission') decision *Banfield and Stolz* [2026] FWC 717 has reinforced the distinction between unreasonable workplace bullying and legitimate management action, confirming that direct or confronting workplace communications will not necessarily breach the Fair Work Act 2009 (Cth).

The application arose from a series of emails and workplace interactions alleged to be intimidating, aggressive and psychologically harmful. The employee argued that the tone and manner of the communications amounted to workplace bullying. However, the Commission rejected the claim, finding that the conduct occurred in the context of legitimate workplace management and did not meet the statutory threshold for bullying.

In doing so, the Commission reaffirmed a well-established principle in workplace law: bullying requires repeated unreasonable behaviour that creates a risk to health and safety. Importantly, the Fair Work Act expressly excludes reasonable management action carried out in a reasonable manner.

June 2026

A VISION IN THE WORKPLACE

While the communications in question may have been uncomfortable or confronting, the Commission considered them to be connected to operational and performance-related issues rather than personal victimisation or inappropriate conduct. The decision reflects the Commission's continued reluctance to characterise robust management exchanges or performance discussions as bullying merely because they are perceived negatively by an employee.

The ruling will provide some reassurance to employers navigating increasingly sensitive workplace complaints, particularly in circumstances where managers are required to address performance concerns, compliance issues or workplace conduct. Employers remain entitled to communicate expectations, seek accountability and raise concerns directly, provided those interactions remain proportionate, professional and objectively reasonable.

At the same time, the decision should not be interpreted as diminishing the importance of appropriate workplace communication. Even where conduct falls short of bullying, poorly managed interactions can still contribute to workplace tension, employee disengagement and psychosocial risks. With psychosocial hazards now a significant focus of workplace health and safety regulators across Australia, employers are under increasing scrutiny in relation to workplace culture, communication practices and managerial behaviour.

The practical challenge for employers is balancing legitimate management prerogatives with the obligation to maintain psychologically safe workplaces. This requires more than simply avoiding unlawful conduct. Organisations should ensure managers are trained to conduct difficult conversations appropriately, communicate performance concerns clearly and professionally, and avoid unnecessarily inflammatory or reactive language in communications.

For employees, the decision serves as a reminder that not every unpleasant or stressful workplace interaction will satisfy the legal definition of bullying. The Commission continues to apply an objective assessment, distinguishing between conduct that is genuinely unreasonable and conduct that forms part of ordinary workplace management, even where that management is firm or confronting.

Ultimately, the case highlights the importance of context in workplace bullying disputes. The existence of tension, disagreement or strongly worded communications will not, without more, establish unlawful bullying. However, employers should remain conscious that the manner in which concerns are communicated can significantly affect both legal risk and its broader workplace culture.

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

A VISION IN THE WORKPLACE



School Drop off Challenges WFH “Balance”

Flexible working arrangements have become one of the defining features of Australia’s modern employment landscape. Yet as recent decisions of the Fair Work Commission (FWC) demonstrate, the practical limits of flexibility continue to be tested where operational expectations collide with the realities of employee caregiving responsibilities.

In *Kliffen v Reapit Employment Services Pty Ltd* [2026] FWC 1766, the Commission was required to resolve precisely that tension. The case concerned a working parent seeking to preserve a long-standing remote work arrangement in the face of an employer’s shift toward increased office attendance. While the dispute itself arose from a single flexible work request, it reflects a broader

recalibration of how “reasonableness” is assessed in hybrid work environments.

The Applicant, a part-time training and support team leader, had worked exclusively from home since 2017. This was an arrangement that continued following a transfer of business in 2023. However, when her employer introduced a policy requiring employees to attend the Sydney CBD office two days per week, that arrangement was placed under strain. What might otherwise appear to be a relatively modest change in working conditions became a significant disruption when viewed against the Applicant’s personal circumstances.

Central to the dispute were the Applicant’s caring responsibilities. As the mother of two young children, including one with support needs, her daily routine was structured around managing school drop-offs and behavioural challenges that required consistency and predictability. Evidence from a paediatrician confirmed that disruptions to established routines could exacerbate those challenges. The Commission accepted that even relatively minor changes to start times and commuting patterns had the capacity to produce disproportionate impacts in this context.

Compounding these challenges was the practical reality of the Applicant’s commute. Travelling from Berowra Heights to Sydney’s CBD, a journey of approximately 90 minutes each way, significantly reduced her capacity to manage both morning and evening caregiving responsibilities. Her husband’s early start time further limited flexibility within the

June 2026

A VISION IN THE WORKPLACE

household, effectively placing primary responsibility for school drop-offs and evening care on the Applicant.

Against this backdrop, the employer advanced familiar arguments. It contended that requiring office attendance was necessary to support organisational culture, team cohesion and effective training. These considerations, frequently relied upon in post-pandemic return-to-office policies, were acknowledged by the Commission as legitimate in principle. However, their persuasive force diminished when examined in the specific operational context. Only a small proportion of the Applicant's team was based in Sydney, meaning that digital communication would remain a central feature of the role irrespective of her physical presence in office.

In this sense, the dispute illustrates a growing judicial scepticism toward broad, generalised assertions about workplace culture. While face-to-face interaction is recognised as beneficial, the Commission critically examined whether the marginal benefit of requiring attendance one or two days per week was sufficient to justify the disruption imposed on the Applicant. In this case, it was not.

Importantly, however, the Commission did not accept that the Applicant was entitled to work exclusively from home. Consistent with the statutory framework, it recognised that employers retain the capacity to refuse flexible work requests on reasonable business grounds. What followed

instead was a carefully calibrated outcome that reflects the increasingly nuanced role the Commission plays in these disputes.

The final orders required the Applicant to attend the office only once per fortnight, with the remaining working days to be performed remotely. Even this limited attendance was subject to modification: she was permitted to commence work as late as 10:30 am on office days to accommodate school drop-off responsibilities, with any shortfall in hours to be made up across the fortnight.

This "middle ground" outcome highlights a broader shift in how flexible work disputes are resolved. Rather than approaching such matters as binary questions, whether a request should be granted or refused, the Commission is increasingly willing to impose structured, hybrid arrangements that balance competing interests. Flexibility, in this sense, is no longer a static entitlement but a negotiated and, where necessary, arbitrated equilibrium.

For employers, the decision reinforces that policies mandating office attendance cannot operate in isolation from individual circumstances. Assertions of business necessity must be supported by evidence demonstrating a tangible operational impact, particularly where roles are already performed in geographically dispersed or digitally integrated teams. More broadly, the case highlights the risk of adopting uniform return-to-office policies without sufficient flexibility to accommodate employees with heightened personal obligations.

June 2026

A VISION IN THE WORKPLACE

For employees, the decision illustrates the evidentiary threshold required to succeed in flexible work disputes. The Applicant's success was underpinned by detailed and credible evidence, including medical reports and a clear articulation of how the proposed changes would affect her daily responsibilities. It confirms that while the statutory right to request flexible work is not absolute, it remains a meaningful avenue for employees facing genuine constraints.

Ultimately, the significance of the decision lies not in the specific arrangement ordered, but in what it reveals about the evolving nature of workplace regulation. As hybrid work becomes entrenched, disputes of this kind are increasingly less about location and more about proportionality. How far an employer's operational preferences should extend when weighed against the lived realities of its workforce.

In that context, Kliffen stands as a clear reminder that "balance" is not merely rhetorical. It is a legal standard that the Fair Work Commission is both willing and equipped to define.

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

This publication is intended only as a general overview of legal issues currently of interest to clients and practitioners. It is not intended as legal advice and should only be used for information purposes only. Please seek legal advice from Stevens & Associates Lawyers before taking any action based on material published in this Newsletter.