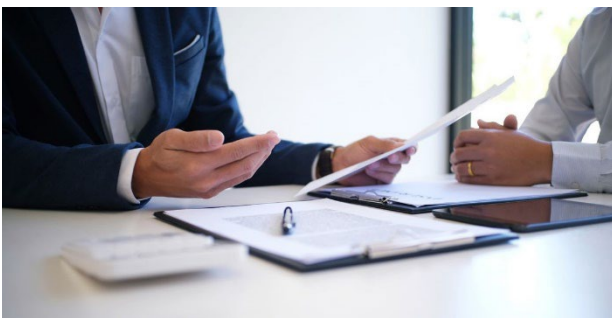


A VISION IN THE WORKPLACE

Our July edition of Vision includes:

- “Anodyne” Case Not Worthy of Suppression Order: Judge;
- Six Months’ PPL, Minimum Wage Rises From 1 July 2026; and
- Hansard Extracts Had No Place in Bias Ruling: Full Court.



“Anodyne” Case Not Worthy of Suppression Order: Judge

The principle of open justice once again took centre stage in the recent case of *Johnson v H&M Hennes & Mauritz Pty Ltd [2026] FCA 834*, with the Federal Court of Australia refusing an application for a suppression order on the basis that the underlying dispute was, in the Judge's words, “anodyne”. While the proceedings undoubtedly carried personal and professional significance for those involved, the Court reinforced that

embarrassment, reputational discomfort or unwanted publicity will rarely justify restricting public access to proceedings.

The case serves as an important reminder that employment disputes do not exist in a private vacuum simply because they concern workplace relationships. Once litigation reaches the Courts, transparency is the default position, and departures from that principle remain exceptional.

The Applicant sought orders preventing publication of identifying information connected with the proceedings. However, the Court concluded that the dispute did not involve confidential commercial information, national security concerns, vulnerable witnesses or other circumstances capable of displacing the long-standing principle that justice should be administered publicly. Instead, the allegations reflected an ordinary employment disagreement, lacking the exceptional features necessary to warrant suppression.

Describing the matter as “anodyne” was particularly significant. The Court was effectively distinguishing between cases that raise genuinely sensitive issues deserving of protection and the broad category of employment disputes that, while important to the parties, are fundamentally routine. The fact that allegations may be uncomfortable, reputationally damaging or

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professionally inconvenient does not classify them as matters requiring secrecy.

This reasoning reinforces the high statutory threshold governing suppression orders in Australian Courts. Such orders are not granted to spare parties from adverse publicity or media attention. Rather, they are available only where they are necessary to prevent prejudice to the administration of justice or to protect other compelling public interests. Open justice remains the starting point because public confidence in the judicial system depends upon courts conducting their work transparently.

For employers, the decision highlights an often-overlooked litigation risk. Organisations frequently focus on the legal merits of a workplace dispute while underestimating the likelihood that pleadings, allegations and evidence may become publicly accessible. Even where allegations are contested or ultimately rejected, their existence may nevertheless attract media reporting or industry attention. Litigation strategy should therefore account not only for legal exposure but also for reputational management from the earliest stages of a dispute.

The decision also carries important lessons for employees. Commencing proceedings may involve public scrutiny extending beyond the immediate workplace. Individuals should understand that personal evidence, employment histories and

allegations concerning workplace conduct may enter the public domain unless exceptional circumstances justify confidentiality. Courts will not shield parties from publicity simply because litigation is personally distressing or professionally inconvenient.

More broadly, the ruling underscores the distinct relationship between workplace privacy and judicial transparency. Employers commonly rely on confidentiality obligations, workplace investigations and internal grievance procedures to protect sensitive information during employment. Those mechanisms, however, do not automatically extend into proceedings. Once a dispute is litigated, the administration of justice is governed by a different set of principles, with openness generally prevailing over private interests.

The practical significance of the decision extends beyond suppression orders themselves. It reinforces judicial reluctance to create a class of confidential employment litigation. If ordinary workplace disputes could routinely be concealed from public view, the transparency that underpins accountability within the legal system would be substantially weakened. Public scrutiny allows the community to understand how employment laws are interpreted and applied, promotes consistency in judicial decision-making and maintains confidence in the administration of justice.

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For employers, the message is clear. Where disputes have the potential to proceed to litigation, reputational planning should sit alongside legal strategy. Internal communications, document management, investigation processes and settlement discussions should all proceed on the assumption that any proceedings may ultimately become public. Prevention, early resolution and careful workplace governance remain the most effective means of managing both legal and reputational risk.

Ultimately, the Court's refusal to suppress this "anodyne" employment dispute reinforces that transparency is not an incidental feature of Australia's justice system, it is one of its defining principles. While exceptional cases will continue to justify confidentiality, ordinary employment litigation will generally remain open to public scrutiny, regardless of the discomfort that publicity may cause to the partner.

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



Six Months' PPL, Minimum Wage Rises from 1 July 2026

- The commencement of the new financial year has once again brought significant workplace reforms. From 1 July, eligible employees can access up to six months of Government-funded Paid Parental Leave (PPL), while the Fair Work Commission's Annual Wage Review delivers increases to the National Minimum Wage and modern award minimum wages. Alongside the introduction of payday superannuation, these changes continue a broader policy trend towards stronger employment protections, greater workforce participation and increased employer accountability.

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While each reform has distinct legal and operational implications, together they require employers to look beyond technical compliance and consider the impact on workforce planning, remuneration, retention and industrial relations.

Paid Parental Leave

The expansion of Government-funded Paid Parental Leave to 26 weeks marks another step in Australia's efforts to better support work and family responsibilities. Beyond providing financial assistance, the reforms aim to encourage ongoing workforce participation and promote a more equitable sharing of caring responsibilities between parents.

The increase in reserved partner leave is particularly significant. By encouraging both parents to access leave, the reforms seek to normalise shared caregiving and reduce the disproportionate impact that extended career interruptions have historically had on women.

For employers, however, the implications extend beyond leave administration. Although the entitlement is funded by the Commonwealth, businesses still must manage the practical impact of longer employee absences through succession planning, replacement arrangements and effective knowledge transfer. Employers with specialised

workforces or limited staffing flexibility may face challenges maintaining business continuity.

The reforms also reinforce the importance of managing employees throughout the parental leave lifecycle. Employers should ensure policies clearly distinguish between statutory leave rights. Employer-funded benefits and the Government-funded scheme, while maintaining appropriate communication during periods of leave.

Importantly, organisations that support parental leave transitions through flexible return-to-work arrangements and effective reintegration strategies are likely to be better positioned to retain talent in a competitive labour market.

Wage increases

The Fair Work Commission's decision to increase the National Minimum Wage and modern award minimum wages by 4.75 % provides cost-of-living relief for low-paid workers, but its effect extend beyond those directly receiving the increase.

Employers must ensure payroll systems, award rates and enterprise agreement wages are updated from the first full pay period on or after 1 July. Beyond compliance, however, wage increases can create broader industrial relations challenges.

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One common issue is wage compression, where the gap between entry-level and more experienced employees narrows as minimum rates rise. This can place pressure on remuneration structures and lead to broader expectations for wage increases across the workforce.

The increases may also create additional cost pressures for labour-intensive industries, prompting businesses to consider productivity measures, restructuring or pricing adjustments. Any such changes must be carefully managed to ensure compliance with consultation and workplace obligations.

The decision also highlights the ongoing importance of payroll compliance. Underpayments frequently arise not from deliberate misconduct but from incorrect classifications, outdated systems or poorly administered salary arrangements. Annual wage reviews therefore present a valuable opportunity for employers to assess broader remuneration and compliance practices.

A shift towards proactive compliance

The introduction of payday superannuation reinforces a broader trend in workplace regulation: entitlements are increasingly expected to be

delivered accurately and in real time, rather than corrected later through enforcement action.

Recent reforms, including expanded wage theft provisions, increased penalties for underpayments and enhanced enforcement powers, reflect growing expectations that employers maintain robust systems to identify and prevent non-compliance before it occurs.

As a result, payroll governance has become a key organisational risk issue. Boards, executives and HR leaders are increasingly expected to understand how payroll systems, employment agreements, workplace policies and industrial instruments work together to ensure compliance.

Looking ahead

The reforms commencing on 1 July represent another stage in the ongoing evolution of Australia's workplace relations framework. Expanded Paid Parental Leave supports workforce participation and more equitable caregiving arrangements, while wage increases and strengthened payroll obligations reinforce the expectation that statutory entitlements are delivered accurately and transparently.

For employers, the challenge is no longer simply responding to individual legislative change. The cumulative effect of successive reforms requires a

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more integrated approach to employment governance that combines compliance, workforce planning, remuneration management and proactive industrial relations practices.

Organisations that treat these reforms as an opportunity to strengthen governance, not merely meet minimum legal obligations, will be better placed to manage risk, support employee engagement and navigate an increasingly complex workplace relations environment.

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



Hansard Extracts Had No Place in Bias Ruling: Full Court

Full court ruling with respect to apprehended bias

The Full Court of the Federal Court has delivered an important decision in *TESA Group Pty Ltd v Mining and Energy Union* [2026] FCAFC 86, providing significant guidance on the interaction between parliamentary privilege, apprehended bias and the integrity of decision-making within Australia's workplace relations system.

Beyond resolving the dispute before it, the judgment reinforces fundamental constitutional principles governing parliamentary privilege while clarifying the evidentiary limits that apply when allegations of apprehended bias are advanced

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against members of the Fair Work Commission or other statutory decision-makers.

Background of the matter

The proceedings arose from an application seeking the recusal of a Deputy President of the Fair Work Commission on the basis of apprehended bias. Prior to their appointment to the Commission, the Deputy President had served as a federal Member of Parliament and Shadow Minister. In support of its application, TESA Group relied extensively on extracts from Hansard, pointing to statements made by the Deputy President during parliamentary debates concerning industrial relations and workplace policy.

TESA contended that these parliamentary statements demonstrated views capable of leading a fair-minded observer to reasonably apprehend that the Deputy President might not bring an impartial mind to the proceedings before the Commission.

The primary question before the Full Court was therefore not whether the statements revealed actual bias, but whether parliamentary speeches could lawfully be admitted and relied upon for that purpose in light of the protections afforded by the *Parliamentary Privileges Act 1987* (Cth).

The Full Court's Judgment

In a unanimous decision, the Full Court held that the Hansard material should not have been admitted into evidence.

Central to the Court's reasoning was section 16(3) of the *Parliamentary Privileges Act 1987* (Cth), which protects parliamentary proceedings from being questioned or impeached in judicial proceedings. The Court concluded that using parliamentary speeches to establish apprehended bias necessarily invited a court to scrutinise, evaluate and draw inferences from what had been said in Parliament. Such use was precisely the type of inquiry the legislation was enacted to prevent.

TESA argued that constitutional principles requiring impartial decision-making justified reading the statutory protections more narrowly. The Court rejected that submission, finding there was no constitutional inconsistency requiring section 16(3) to yield. Parliamentary privilege serves an important constitutional function by preserving the independence of Parliament and ensuring that parliamentary proceedings cannot later become the subject of judicial examination.

Once the Hansard evidence was excluded, the apprehended bias argument could not succeed. The appeal was therefore dismissed.

Although the decision concerns an application for recusal within the Fair Work Commission, its

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significance extends well beyond the immediate dispute.

The judgment confirms that parliamentary privilege remains a robust constitutional protection that cannot be circumvented by characterising parliamentary material as evidence relevant to bias rather than to the substantive issues in dispute. This provides welcome certainty regarding the operation of section 16(3) and reinforces the longstanding separation between the legislative and judicial branches of government.

Importantly, the Court recognised that public office holders frequently bring with them professional, political and policy experience acquired before appointment. Previous participation in parliamentary debate does not, of itself, undermine the independence expected of judicial or quasi-judicial office holders. To permit parliamentary speeches to become routine evidence in recusal applications would expose former parliamentarians serving on courts and tribunals to ongoing challenges based upon positions adopted in the course of democratic debate.

The decision therefore preserves both parliamentary privilege and confidence in the impartial administration of justice by preventing historical political participation from becoming an automatic basis for allegations of apprehended bias.

Implications

For employers, the decision provides greater certainty regarding the evidentiary threshold required to establish apprehended bias in industrial proceedings. Parties seeking the recusal of a Commission member will need to rely on admissible evidence demonstrating objective circumstances capable of giving rise to a reasonable apprehension of bias, rather than historical parliamentary statements protected by privilege.

For employees and unions, the judgment equally reinforces confidence in the institutional independence of the Fair Work Commission. Commission members are appointed from diverse professional backgrounds including, government, private practice, academia and politics. Members are required to discharge their statutory duties impartially. Previous policy advocacy or political engagement will not, immediately, disqualify a Member from presiding over a matter.

The decision also carries important implications for industrial relations practitioners. Lawyers advising clients on recusal applications will need to carefully assess the admissibility of proposed evidence before commencing proceedings. Reliance upon parliamentary debates, ministerial speeches delivered within Parliament or other protected parliamentary material is unlikely to provide a

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viable foundation for future apprehended bias claims.

For lawmakers and policymakers, the judgment reaffirms the constitutional importance of parliamentary privilege within Australia's system of responsible government. Parliamentary debate is intended to facilitate robust public discourse without concern that statements made in Parliament may later become evidence in litigation. The Full Court's decision confirms that this protection remains fundamental, even where competing considerations such as procedural fairness and impartiality are engaged.

Looking Ahead

As appointments to the Fair Work Commission and other tribunals increasingly draw from individuals with diverse careers across politics, industry and the legal profession, questions surrounding prior affiliations and perceived impartiality are likely to continue emerging.

The Full Court's decision provides valuable guidance by distinguishing between a decision-maker's protected parliamentary conduct and admissible evidence capable of establishing apprehended bias. In doing so, it strengthens the constitutional doctrine of parliamentary privilege

while preserving the objective test for impartiality that underpins public confidence in Australia's workplace relations institutions.

For employers, employees, unions and practitioners alike, the decision serves as an important reminder that allegations of bias must rest upon legally admissible and objectively compelling evidence. Parliamentary proceedings remain constitutionally protected, and the courts will not permit those protections to be eroded.

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

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