

September 2026

A VISION IN THE WORKPLACE

Our September edition of Vision includes:

- Draft Non-Compete Laws Released;
- FWC Introduces Mandatory AI Disclosure;
- 'Doomed' AI Claim Attracts Costs Order; and
- AI's First Legal Win?



DRAFT NON-COMPETE LAWS RELEASED

The Albanese Government has released draft legislation that would substantially restrict the use of non-compete clauses and introduce new prohibitions on anti-competitive employment practices. The proposed reforms, contained in the *Competition and Fair Work Legislation Amendment (Banning Unfair Non-Competes) Bill 2026* ('the **Bill**'), are now open for consultation, with submissions due by 2 October 2026.

The reform forms part of the Government's broader agenda to improve competition, increase labour mobility and boost wages. The Government has argued that non-compete clauses can prevent workers from moving to better-paying opportunities and may suppress competition within the labour market. Research relied upon by the Government suggests that around one in five Australian workers are currently subject to a non-compete clause and that removing these restraints could have a positive effect on wages and workforce participation.

Non-Compete Clauses

The Bill would amend the *Fair Work Act 2009* ("**FW Act**") to prohibit non-compete clauses for employees earning at or below the high-income threshold, currently \$190,100 per annum.

Importantly, the prohibition would extend beyond traditional employment contracts. It would also apply to other workplace arrangements, including deeds, workplace policies, modern awards, enterprise agreements and workplace determinations. The explanatory materials indicate that, for national system employees, post-employment restraint provisions would be regulated exclusively under the FW Act, replacing reliance on common law principles and, in New South Wales, the *Restraints of Trade Act 1976*.

The Bill would also prohibit co-worker non-solicitation clauses for all employees, regardless of income. These provisions commonly seek to

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prevent former employees from encouraging colleagues to leave an employer or join a competing business.

No-Poach and Wage-Fixing Arrangements

In addition to the employment law reforms, the Bill would amend the *Competition and Consumer Act 2010* to prohibit businesses from entering no-poach and wage-fixing agreements.

No-poach arrangements generally involve employers agreeing not to recruit or hire each other's employees, while wage-fixing arrangements involve employers agreeing to fix, cap, or control employee remuneration or employment conditions. The proposed reforms would extend Australia's existing framework to these practices.

Consistent with current provisions, civil and criminal penalties would apply to businesses that make, participate in, or give effect to prohibited arrangements. The Australian Competition and Consumer Commission (ACCC) would be responsible for investigating and enforcing these provisions. Notably, the prohibitions would apply only to arrangements involving employees and would not extend to independent contractors.

The draft legislation also includes targeted exemptions for certain arrangements, including joint ventures, labour hire arrangements, secondments and professional sporting leagues.

Protecting Legitimate Business Interests

While the reforms significantly restrict post-employment restraints, the Government has sought to preserve employers' ability to protect confidential information and intellectual property.

The explanatory materials confirm that appropriately drafted confidentiality clauses and non-disclosure agreements (NDAs) will remain lawful. However, confidentiality provisions that are drafted so broadly that they effectively prevent an employee from working elsewhere may be treated as prohibited non-compete clauses.

As a result, employers may need to place greater reliance on carefully drafted confidentiality and intellectual property protections rather than broad restraint provisions.

Penalties and Next Steps

The proposed reforms introduce significant penalties for non-compliance. Employers who include or attempt to enforce prohibited restraint provisions may face penalties of up to \$21,840 for standard contraventions and up to \$218,400 for serious breaches. For corporate employers, existing FW Act penalty provisions could result in penalties exceeding \$1 million in serious cases.

Current employees, prospective employees, unions and Fair Work Inspectors would be able to commence proceedings to enforce the new provisions.

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The consultation period closes on 2 October 2026. If enacted, the legislation will commence on the first 1 January, 1 April, 1 July or 1 October following Royal Assent, whichever occurs first.

These proposed reforms represent one of the most significant changes to employment restraints in recent years. Employers should closely monitor developments and consider reviewing existing employment contracts, restraint clauses and competition law compliance practices in anticipation of potential legislative change.

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



FWC INTRODUCES MANDATORY AI DISCLOSURE

- From 20 October 2026, parties using generative artificial intelligence ('GenAI') in Fair Work Commission ('FWC') proceedings will be required to disclose its use when preparing documents for individual rights matters, including unfair dismissal, general protections and anti-bullying applications. The reform follows growing concern within the Commission about the increasing prevalence of AI-generated applications and submissions.

The new Guidance Note, issued by FWC President Justice Adam Hatcher, reflects the Commission's attempt to balance the benefits of AI-assisted drafting with the need to maintain the integrity and reliability of evidence and submissions filed in proceedings. Research commissioned by the FWC found that approximately 40% of applicants were using AI to help prepare or manage their cases.

What are the new requirements?

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Where GenAI has been used to prepare a document, parties must: disclose that AI was used and explain how it was used; verify that all factual content, legal authorities, quotations and references are accurate and relevant; and where the document is classified as a witness statement or declaration, ensure it reflects the witness's own knowledge and words and is true to the best of their knowledge.

The Commission has also indicated that application and response forms will be updated to include AI disclosure requirements. Legal practitioners and other professional representatives will face additional obligations, including providing hyperlinks to authorities cited in submissions.

Why were the changes considered necessary?

Justice Hatcher has linked the reforms to the rapid growth in the Commission's workload and the increasing use of AI by self-represented litigants. According to the President, the Commission's caseload is expected to increase by more than 70% over a three-year period, with AI-generated applications contributing significantly to the rise in filings.

A particular concern is the phenomenon of "AI dependency", where users accept AI-generated content without independently checking its accuracy. This can result in applications containing incorrect facts, fabricated legal authorities, or unrealistic assessments of a claim's prospects. The Commission considers that such filings increase

administrative burdens, complicate dispute resolution processes and divert resources from meritorious matters.

Implications for Employers

For employees and self-represented applicants, AI remains a useful tool for understanding processes, organising information and drafting documents. However, responsibility for the content of any document filed with the Commission will continue to rest with the individual submitting it. AI assistance will not excuse inaccuracies or misleading information.

For employers, HR professionals and legal representatives, the reforms provide greater transparency regarding the preparation of applications and evidence. They also reinforce existing professional obligations to verify factual and legal accuracy before documents are filed.

For conciliators and Commission members, the changes may assist in identifying the role AI has played in the preparation of documents and reduce the impacts of poorly researched or inaccurate claims on case management and resolution processes.

The reforms signal that while AI is becoming a permanent feature of workplace litigation, its use must be transparent, responsible and subject to human oversight. As AI tools become increasingly sophisticated, the FWC's approach may provide a model for other courts and tribunals seeking to

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preserve procedural fairness while embracing technological change.

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



‘DOOMED’ AI CLAIM ATTRACTS COSTS ORDER

Artificial intelligence (“AI”) is rapidly becoming a familiar feature of workplace disputes and legal proceedings. From drafting correspondence to assisting with submissions, AI tools offer self-represented litigants unprecedented access to information and support. However, a recent FWC decision serves as a cautionary reminder that AI is no substitute for thoroughly understanding the merits of a claim.

In *Sadnan Khan v Aldi Pty Ltd* [2026] FWC 3144, the FWC took the unusual step of ordering a former employee to contribute to his employer's legal costs after pursuing an unfair dismissal application that was incapable of succeeding. While costs orders in the FWC remain rare, the decision highlights the

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risks associated with relying on AI-generated material without reviewing or verifying its accuracy.

The Applicant had been employed by Aldi before being dismissed in March 2026, receiving one week's pay in lieu of notice. He subsequently lodged an unfair dismissal application. Almost immediately, the Commission identified that the Applicant had been dismissed three days short of the six-month minimum employment period required under section 383 of the *Fair Work Act 2009 (Cth)*.

Two days after the application was filed, the Commission informed the Applicant that he appeared not to satisfy the minimum employment threshold. A week before the hearing, a Deputy President again contacted the Applicant, explaining that his case was unlikely to succeed and encouraging him to discontinue the proceedings.

Rather than withdrawing the application, the Applicant responded with what the Commission described as an AI-generated email. The response continued to rely on an incorrect understanding of the relevant dismissal date, being that his employment ended when his notice period expired.

The Applicant ultimately conceded at the hearing that he had not completed the minimum employment period and discontinued the claim. The issue that remained was whether his conduct in continuing the proceedings justified a costs order.

Central to the Commission's reasoning was the Applicant's reliance on AI-generated material. The Deputy President made clear that there is nothing

inherently unreasonable about using AI to assist with drafting correspondence or submissions.

However, the Commission drew a distinction between using AI as a drafting aid and treating it as a substitute for independent judgment. The Deputy President suggested that the Applicant may have adopted AI as a form of "quasi-legal advisor", relying on AI-generated responses without properly assessing their accuracy. The Commission found that had the Applicant done so, he would have recognised that his case was 'doomed'.

The decision therefore reflects a broader concern regarding the increasing use of generative AI within legal processes. While AI can assist users in preparing documents more efficiently, the technology remains vulnerable to misunderstanding legal concepts, applying incorrect assumptions, or confidently presenting flawed reasoning. The Commission's message was clear that responsibility for the content of submissions remains with the person who files them.

In determining whether costs should be awarded, The Deputy President emphasised that the Applicant had been given multiple opportunities to understand the problem with his case. The Commission's correspondence clearly identified the defect, explained why the claim lacked reasonable prospects of success, and encouraged discontinuance before the hearing. Despite these warnings, the Applicant chose to continue.

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On that basis, the Commission concluded that Aldi had incurred legal costs unnecessarily as a result of the Applicant's unreasonable conduct. While acknowledging that Aldi's legal expenses substantially exceeded the amount awarded, the Deputy President ordered the Applicant to pay \$1,230 towards those costs.

The decision is noteworthy not merely because a costs order was made, but because of the circumstances in which it arose. The FWC has traditionally been reluctant to award costs, preferring an accessible and informal jurisdiction in which parties can pursue claims without fear of significant financial consequences. This case demonstrates that where a party persists with a claim after receiving clear warnings that it is fundamentally flawed, that reluctance may give way to deterrence and accountability.

For employees, the decision reinforces the importance of independently reviewing legal arguments and carefully considering advice received from the FWC, even when using AI tools. AI may assist with drafting, but it cannot replace a proper understanding of the legal requirements underpinning a claim.

For employers, the case provides reassurance that the FWC is willing, in appropriate circumstances, to compensate parties who incur unnecessary costs defending proceedings that have no realistic prospect of success.

Ultimately, *Khan* is less a decision about AI itself and more a decision about responsibility. As AI becomes increasingly embedded in legal and workplace processes, the FWC has made it clear that litigants remain accountable for the arguments they advance. Technology may assist in preparing a case, but it cannot shield a party from the consequences of pursuing one that is plainly without merit.

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

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AI'S FIRST LEGAL WIN?

- **An 'AI Legal Team' has on its first case. It's a rare win for Access to Justice**

The Fair Work Commission (**FWC**) has handed down what has been widely described as a landmark decision under Labor's employee choice pathway reforms, ordering that a Macquarie University academic be converted from casual employment to ongoing part-time employment. However, the decision has attracted attention for another reason, with the successful applicant claiming that AI played a significant role in helping him prepare and run his case.

The decision in *Baker v Macquarie University* (2026) FWC 3054 represents one of the first major tests and rulings to consider the operation of employee choice pathway reforms introduced in 2024 and

raises broader questions about the growing role of AI in workplace disputes and access to justice.

Background

Mr. Gregory Baker (**Mr. Baker**), a computing academic at Macquarie University (**the University**) taught computer science subjects across consecutive semesters between 2023 and 2025.

In November 2025, Mr. Baker notified the University that he believed his employment no longer met the requirements of casual employment and sought conversion to ongoing part-time employment under the employee choice pathway provision. The University declined the request, resulting in Mr. Baker commencing proceedings in the FWC in December 2025.

Following unsuccessful attempts to resolve the matter, the dispute proceeded to arbitration before the FWC, which ultimately determined that Mr. Baker should be treated as an ongoing part-time employee.

The Role of AI in The Proceedings

While the casual conversion outcome attracted significant attention, much of the public discussion surrounding the case has focused on Mr. Baker's use of AI.

Following the decision, Mr. Baker publicly stated that AI tools assisted him in identifying his potential entitlement to seek conversion from casual employment in the first place. He also reported using multiple AI platforms to help research the

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relevant legal framework, review source materials, organise evidence and anticipate potential arguments that might be raised by the University.

Importantly, Mr. Baker represented himself throughout the proceedings and did not engage legal representation.

The case has been cited by some commentators as an example of how emerging technologies may improve access to justice by assisting individuals to understand and pursue workplace rights that they may otherwise have been unaware of.

AI and Workplace Litigation

The increasing use of AI in workplace disputes presents both opportunities and challenges.

On one hand, AI tools may assist employees and employers to better understand their legal rights and obligations, prepare documentation and navigate relatively straightforward legal issues. This has the potential to improve access to justice, particularly for individuals who may be unable to afford legal representation.

On the other hand, courts, tribunals and regulators have continued to express concerns regarding the risks associated with generative AI, including inaccurate legal research, fabricated authorities and poorly drafted submissions.

Recent commentary from courts and tribunals in Australia and overseas has highlighted instances

where AI-generated content has included incorrect legal authorities or unsupported arguments. As AI use becomes more widespread, decision-makers are increasingly required to manage these risks while ensuring that legitimate claims can continue to be heard efficiently.

What Does This Mean for Employers and Employees?

The decision carries two important messages.

First, it demonstrates that the FWC is prepared to enforce the employee choice pathway provisions where workers can establish that their employment no longer meets the characteristics of casual employment. Employers should therefore ensure they carefully assess any casual conversion requests and maintain appropriate records supporting the classification of casual employees.

Second, the matter highlights the growing role of AI as a workplace and legal assistance tool. While AI may help parties better understand their rights and prepare their cases, users should exercise caution and independently verify any legal advice, authorities or submissions generated by such systems.

If you have any questions about casual conversion rights, the employee choice pathway reforms or workplace disputes before the Fair Work Commission, please do not hesitate to contact Nick Stevens or Evelyn Rivera.