



HERBERT SMITH
FREEHILLS
KRAMER

EMPLOYMENT & WORKPLACE RELATIONS IN AUSTRALIA

LEGAL GUIDE

2026





HERBERT SMITH FREEHILLS KRAMER GUIDE TO EMPLOYMENT & WORKPLACE RELATIONS IN AUSTRALIA

2026

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1 Introduction

The Australian Herbert Smith Freehills Kramer Employment, Industrial Relations and Safety team help our clients achieve success across the full range of workplace issues.

In truth, the legal and social environment has never been more complex for employers. Issues of workplace relations, industrial relations, social expectations and risk management are far more interconnected than ever before.

One of the primary changes we have seen across our client base has been the merging of responsibilities across internal teams. It is now routine that the IR team, HR or P&C teams work closely with the safety team, the reportable conduct hotlines and other legal functions. This is to set overall strategies for legal compliance and achieve corporate objectives, but also to respond to claims and regulatory interventions.

It is in this cross-functional context that we are making this annual guide available to you. We hope you find it a useful reference tool across the full range of employment topics which impact your role. Given legal developments, many of the chapters in this Guide have been refreshed and updated from last year. We have taken into account the most recent reforms across Australian State and federal laws, as well as drawing on the leading cases and decisions which continue to shape the employment relationship in Australia.

Resilience is key, but flexibility is challenging

2025 showed us that the global marketplace for Australian goods and services is increasingly complex, and there is every reason to think that 2026 will be more of the same.

There are good opportunities for employers who are able to shape their workforce to improve productivity. Those who are unable to build internal resilience through change and growth will fall further behind. In this context, the macro-policy settings for Australian workplaces can give contradictory messages.

The pace of change to workplace law has not abated over recent years, and the level of regulatory activity and intervention is as high as it has ever been. Changes made at the federal level in recent years lessened flexibility for employers to make changes to workplace conditions, and the impact of this manifested in 2025, and will increase in this coming year. There does not seem to be any sign that these changes will be reversed, and if anything, the discussions at the political level speak of more regulation and more enforcement for non-compliance.

For businesses with a global reach, at its worst this might make the Australian market less appealing for investment or for growth. However, we have seen many examples where thoughtful strategic planning, workforce engagement and

clear leadership can be used to great effect and can build business resilience in spite of these external factors. All of this rests on a clear understanding of the legal landscape affecting Australian workplaces, a sense of innovation and a focus on growth.

The light is shining on internal workplace issues

Across the year, we have undertaken or managed a range of workplace investigations for our clients, and this is a core part of the support we are able to provide. Hardly a day has gone by in 2026 where one employer or another has not been in the financial papers as a result of a some culture or conduct issue at a senior level. Scrutiny on executives and boards is acute.

When we assist clients with these investigations or reviews, they might have arisen as a result of whistleblower concerns, workplace complaints, or as a result of a desire by a business to understand more about its workplace culture and performance. These investigations are nearly always multi-faceted and complicated. They often feature intersecting workplace rights and responsibilities, including the emerging language of managing psychosocial-risk in the workplace.

Historically, these investigations were often focussed on a single issue or concern and were solely for a limited internal audience of decision makers. What has changed over recent years has been the understanding that these investigations or reviews form part of the arsenal available to businesses to seek to effect change or raise internal awareness of issues. In some cases, these reviews

are made public, even if they do not tell an entirely favourable story about historical conduct. Obviously, how these reviews are framed and undertaken is essential to that success, and for avoiding unintended impacts.

Contemporary employment, IR and safety practitioners should understand the role that these investigations and reviews can play and invest in the capability of their internal teams and understanding the skill set of their external partners and legal advisors.

The stakes are high for senior business leaders, and they need support

Readers of this Guide will observe that one of the common features of the regulatory environment across a number of issues is the potential for senior officer, executive or board liability for non-compliance or breaches.

This cohort of senior business leaders have been placed at the centre of compliance across areas like workplace safety, wage compliance, gender equality and anti-harassment expectations. Many of the penalties for not meeting these duties are criminal in nature, and there is a strong willingness of Australian regulators to pursue individuals for non-compliance.

There are great opportunities here for safety, IR, HR or P&C teams to directly add value at this C-suite and board level. These roles can now be squarely seen as strategic partners to the executive and the board, and there is something exciting about this opportunity for those teams to have a seat at these tables with confidence.

Thank you

I am very proud to introduce our 2026 Guide to Employment and Workplace Relations in Australia. The Guide is written with the needs of you, our clients, in mind.

If you are reading this in hard copy, please note that an electronic and fully searchable version is also available.

It is a lot of hard work, but we treat the production of this Guide as a privilege. We make it available in recognition of the premier place held by Herbert Smith Freehills Kramer in the field of Australian employment law, industrial relations and workplace safety. Our firm has remained the national leader in this field over many decades.

The investment we make in our clients and the development of our lawyers across our Australian offices is hopefully apparent from the breadth of content in our 2026 Guide, and it is all possible because of the support of our wonderful clients, both large and small businesses.

On behalf of all of our team, thank you for your ongoing support and enjoy the Guide.



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2 An overview of employment regulation in Australia

Overview

Employment and workplace relations matters in Australia are governed by a range of state and federal laws. These cover areas such as minimum terms and conditions of employment, work health and safety (WHS), privacy, discrimination, superannuation, public holidays and various types of leave.

The terms and conditions of employment and industrial relations obligations of most employers are regulated at the federal level under the system established by the *Fair Work Act 2009* (Cth) (FW Act).

However, certain employment-related matters continue to be regulated at the state and territory level.

This introductory chapter provides a general overview of employment regulation in Australia.

State and federal systems of regulation

Although the FW Act is the primary legislation governing employment in Australia, employers need to be aware of certain matters that are still the responsibility of each state and territory, and understand how the two levels of regulation interact.

The FW Act generally 'covers the field' and overrides state and territory laws that deal with the same subject matter.

However, certain matters are specifically excluded from the scope of the FW Act.

These matters include:

- workers' compensation
- work health and safety
- long service leave (other than for a limited number of employees who have a preserved award-or agreement-derived long service leave entitlement), and
- equal opportunity and discrimination.

Most, but not all, employers are covered by the federal system.

Employers who are not 'constitutional corporations' (trading, financial and foreign corporations) and certain federal and state government bodies will not necessarily be covered by the substantive provisions of the FW Act. A corporation will be considered a trading corporation if it engages in 'substantial or significant' trading activities. State and territory industrial laws regulate employers not covered by the FW Act.

National Employment Standards

The National Employment Standards (NES) are 12 minimum conditions of employment which apply to all employees covered by the FW Act.

The 12 minimum conditions of employment that comprise the NES are set out in the table below.

STANDARD	GENERAL EXPLANATION
Hours of work	maximum 38 'ordinary' hours each week plus 'reasonable' additional hours
Flexible working arrangements	can be requested by employees who are parents, carers, have a disability, are aged 55 or older, are experiencing family and domestic violence, provide care or support to a family member who is experiencing family and domestic violence, or are pregnant
Casual pathway to permanent employment	a process for employees to change from casual to permanent (ongoing) full-time or part-time employment
Parental leave	up to 52 weeks of unpaid parental/adoption leave and related entitlements, with the ability to request a further 52 weeks' unpaid leave
Annual leave	4 weeks paid annual leave per year, with an extra week for shiftworkers
Personal/carer's leave, compassionate leave, and family and domestic violence leave	10 days of paid personal (sick/carer's) leave per year plus 2 days of unpaid carer's leave per occasion required
	2 days of paid compassionate leave per occasion required
	10 days' paid family and domestic violence leave per year
Community service leave	leave to engage in eligible community service activities (eg jury service and voluntary emergency management activities such as fire-fighting)
Long service leave	entitlements are per state and territory long service leave legislation (other than for a few employers who are subject to preserved award and agreement entitlements)
Public holidays	the right to be absent from work without loss of pay on public holidays and the right to refuse to work on a public holiday on reasonable grounds
Notice of termination and redundancy pay	dependent on length of service and age, up to 5 weeks' notice of termination and up to 16 weeks' redundancy pay
Fair Work Information Statement and Casual Employment Information Statement	must be issued to certain employees to provide information about conditions of employment
Superannuation contributions	to pay superannuation contributions (12% in 2025-2026) of an employee's ordinary time earnings

Some NES entitlements are tied to employment status (ie whether the employee is engaged on a permanent or casual basis) or length of service (eg parental leave, requests for flexible working arrangements, notice of termination and redundancy pay).

The NES also include rules about how these entitlements apply in practice (eg when annual leave can be taken, what documentation is required for personal leave, whether the leave is paid or unpaid etc). Further information about the NES and these rules can be found in Chapter 3, 'National Employment Standards'.

All enterprise agreements must comply with the NES, and all modern awards are underpinned by the terms of the NES. Common law contracts of employment are also subject to the NES. As the provisions of the NES are statutory minimum terms of employment, they cannot be contracted out of, traded off or bargained away. However, employers and employees are free to negotiate other terms and conditions of employment not covered by the NES or that are more generous than the NES.

Minimum wages

How are minimum wages set?

Minimum wages, including casual loadings, are set and adjusted by the Expert Panel of the Fair Work Commission (FWC) on an annual basis.

The 2024 – 2025 wage review

Following the 2025 Annual Wage Review, the Expert Panel:

- increased the national minimum wage for adults not covered by a modern award by 3.5% to \$948.00 per week (based on a 38 hour week) or \$24.95 per hour

- increased minimum award wages by 3.5%, and
- maintained the casual loading for award/agreement-free employees at 25%.

For further information on award-specific minimum wage increases refer to Chapter 4, 'Modern Awards'. Employers should consult the wages provisions of any applicable modern award to determine the minimum wages for their employees.

The role of modern awards

What are modern awards?

Modern awards are industry or occupation-based instruments which establish a safety net of terms and conditions of employment that supplement the 12 minimum conditions of employment set out in the NES. Modern award terms are limited to the 12 matters covered by the NES, plus a further 10 terms and conditions of employment.

While awards were once the main source of regulation of employee terms and conditions, since the early 1990s, Australia's industrial relations landscape has been progressively reformed to make enterprise agreements the main focus. Since that time, awards have been intended to be a minimum safety net only, with enterprise bargaining being the primary means of bargaining for higher terms and conditions of employment.

That being the case, not every employer and employee will be covered by a modern award (as they may not fall within the scope of the 'coverage' provisions of the modern award), and awards do not apply to employers or employees who are covered by an enterprise agreement.

Importantly, an enterprise agreement must leave all employees covered by it better off overall under the terms of the enterprise agreement compared to the relevant modern award that would have otherwise applied to them (see below section on the 'Better Off Overall Test (BOOT)', for further information).

Minimum wages and modern awards

Each modern award includes terms dealing with minimum wages and skills-based pay scales for employees covered by the award. The minimum wages in modern awards are adjusted each year following annual wage reviews conducted by the Expert Panel of the FWC, as noted above.

For further information refer to Chapter 4, 'Modern Awards'.

Enterprise agreements

What are enterprise agreements?

Enterprise agreements are collective agreements made by employers and their employees under the FW Act. In most cases, employees are represented by unions which are allotted legal status as 'bargaining representatives'.

All enterprise agreements can operate alongside common law contracts of employment, however a contract of employment can only supplement (not undercut) enterprise agreement terms and conditions.

Sweeping changes to the enterprise bargaining regime in the FW Act were introduced following the passage of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth). For further information refer to Chapter 11, 'Enterprise Bargaining'.

Better off overall test (BOOT)

To be approved by the FWC, all enterprise agreements must pass the BOOT. Under the BOOT, each employee covered by an enterprise agreement must, on balance, be better off overall than they would be under the applicable modern or enterprise award.

The BOOT allows award conditions (but not NES conditions) to be traded off or modified as long as the total remuneration and/or benefits received by the employee under the proposed enterprise agreement leaves them better off overall than if the relevant award applied. The test is applied strictly by the FWC.

Labour hire and 'same job, same pay'

The FWC has power to make 'regulated labour hire arrangement orders'. These orders, which were first able to come into effect from 1 November 2024, require labour hire workers to be paid in accordance with enterprise agreements that apply to the same kind of work performed by the labour hire workers if they were directly employed by the 'host' company they are supplied to. Hosts must also provide sufficient payroll information to employers of labour hire workers to enable them to comply with their new payment obligations, and the FW Act introduces penalties for businesses who attempt to avoid the scope of the FWC's new powers.

For further information refer to Chapter 23, 'Labour Hire'.

Minimum standards for 'employee-like' workers

The FW Act contains provisions providing a new framework of protections for 'employee-like' workers in the gig economy and road transport industries,

including powers for FWC to make minimum standards orders similar to modern awards.

For further information refer to Chapter 24, 'Gig-economy and road transport operators'.

Industrial action

When can employees take lawful industrial action?

Employees can only take lawful industrial action where certain procedural requirements are met. These requirements include that:

- they are genuinely trying to reach agreement about permitted matters
- the nominal expiry date of any existing agreement has passed
- the industrial action has been authorised by a protected action ballot, and
- the required written notice of the action has been given to the employer.

What can employers do if employees take unlawful industrial action?

Where employees take or threaten unlawful industrial action, their employer can seek an order from the FWC that the industrial action stop, not occur or not be organised.

In certain circumstances, action may also be available in the Federal Court of Australia or state/territory courts.

Can employers pay employees who take industrial action?

No. In almost all cases it remains unlawful for an employer to pay employees who take industrial action, whether or not the

industrial action is lawful. Special rules apply to the payment of employees who participate in lawful partial work or overtime bans.

If employees engage in any type of 'unprotected' industrial action, the employer must deduct a minimum of 4 hours' pay from participating employees. This applies even if the length of the industrial action is shorter than 4 hours.

For further information refer to Chapter 12, 'Responding to Industrial Action'.

Bullying

The federal anti-bullying jurisdiction empowers a 'worker' who reasonably believes that they have been bullied at work to apply to the FWC for an order that the bullying stop.

The definition of 'worker' is not limited to employees. It includes an individual who performs work in any capacity, including as a contractor, a subcontractor, an outworker, an apprentice, a trainee, a student gaining work experience, or a volunteer.

A person is 'bullied at work' if an individual repeatedly behaves unreasonably towards the worker, and that behaviour creates a risk to the worker's health and safety. The legislation makes it clear that reasonable management action carried out in a reasonable manner is not taken to be bullying behaviour.

Although the FWC does not have the power to impose a financial penalty on an employer, or otherwise award any monetary compensation to an applicant, the types of orders it can make to prevent the bullying from occurring are extremely

broad. A failure to comply with a bullying order can attract civil penalties.

For further information refer to Chapter 10, 'Bullying'.

Transfer of business

The FW Act regulates what happens when an employee takes up employment with a new employer as part of a 'transfer of business'. These rules are broad and have been designed to maintain employees' terms and conditions of employment when the employee and their work are transferred to another entity, including within a corporate group.

The key consequence of a transfer of business under the FW Act is that any applicable industrial instruments will transfer to the new employer and apply to the transferring employees, unless the new employer obtains an order from the FWC that this will not occur. A transfer of business also has implications with respect to the new employer's recognition of a transferring employee's prior service and leave entitlements with the old employer.

What is a transfer of business?

The transfer of business rules under the FW Act will only be triggered if:

- one or more employees of one employer (the old employer) cease employment with the old employer and, within 3 months, commence employment with another employer (the new employer)
- the transferring employees perform the same or substantially the same work for the new employer as they performed for the old employer, and
- there is a 'connection' between the old employer and the new employer.

A 'connection' will exist where:

- there is a transfer of assets from the old employer to the new employer
- the old employer outsources work to the new employer
- the new employer ceases to outsource work from the old employer (commonly referred to as 'insourcing'), or
- the old employer and the new employer are associated entities.

For further information, refer to Chapter 15, 'Transfer of Business in Australia'.

Right of entry

What rights do unions have to enter a workplace?

Union officials may gain entry to a workplace:

- to hold discussions with employees whose industrial interests the union is entitled to represent (ie who fall within the scope of the union's rules)
- pursuant to state or territory WHS laws, or
- to investigate a suspected breach of the FW Act or an industrial instrument that applies or applied to a member of the union.

There are certain conditions that must be met before a union can exercise rights of entry. For example, a union official must hold a valid entry permit.

Can unions do anything they like once they enter the workplace?

No. Depending on the reason for entry, unions are limited in what they can do.

For instance, where a union is conducting discussions with employees, it can only

hold discussions with employees whose industrial interests it is entitled to represent and who wish to engage in those discussions. Where a union is entering to investigate a suspected breach, it can only inspect work and interview employees for the purposes of investigating the breach, and generally can only view records of employees who are members of the union.

Permit holders are now also able to exercise a right of entry without notice if they obtain an exemption certificate from the FWC when investigating suspected underpayments.

For further information refer to Chapter 13, 'Union Regulation and Right of Entry'.

Workplace delegates

The FW Act contains rights and protections for 'workplace delegates'. Employers are required to provide delegates with reasonable access to the workplace to undertake their duties as delegates. Workplace delegates are entitled to paid time during normal working hours to attend training in relation to their role (except for employees of small businesses). An employee does not need a right of entry permit to exercise the rights of a 'workplace delegate'.

Modern awards, enterprise agreements and workplace determinations are now also required to contain clauses providing for these workplace delegate rights.

Employers are also required to ensure that they do not:

- unreasonably fail or refuse to deal with a workplace delegate
- knowingly or recklessly make a false or misleading representation to a workplace delegate, or

- unreasonably prevent a workplace delegate from exercising their rights.

For further information refer to Chapter 13, 'Union Regulation and Right of Entry'.

Termination of employment

Several claims are available to employees who are dismissed from their employment. Depending on the circumstances, employees can claim:

- under the common law for breach of contract
- unfair dismissal under the FW Act
- general protections under the FW Act, or
- discrimination under state or federal equal opportunity legislation.

Who can bring an unfair dismissal claim?

Only an employee whose employment has been terminated at the initiative of their employer, or who has been 'constructively dismissed' can bring an unfair dismissal claim. The unfair dismissal jurisdiction provides a remedy to employees if their dismissal was 'harsh, unjust or unreasonable'.

The following employees are excluded from bringing claims:

- employees who have not completed the minimum employment period of 6 months (in the case of employers with more than 15 employees) or 12 months (in the case of employers with fewer than 15 employees)
- an employee for whom the dismissal was a case of genuine redundancy, where the employer has complied with its redeployment and consultation obligations

- an employee not covered by an industrial instrument and paid more than the 'high income threshold' (\$183,100 per annum, as at 1 July 2025), or
- an employee who is pursuing other termination of employment proceedings.

For further information on unfair dismissal and other claims relevant to termination of employment, refer to Chapter 6, 'Termination of Employment'.

General protections and workplace rights

Under the FW Act, employees cannot be dismissed or subjected to other detrimental action because they have certain rights, entitlements or attributes.

For example, an employer cannot:

- take adverse action against an employee because of the employee's workplace rights or industrial activities (including freedom of association)
- engage in behaviour intended to coerce an employee to exercise, or not exercise, their workplace rights
- take adverse action against an employee because of a particular attribute (eg their race, colour, sex, age, disability, etc), or
- knowingly or recklessly make false and misleading statements about a person's workplace rights.

The general protections provisions also apply to (and protect) employers, independent contractors, unions and prospective employees in certain circumstances.

For further information on the implications of the general protections rights, refer to Chapter 6, 'Termination of Employment' and Chapter 9, 'Discrimination, Sexual Harassment, Diversity and Workplace Rights'.

Discrimination

Discrimination is regulated at both state and federal levels by legislation in all jurisdictions. Under this legislation, employers must not directly or indirectly discriminate against employees for a prohibited reason. These reasons vary from jurisdiction to jurisdiction, but generally include the following:

- sex
- marital status
- pregnancy or potential pregnancy
- breastfeeding
- family or carer's responsibilities
- sexual preference or orientation and lawful sexual activity
- race or nationality
- colour
- gender history, gender identity, transgender, transexual or intersex status
- religious belief or activity
- physical features
- disability
- physical or intellectual impairment
- age
- political belief of activity
- trade union membership or industrial activities
- employment activity, and
- irrelevant criminal or medical record.

Each state/territory has a slightly different definition of protected attributes, and it is therefore important to check the relevant legislation in which the business operates. Most employers adopt a 'high watermark' approach and ensure that their relevant policies capture all grounds of unlawful discrimination.

In most jurisdictions, it is a defence to a discrimination claim that the discrimination related to a characteristic that prevented the employee (or prospective employee) from fulfilling the inherent requirements of their position or employment.

For further information refer to Chapter 9, 'Discrimination, Sexual Harassment, Diversity and Workplace Rights'.

Changes to workplace sexual harassment laws

Following the passage of the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* (Cth) on 12 December 2022, the Federal Government has now implemented all of the 55 recommendations in the Australian Human Rights Commission's *Respect@ Work* report which was released in March 2020. There is now:

- a positive duty for employers to take reasonable and proportional measures to eliminate unlawful sex discrimination, including sexual harassment, as far as possible
- a prohibition against conduct that subjects another person to a hostile workplace environment on the ground of sex, and

- the ability for representative bodies (such as unions) to make representative applications in the Federal Courts (also known as 'class actions') on behalf of one or more individuals who have experienced unlawful discrimination.

For further information refer to Chapter 9, 'Discrimination, Sexual Harassment, Diversity and Workplace Rights'.

Right to disconnect

The FW Act now contains an employee 'right to disconnect'. The provisions apply to both non-small businesses and small businesses.

The right to disconnect is a positive right for employees to refuse to monitor, read or respond to contact, or attempted contact, from an employer outside of the employee's working hours unless the refusal is unreasonable. This right also extends to refusing to respond to contact from a third party if the contact, or attempted contact, relates to the employee's work. This right is a protected attribute for the purposes of the general protections regime in the FW Act.

The FWC has powers to deal with a dispute raised by either an employer or employee regarding the right to disconnect. If an application is made to the FWC to deal with a right to disconnect dispute and the FWC is satisfied that:

- the employee is unreasonably refusing to monitor, read or respond to contact or attempted contact and there is a risk the employee will continue to do so, or

- the employee's refusal is not unreasonable and there is a risk the employer will take disciplinary action against the employee due to the reasonable refusal or continue to require the employee to make contact,

then the FWC has power to make the following orders:

- that the employee be prevented from continuing to unreasonably refuse to monitor, read or respond to contact or attempted contact
- the employer be prevented from taking disciplinary action against the employee for a reasonable refusal, or
- that the employer be prevented from making unreasonable contact with the employee.

Modern awards also contain a term that specifies that employees can exercise this new right to disconnect.

Work health and safety and workers' compensation

Work health and safety (WHS) and workers' compensation continue to be regulated primarily by each state and territory. This has created inconsistency between jurisdictions, especially because of the different rules affecting WHS compliance.

The federal model health and safety legislation was released in May 2010 with the intention of harmonising the disparate state/territory WHS laws around Australia. All jurisdictions except Victoria have since adopted the model laws, so some differences nonetheless remain between jurisdictions.

Regardless of whether the harmonised laws or existing state or territory laws apply, the fundamental tenets of Australian WHS law are that employers have an obligation to maintain a safe workplace and ensure the health, safety and welfare of their workers and other persons affected by the way they conduct their business.

WHS is a highly regulated regime, with state and federal regulatory bodies empowered to investigate, enforce and prosecute breaches of WHS laws.

Substantial penalties apply for failure to comply with the relevant legislation and both companies and their employees or officers involved in contraventions can be exposed to criminal prosecution and potential imprisonment.

Industry-specific (eg mining and petroleum) and task-specific (eg electrical safety and dangerous goods) safety laws also exist in each jurisdiction.

For further information refer to Chapter 20, 'Health and Safety, Workers' Compensation and Personal Injury'.

Long service leave

Long service leave provides additional paid leave for employees with lengthy uninterrupted service. It remains primarily regulated by state and territory legislation. The NES preserve, or allow for the preservation of, long service leave entitlements provided by industrial instruments that were in operation on 31 December 2009 in certain limited circumstances.

Unless an entity is subject to award- or agreement-derived long service leave terms, enterprise agreements made under the FW Act are subject to state and territory laws dealing with long service leave.

Most state schemes provide for an entitlement of 3 months' long service leave after 15 years' service, with some states allowing this entitlement to be accessed or paid out on termination of employment after a shorter period of time, such as 7 or 10 years.

For further information refer to Chapter 3, 'National Employment Standards'.

Superannuation

Under the *Superannuation Guarantee (Administration) Act 1992* (Cth) employers must contribute a minimum of 12% of an employee's ordinary time earnings to that employee's approved superannuation fund. The minimum contribution is not currently scheduled to increase further.

Generally speaking, employers must provide a choice of superannuation fund for employees.

The right to superannuation contributions is included as a NES entitlement. Employers already have an obligation to pay superannuation contributions for eligible employees under superannuation guarantee laws. There would be no contravention of the NES provision where an employer has met their obligations under these laws.

However, inclusion in the NES means that any unpaid or underpaid superannuation is directly enforceable under the FW Act. Employees, unions or the FWO may take action for breaches by employers. Employer compliance under existing superannuation legislation will continue to be enforced by the ATO, the primary regulator.

For further information refer to Chapter 18, 'Superannuation'.

Privacy and workplace surveillance

The *Privacy Act 1988* (Cth) sets out the Australian Privacy Principles, which govern the collection, use, disclosure and transfer of personal and sensitive information in Australia's private sector. In addition, some states and territories have enacted health records and/or specific workplace privacy legislation.

State and territory-specific legislation also exists which governs the use of electronic surveillance and monitoring of employees.

For further information refer to Chapter 17, 'Privacy and Workplace Surveillance'.

27 Herbert Smith Freehills Kramer services

Our Australian Employment, Industrial Relations & Safety team

Our Employment, Industrial Relations & Safety practice is regarded as one of Australia's premier practices.

We have been at the forefront of Australia's major workplace cases over the last 40 years, helping manage and mitigate the impact of high-profile disputes and claims.

We are also one of the largest teams in Australia, dedicating more than 90 legal staff to all areas of employment, industrial relations and safety law.

We pride ourselves on providing thoughtful, cost effective and practical advice to ensure operational objectives are achieved. Our team has pioneered many workplace relations strategies for both private sector and government clients.





We are attuned to ensuring workers are engaged with fairly and respectfully, even amid employment disputes or disagreements.

Core areas of expertise include industrial relations, employment law, litigation, workplace health and safety, diversity and equal opportunity law, privacy and training.

Our global network

Globally, Herbert Smith Freehills Kramer offers a full complement of commercial law services, including capital markets, competition, finance, intellectual property, mergers and acquisitions and tax, to name just a few. Our Australian Employment, Industrial Relations & Safety team is part of our global Employment, Pensions & Incentives team and is truly specialised in resolving issues at a national, regional and global level.

Herbert Smith Freehills Kramer advises clients from offices in major commercial hubs as illustrated. With our global network and expertise in all legal matters impacting on the employment relationship, our team is ideally positioned to assist employers across borders, including in the US, UK, Europe, the Middle East, Africa, Asia and Australia.

See Chapter 29 of this Guide which lists our global network of employment lawyers, or alternatively scan the QR code below.



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