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Workplace Observer

December 2025

Issue #3

FWC orders Westpac to grant flexible working arrangement

Karlene Chandler v Westpac Banking Corporation [2025] FWC 3115

The Fair Work Commission (**FWC**) has ordered Westpac to grant a flexible working arrangement to a long-serving employee after finding the bank failed to comply with statutory requirements under the Fair Work Act 2009 (Cth) (**FW Act**) and lacked reasonable business grounds for the refusal. The ruling highlights heightened obligations on employers under recent FW Act amendments, particularly when responding to flexibility requests from employees with caring responsibilities.

Background

Karlene Chandler has worked for Westpac since 2002. In January 2025, she sought to work from home to manage school drop-off and pick-up for her children. The commute from her home in Wilton to Westpac's Kogarah office is roughly two hours each way, making in-office attendance during school hours impractical. As an alternative, she proposed splitting time by attending Westpac's Bowral branch, closer to home.

Westpac refused the request, relying primarily on its Hybrid Working Policy, which requires staff to attend a corporate office at least two days per week. Attempts to negotiate a mutually acceptable arrangement were unsuccessful, and Chandler escalated the matter under the new arbitration mechanism in section 65C of the FW Act.

Procedural non-compliance

Deputy President Roberts found Westpac breached section 65A by not:

1. Providing a written response within the statutory 21-day period;
2. Engaging in genuine consultation;
3. Attempting to reach agreement, and considering the personal consequences of refusal.

The FWC described Westpac's written reasons as perfunctory, noting that they merely echoed its internal policy rather than applying the statutory criteria. Because the FW Act requires all procedural steps to be satisfied before an employer may lawfully refuse a request, the failures were characterised as significant.

Deputy President Roberts found Westpac did not meet key obligations under section 65A of the FW Act.

No reasonable business grounds

In defending its refusal, Westpac argued that remote work would negatively affect team collaboration, productivity and customer service, invoking the "reasonable business grounds" provisions in subsection 65A(5) of the FW Act. However, the FWC concluded that these claims were generalised assertions lacking evidentiary support. Evidence before the FWC showed that Chandler had effectively worked remotely for extended periods, achieving strong performance outcomes, and mentoring colleagues online. Westpac produced no quantitative evidence of reduced productivity or service quality, despite the statutory requirement that detriments be "significant" and supported by particularised reasoning.

Fairness and enterprise agreement Issues

Westpac submitted that granting the request would conflict with its enterprise agreement and be unfair to other employees required to attend the corporate offices. The FWC rejected this, citing the primacy of the National Employment Standards (**NES**) and recent Full Bench authority in *Paper Australia Pty Ltd v May*, confirming enterprise agreements cannot constrain NES entitlements. The FWC also noted Westpac's enterprise agreement acknowledged employees' rights to request flexible work.

Deputy President Roberts also emphasised the personal impact on Chandler. Requiring her to attend Kogarah would impose financial strain and risk her continued employment. By contrast, any operational benefit to Westpac from in-office attendance was marginal and unsupported by evidence. Fairness considerations favoured the employee.

Outcome and reminder for employers

The FWC ordered Westpac to grant the requested arrangement under section 65C(1)(f)(i), permitting Chandler to work remotely (or from a closer branch). The ruling warns employers to strictly comply with FW Act procedural requirements and base refusals on evidence, not policy preferences or broad statements about collaboration.

Flexible work requests must be assessed individually, with meaningful consultation and proper consideration of the employee's circumstances.

Employers should seek specialist legal advice where a dispute arises as arbitration is available and uncertain and adverse findings can significantly affect operations.

Time to celebrate, not litigate

As the year winds down towards the holiday season, employers will be hosting end of year celebrations. While this is a time to celebrate, employers should be reminded of risks and responsibilities owed to employees, and take steps to ensure employees are protected.

Employers have a primary duty under work health and safety legislation to ensure, as far as is reasonably practicable, the health and safety of workers. This primary duty continues to apply at work-related functions, as they are considered an extension of the workplace.

The same can also be said for an employer's duty to take reasonable and proportionate measures to eliminate, as far as possible, sexual harassment, sex-based harassment, sex discrimination, conduct creating a workplace environment that is hostile on the ground of sex, and related acts of victimisation.

To prepare for end of year functions, and avoid a Christmas calamity, employers need to ensure they are taking steps to mitigate risks of any unsafe workplace behaviour occurring. Such steps may include:

1. Reviewing appropriate policies and any applicable complaints procedures to ensure they are up to date, and amending as necessary.
2. Prior to the function, reminding employees of the policies and procedures and that the same expectations of behaviour apply at the function as in the office.
3. If alcohol is being served at any function, ensure responsible service of alcohol and sufficient food and non-alcoholic beverages supplied.
4. Making sure employees have a safe way to return home after the function.

Following an end of year function, if an employer is made aware of alleged conduct that if substantiated would be a breach of its code of conduct or other applicable policy, and/or other applicable legislation (eg. sexual harassment), the employer should take immediate steps in accordance with its complaints procedures/policies and conduct an investigation into the allegations.

Employers should be sure to seek appropriate advice in relation to investigations, and disciplinary action, particularly where there are allegations that may amount to sexual harassment, or sex-based discrimination in the workplace. Courts are increasingly ordering sizeable damages exemplified recently in the Federal Court decision of *Magar v Khan* where an award of damages exceeded $300,000.

Did You Know?

From 1 July 2026, employers will be required to make superannuation contributions within seven calendar days of paying workers wages and salaries, rather than the quarterly payments currently made.

Increased protection of paid parental leave

On 3 November 2025, the Fair Work Amendment (Baby Priya's) Bill 2025 (**the Bill**) was passed by the Senate, and came into effect on 6 November 2025.

The Bill amends the Fair Work Act 2009 (Cth) (**FW Act**) preserving employer-funded paid parental leave where an employee's child is stillborn or dies. An employer must not refuse to allow an employee to take leave, or cancel the leave without a request from the employee.

An exception to this is an employer may refuse or cancel the leave if, under the terms and conditions of the employee's employment, the employer is expressly allowed to refuse or cancel the leave or is not entitled to take the leave, or the employee is entitled to other leave (other than unpaid parental leave and compassionate leave) because of the stillbirth or death of a child.

The Explanatory Memorandum provides that the Bill is not retrospective, and will apply to existing and future employment contracts and workplace instruments where the stillbirth or death of a child occurred on or after commencement of the Bill.

This is a new protection for employees in respect of employer-funded parental leave, previously not provided in the FW Act, providing greater certainty for parents during what is likely already a difficult time.

A joke from an employment lawyer

Why was the disciplinary process never completed?

Because by the time the award, the Fair Work Act, the employment agreement, the policies, and the relevant case law were finally deciphered... the employee had already retired.

Get to know

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My favourite movie is...

Love Actually (I love Christmas, actually).

My ideal breakfast is...

Softly scrambled eggs on toast with butter, chives, tomato relish and a cappuccino.

A quote I like is...

Find a way or make one (Hannibal).

If I was an animal, I would be...

A meerkat.