COUNCIL CONNECT

JUNE 2026

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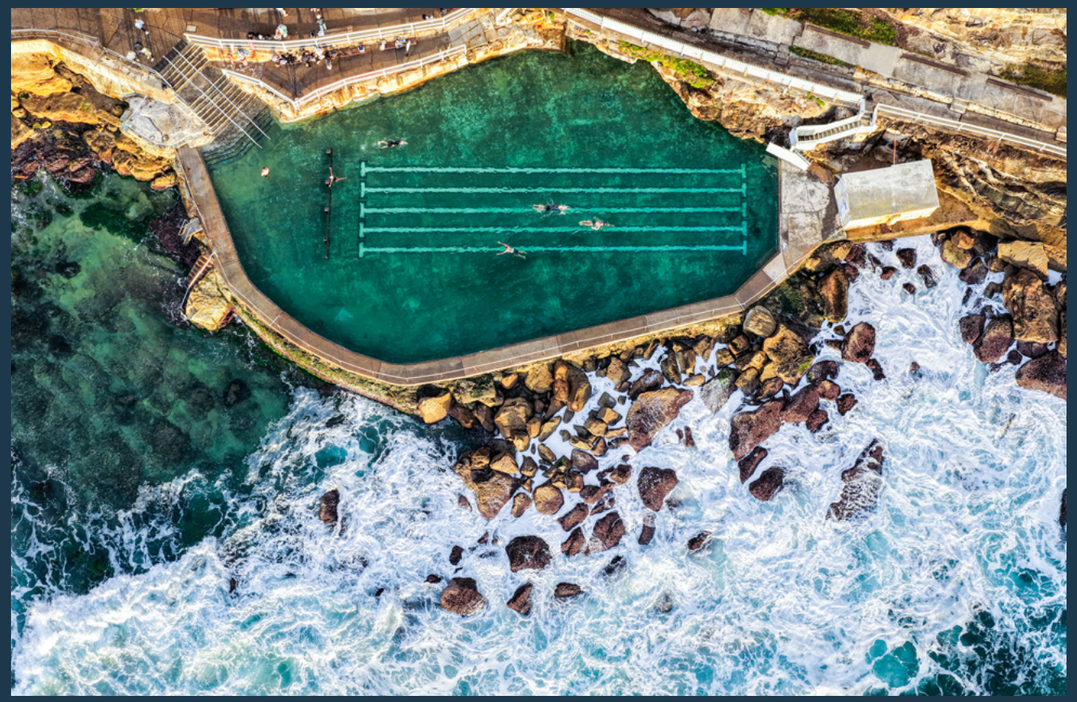

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A MESSAGE FROM THE CEO

Riana Steyn

Welcome to the June 2026 issue of Council Connect. Across this issue, a clear theme emerges – that NSW councils are being asked to do more, faster, and under increasing scrutiny.

The broader context is not helping. Ongoing global uncertainty and economic volatility are driving tighter timeframes, higher expectations and greater exposure to risk for local government.

In this edition, we focus on what recent legal and regulatory changes mean in practice. We cover Security of Payments and contract formation risks, pressures arising from the Road Transport Contractual Chain Order, planning reform timeframes, retail leasing changes, and evolving workplace obligations. Each carries practical implications that require careful navigation.

I am pleased to share the opening of Bartier Perry's Parramatta office, along with plans for our Local Government Forum in October. We look forward to bringing councils together again to exchange practical insights and experiences.

Finally, we are proud to recognise Special Counsel Mary-Lynne Taylor, well known to many of you, on her inclusion in the King's Birthday Honours List. It is a well-deserved acknowledgement of her longstanding contribution to the legal profession and the local government sector.

As always, our focus is on helping you manage risk and respond to legal change with confidence. We are here to support you wherever we can.

Warm regards,
Riana

SAVE THE DATE

Join us at the Bartier Perry Local Government Forum, taking place in Parramatta on 13 October 2026.

A CAREER THAT HELPED SHAPE SYDNEY RECOGNISED WITH A MEMBER OF THE ORDER OF AUSTRALIA

MARY-LYNNE TAYLOR (AM)

Many in the local government sector will know Mary-Lynne Taylor. Some have worked alongside her over many years, while others know her by reputation. Many recognise the depth of experience and judgment she brings to planning and environmental law. At Bartier Perry we are lucky enough to call her a colleague and friend.

This year, her contribution has been recognised with the award of Member of the Order of Australia (AM) in the King's Birthday Honours List. It is a fitting acknowledgement of a legal career spanning more than 50 years, much of it closely connected to local councils. As a firm, we are very proud to see her achievements recognised in this way.

Mary-Lynne began her career at a time when the legal profession looked very different. She graduated from the University of Sydney in 1968 as one of just eight women in a class of more than 300. In those early years, it was common for her to be the only woman in the room, including in council meetings and planning discussions.

Reflecting on that time, she is typically pragmatic. "I never felt I was treated differently," she has said but she claims assistance from wonderful male colleagues at the university and in the workplace and then of course the ever-helpful Woman Lawyers Association down through the years. Experiences like this helped shape a career defined by resilience, practicality, and a steady approach to complex and often contested issues.

Her career has taken her from the Crown Solicitor's Office to private practice, including roles in various city firms and later co-founding her own practice, mainly practising in the Land and Environment Court. For many years she has been part of Bartier Perry as Special Counsel, continuing to advise on planning and environmental matters.

Throughout that time, she has worked closely with local councils on challenging issues, from development disputes and urban renewal to heritage and land use planning. She has also contributed through roles on the Local and State planning panels and the Heritage Council of NSW.

Working with various local planning panels was a great experience and provided a unique opportunity for her to work with council staff, Councillors and the public.

For those in local government, her career reflects a deep respect for the role councils play at the frontline of planning. Her work demonstrates that good outcomes are achieved through balance, careful judgment and a willingness to engage constructively.

Mary-Lynne has seen significant change in the legal profession, particularly, the number of women now attending law schools and finding successful careers in the workplace – an outcome dear to her heart.

Beyond her technical expertise, she is widely respected for her generosity and willingness to share her experience. Many have benefited from her insights and the perspective she brings from decades in the sector. Throughout her career she has lectured at Sydney University in planning law and heritage studies and has contributed to the ongoing education of practitioners of all aspects of the Land and Environment Court.

The Member of the Order of Australia recognises not only the length of Mary-Lynne's career, but the impact of her contribution. Over many years, she has helped shape aspects of Sydney's built environment while supporting councils in decisions that influence how our communities live and grow.

For all those who know her, this award will come as no surprise.

Image courtesy of UDIA.

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NSW PLANNING REFORMS BRING DEEMED APPROVAL, TIGHTER DEADLINES AND INCREASED PRESSURE

The second tranche of NSW planning law reforms commenced on 21 March 2026 and are already changing how councils manage development assessment.

This second tranche of reforms place emphasis on councils and consent authorities to provide timely determinations, identify issues with applications and to provide clear communication with applicants.

It is important for councils to understand the newly imposed timeframes for determinations, reviews and appeal processes, particularly in light of the new deemed approval pathway available for certain 'low-risk' developments.

For councils and other consent authorities, the reforms compress timeframes for certain modification applications by introducing a 14-day determination period and a new deemed approval pathway, and extend the window in which applicants can seek reviews and commence appeals. The combined effect is greater resourcing pressure through the tighter timeframes and the risk of a deemed approval if an application is not determined quickly.

Details of the changes

These changes are delivered through the *Environmental Planning and Assessment (Planning System Reforms) Act 2025* (**Planning Reforms Act**), which amends the *Environmental Planning and Assessment Act 1979* (**EPA Act**) and the *Environmental Planning and Assessment Regulation 2021* (**EPA Regulation**).

The Planning Reforms Act follows earlier reforms focused on amendments to the State Environmental Planning Policy (Housing) 2021 (see our article Low and Mid-Rise Housing Policy – Stage 2 is here!).

The first tranche focused on updated EPA Act objects, legislative enshrinement of the Housing Delivery Authority, the introduction of the Development Coordination Authority and the transfer of certain roles from Regional Planning Panels to councils and local planning panels (see our article Major NSW Planning Reforms Proposed in 2025 Bill for more detail).

This second tranche is aimed at streamlining and accelerating decision-making across the NSW planning system. For councils, the headline issues are shorter assessment periods, new pathways for low-risk development (particularly minor modifications) and a stronger emphasis on early identification of pathway/validity issues to avoid deemed approvals.

The second tranche of the Planning Reforms Act makes the following key changes to the EPA Act and EPA Regulations:

- introduction of other new development pathways to promote more streamlined and timely assessment processes, with a particular focus on 'low-risk' development including minor modifications to existing development applications
- the introduction of a 14-day determination period and deemed approval
- amendments to process and timeframes for reviews and appeals
- changes to Part 5 of the EPA Act including that determination authorities are no longer required to take into account all matters affecting or likely to affect the environment 'to the fullest extent'
- streamlined Community Participation Plan to provide consistent exhibition and consultation requirements
- introduction of targeted assessment pathways to allow certain projects which address merit issues and impacts upfront to bypass a full merit assessment.

The key amendments and expected impacts on councils are outlined below.

Section 4.55(1) modification applications – new scope and deemed approval timeframe

One of the most significant changes introduced by the Planning Reforms Act for councils is the increased scope and amendments to the operation of section 4.55 of the EPA Act.

Section 4.55, as amended, applies as follows:

- 4.55(1) applies to modification applications for minor errors or no environmental impact
- 4.55(1A) applies to modification applications with minimal environmental impact
- 4.55(2) applies to all other modification applications.

The most significant amendments relate to section 4.55(1), which has been revised to accelerate decision making for applications involving *minor modifications* to existing development approvals. The amendments are intended to promote more efficient use of section 4.55(1) in dealing with such modifications.

This intention is reflected in the following amendments to section 4.55(1) which now provides that:

- it applies only to modification applications that *do not have an environmental impact*
- applications are subject to a 14-day determination period
- applications are *deemed approved* if no determination is made within that 14-day period
- notification of applications is not required.

These changes apply to any modification applications made under section 4.55(1) lodged from 21 March 2026 onwards.

Councils should expect a shift in the proportion of modification applications being lodged under section 4.55(1), rather than section 4.55(1A), as applicants are likely to seek to take advantage of the *deemed approval* pathway. Several of our council clients have already reported a notable increase in the number of applications being lodged under section 4.55(1).

The introduction of a 14-day determination timeframe is intended to facilitate a faster assessment process for *low risk* applications. However, while the section 4.55(1) pathway is likely to be attractive to applicants, it will place increased pressure on councils to assess and respond to these applications within a significantly shorter timeframe.

Councils will need to carefully review applications lodged under section 4.55(1) to ensure that they have been validly made before the 14-day determination period expires and the application is deemed to be approved. In particular, it is critical that councils consider whether the proposed modification will result in *no environmental impact*.

Where an application does not satisfy the requirements of section 4.55(1), councils should refuse the application and provide feedback to the applicant regarding the appropriate application pathway, which may instead be section 4.55(1A) or section 4.55(2).

Applications made under section 4.55(1) may still require referrals. In such circumstances, it will be the responsibility of the Development Coordination Authority to ensure that referral responses are obtained in a timely manner, enabling councils to consider those responses before the 14-day determination period lapses.

Although councils may request additional information from applicants, applications made under section 4.55(1) are not subject to any "stop the clock" provisions. If further information is required and is critical to the assessment of the application, the appropriate course will be to refuse the application on the basis that insufficient information has been provided.

Notably, determinations made in respect of section 4.55(1) applications are not subject to a right of appeal. However, where a council elects to refuse an application under section 4.55(1), reasons should be clearly articulated to assist the applicant in understanding the refusal and addressing any deficiencies prior to re lodging the application.

Finally, it is noted that minor modifications to development consents granted by the Court continue to be dealt with under the section 4.56 pathway. Conditions of consent may also be imposed on applications made under section 4.55(1); however, any such conditions must be consistent with the modification sought and must not defeat the purpose of the application.

Reviews and appeals - expanded timeframes

Amendments have also been made to the review and appeal processes, with the aim of providing applicants with greater flexibility, as well as improved clarity and consistency between the review and appeal pathways.

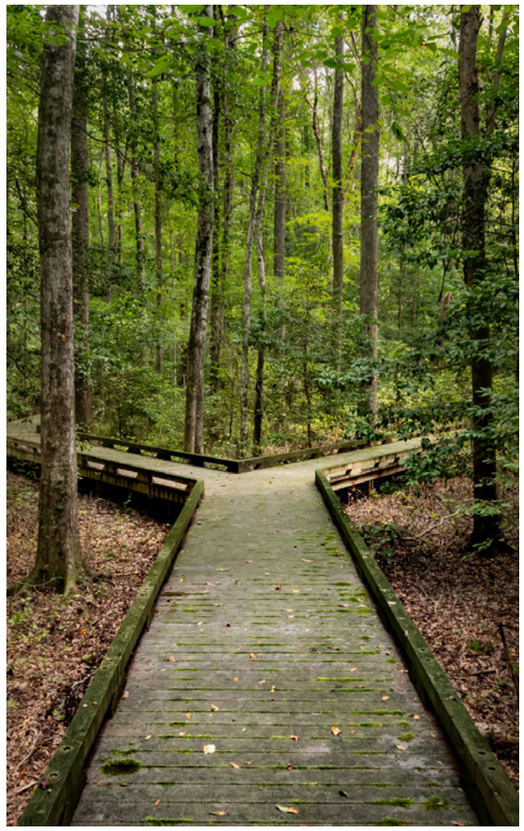
Key amendments to Divisions 8.2 and 8.3 of the EPA Act include the following:

- applicants now have six months to apply for a review of a determination;
- there is no longer a prescribed timeframe for a review to be completed (previously, reviews were required to be finalised within six months of the determination date);
- applicants may elect for a review to be determined by a local planning panel (where constituted), rather than by a more senior officer of the relevant council;
- applicants may commence deemed refusal appeal proceedings in the Land and Environment Court (**LEC**) in respect of a development application or modification application at any time up until determination; and
- appeal proceedings in the LEC can no longer be commenced while a review is underway. Instead, a "stop the clock" mechanism applies to the six month appeal period during the review process.

Section 244 of the EPA Regulation has also been amended to allow an applicant to seek a review of a modification application up to six months after the date of determination.

Any development applications or modification applications that have not yet been determined within the applicable assessment period may be appealed as deemed refusals under these amended provisions, even where deemed refusal appeal rights would have otherwise expired under the former regime.

As determinations are now generally subject to longer review and appeal periods, councils should exercise care to ensure that determinations and reviews are completed within the prescribed timeframes. Failure to do so may result in an increase in LEC appeals, particularly in relation to deemed refusals.



Environmental Impact Statements - risk-based assessment

Amendments to Part 5 of the EPA Act have been made to change the focus of matters affecting or likely to affect the environment. The intention is to guide determination authorities to conduct a more proportionate and risk-based approach, having greater regard to the nature and risk of developments and activities.

Amendments have been made to section 192 of the EPA Act including that environmental impact assessments no longer need to provide an analysis of feasible alternatives to the development or activity, and only an analysis of the significant likely impacts is required.

Statewide Community Participation Plan

The NSW Government proposes to introduce a single Statewide Community Participation Plan to apply consistently across the State and be used by all planning and determination authorities.

At present, there are more than 100 community participation plans operating across NSW. The introduction of a single plan is intended to provide greater uniformity and certainty for authorities, applicants and communities in relation to planning decisions and processes.

Councils will not be precluded from tailoring their community participation practices through additional engagement strategies to reflect local community needs. Rather, the Statewide Community Participation Plan is intended to establish a consistent baseline of minimum requirements, including:

- a minimum 60 day consultation period for State strategic planning initiatives, such as Regional and State Plans
- a standard seven day notice period to neighbours prior to the commencement of works under a Complying Development Certificate
- standardisation of the categories of development applications that require public exhibition.

A draft Statewide Community Participation Plan was recently on public exhibition, with submissions closing on 3 June 2026.

Targeted assessment - watch this space

A newly targeted assessment pathway has been introduced for certain types of development where key issues and impacts can be readily identified.

The purpose of this pathway is to capture development that does not meet the criteria for complying development, but also does not warrant

the full development application assessment process. It is intended to streamline approvals and reduce assessment timeframes for certain *low risk* developments. New sections 4.15(1C) and 4.15(1D) of the EPA Act prescribe a limited set of matters for consideration when assessing a development application under the targeted assessment pathway.

The categories of development eligible for targeted assessment will be specified in a State Environmental Planning Policy. At this stage, no development types have been declared. However, it is anticipated that complex developments with significant environmental impacts will be excluded from this pathway.

The NSW Government has indicated that a discussion paper outlining the targeted assessment pathway in further detail will be released in the coming months, and councils will be invited to participate in the consultation process.

What should councils do? Practical steps

1. **Review section 4.55 modifications:** confirm the modification application has lodged correctly (4.55(1) vs 4.55(1A)/(2)), check completeness, and consider whether the application has an "environmental impact"
2. **Determine within the 14-day deadline:** refuse early when you must
3. **Prepare for increased reviews and appeals:** expect more review requests and deemed refusal appeals

Given the potential benefits available to applicants from these amendments, it is crucial for consent authorities to conduct effective preliminary reviews of development and modification applications to ensure that they have been made correctly under the appropriate pathways.

The changes are detailed and we know they are a lot to take in.

If you'd like any support interpreting and implementing these changes, please get in touch with our planning team.

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SECURITY OF PAYMENTS (NSW) 2026: WHAT COUNCILS NEED TO KNOW

In 2026, the security of payment regime under the *Building and Construction Industry Security of Payment Act 1999* (NSW) (SOPA) remains one of the fastest ways for contractors to turn payment disputes into cashflow in the short term.

For councils, the risks presented by SOPA almost always arise out of the process. As principals on capital works and maintenance contracts, councils can face an enforceable liability for the claimed amount if a payment claim is missed or a payment schedule is late, particularly now that claims are commonly served via email and contract platforms outside business hours.

This update highlights recent NSW decisions that sharpen the practical message for councils:

- to treat digital service as immediate
- assume imperfect claims still require a response
- build "SOPA readiness" into everyday contract administration (monitoring, escalating and diarising deadlines) rather than relying on crisis response.

Deeming clauses and service timing

The NSW Court of Appeal has recently confirmed that the effect of section 14(4) SOPA is that the period for responding to a payment claim can be contractually shortened but not lengthened and, in particular, clauses seeking to defer service until the next business day may be ineffective.

In Roberts Co (NSW) Pty Ltd v Sharvain Facades Pty Ltd (Administrators Appointed) [2025] NSWCA 161 (**Sharvain Facades**), the Court held that an electronically served payment claim was served when it became accessible to the principal, notwithstanding a contractual provision deeming service to occur on the following business day, essentially extending the statutory 10-day deadline.

In the case of *Sharvain Facades*, the head contractor served a $3.2M payment claim via Payapps at 7:18pm on Friday, 28 February 2025. Roberts Co (the principal) considered the clause deeming after-hours service as received the next business day and responded with a payment schedule on Monday, 17 March 2025.

The Court held that the deeming clause was void under section 34 SOPA and the clock started on 28 February 2025, and Roberts Co became liable for the full payment claim amount.

What to do differently in 2026

In 2026, parties responding to a payment claim cannot assume a deeming clause buys time to respond, even where a payment claim is served outside business hours.

Parties should treat a payment claim capable of being retrieved as the practical trigger point for internal escalation and ensure whoever monitors the platform for service of SOPA claims (eg. Payapps, email, etc) understands the implications of receiving a payment schedule and diarises the earliest plausible deadline.

Imperfect payment claims

Another 2025 appellate decision provides clarity for claimants and a clear warning for respondents - the validity of payment claims is not about perfection.

The NSW Court of Appeal found in *Manariti Plumbing Pty Ltd v Universal Property Group Pty Ltd* [2025] NSWCA 135 (**Manariti Plumbing**) that a payment claim can be enforceable even if its supporting material is not perfect, provided it is reasonably comprehensible and the work is reasonably identifiable.

This matters because the most common (and risky) response we still see is principals or administrators of a contract ignoring a payment claim on the assumption that it is invalid. Courts have repeatedly emphasised that disputes about valuation, defects, set offs or overclaiming are ordinarily matters to be dealt with through the SOPA regime and not by silence.

Manariti served a $221K payment claim via email with an invoice, statement and spreadsheet

In *Manariti Plumbing* the payment claim was submitted on a cost-plus basis in circumstances where earlier claims were fixed price. The claim also sought profits on previously paid invoices, and Manariti failed to explain why these were applied or why the claims shifted to cost-plus.

Universal did not serve a payment schedule or pay the amount claimed and argued the claim was not a valid claim for the purposes of SOPA.

The District Court refused Manariti its application for a summary judgment and agreed with Universal that it was an invalid claim. On appeal, the Court of Appeal held that while the claim was not perfect, the prior invoices and spreadsheet sufficiently identified the work and so was a valid claim.

What to do differently in 2026

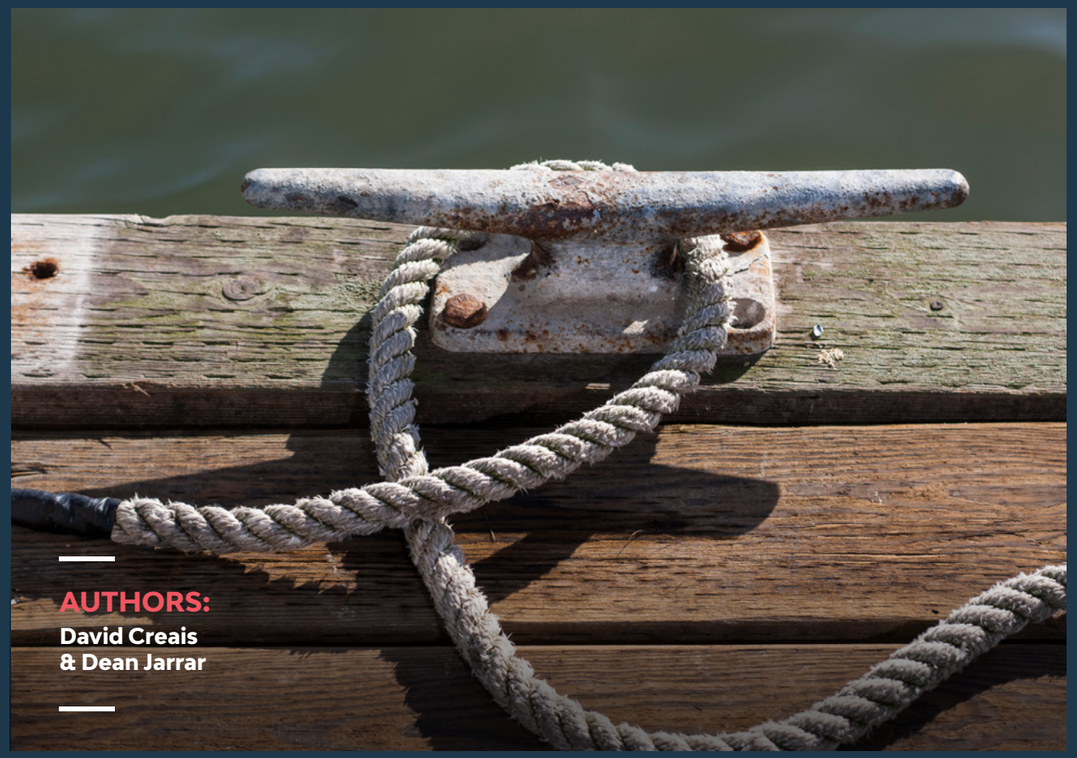
If the claim is intelligible enough to understand what is being claimed for, assume it requires a payment schedule, then assess **and** address the claims substance.

Parties should reserve "invalidity" arguments for genuinely unclear claims and run them in a schedule and adjudication response rather than doing nothing. Similarly, disputes over damages or restitution must be resolved via adjudication, not by ignoring them.

Conclusion

In practice, SOPA disputes are usually won or lost on deadlines. For councils, the key is to assume electronic service is effective as soon as a claim can be accessed, respond to any reasonably understandable claim with a payment schedule (even if you disagree with it), and diarise the earliest possible due date. Simple controls such as clear monitoring of email/platforms, back-up cover during leave, and a reliable escalation path can prevent avoidable liability and keep payment disputes manageable

If you would like support to review your council's SOPA procedures, or to prepare a payment schedule or adjudication response within the statutory timeframes, our Building & Construction team can assist.



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CONTRACT? WHAT CONTRACT?

When a council resolution to accept an offer is not binding

The NSW Court of Appeal's decision in *Piety Developments Pty Ltd v Cumberland City Council* is a timely reminder that, for councils, passing a resolution to "accept" an offer is not the same thing as entering into a legally binding contract. Even where a resolution is passed in open session, livestreamed, and later recorded in Council minutes, it may still fall well short of creating enforceable contractual rights.

The case provides important guidance on how the basic principles of contract formation operate in the context of local government decision-making as regulated by the *Local Government Act 1993*.

Background to the dispute

Cumberland City Council owned land which it had acquired by compulsory acquisition and was using as a car park.

The Council commenced a public tender process for the sale and redevelopment of the land. That process did not result in an accepted tender and the Council resolved to enter negotiations with two proponents, including Piety Developments.

The Council asked both proponents to submit a "best and final offer". Piety's offer contemplated the later exchange of a formal contract, including a cash payment to be made six months after exchange.

At an ordinary Council meeting on 3 November 2021, councillors resolved to "accept the offer from Piety Developments Pty Ltd" and delegated authority to the General Manager to execute the documents. The meeting was held in public and livestreamed. The following day, unsigned draft minutes recording the resolution were published on the Council's website.

Shortly after the meeting concluded, several councillors lodged a notice of motion seeking to rescind the resolution. Although the minutes were later confirmed and signed, no contract documents were executed and no written communication of acceptance was sent to Piety. The Council then entered the statutory caretaker period ahead of the local government elections.

Piety nonetheless claimed that a binding agreement had been formed. It argued that the Council's resolution, combined with Piety becoming aware of it through the meeting and the publication of minutes, was enough to constitute acceptance. It sought specific performance or alternatively damages.

At first instance, the Supreme Court rejected that claim. The Court of Appeal dismissed Piety's appeal, confirming that no binding contract had come into existence.

The central legal issue - acceptance and communication

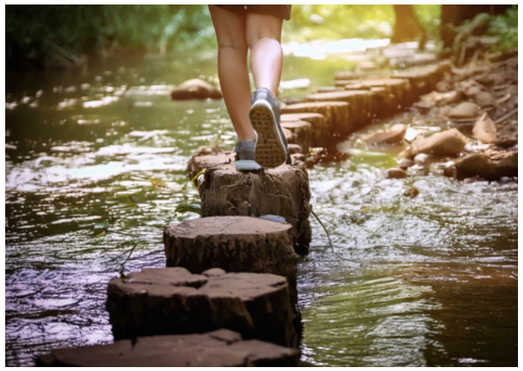
The Court of Appeal's reasoning turned on a basic proposition of contract law - acceptance of an offer must be communicated to the offeror to create a binding contract.

But a council resolution is an internal decision. In contractual terms, it may reflect an intention to accept an offer, but it does not complete the act of acceptance unless that intention is communicated.

Piety argued that acceptance was communicated by a combination of factors: the public nature of the Council meeting, the livestream, the posting of draft minutes online and the fact that Piety became aware that the resolution had been passed.

The Court rejected that submission - the Council did not, by words or conduct, communicate its acceptance to Piety in a way that a reasonable person in Piety's position would understand as final and binding.

No letter or email was sent. No authorised officer told Piety that its offer had been accepted. No contract was executed. The mere fact that Piety learnt of the resolution through indirect means was insufficient.



Statutory context matters

A key feature of the Court's reasoning was its emphasis on the statutory and regulatory framework within which councils operate. Unlike private entities, councils are public bodies subject to detailed legislative requirements governing meetings, resolutions and record-keeping.

While a party such as Piety could be taken to know that councils conduct meetings in public and publish agendas and minutes as part of their statutory obligations, the minutes are prepared in draft form and only later confirmed and signed, and council resolutions may be rescinded in accordance with statutory procedures before they are acted upon.

Against that background, the Court held that the publication of unsigned draft minutes was not a communication of acceptance for contractual purposes. It was simply a step taken in the performance of the Council's statutory functions.

Until acceptance was formally communicated, the Council was entitled to reconsider its decision. The existence of a rescission motion further reinforced that the resolution had not crystallised into a binding commitment.

The role of minutes and writing requirements

Piety also argued that the later confirmation and signing of the minutes satisfied the writing requirements under section 54A of the *Conveyancing Act 1919* (NSW), which requires contracts for the sale of land to be evidenced in writing signed by the seller.

The Court rejected this argument. It held that the minutes did not constitute a "memorandum or note" of a contract. When the minutes were confirmed and signed, a rescission motion was on foot and the Council was in caretaker mode (when a council is not permitted to enter into major contracts or land dealings). The minutes were prepared to comply with statutory obligations, not to record a concluded contract.

In short, the case confirms that councils enter contracts deliberately, not accidentally. A resolution may signal intent, but without clear and authorised communication of acceptance, there is no contract at all.

Nonetheless, councils should not treat the decision as a licence for poor practice. Different facts, particularly express communication by an authorised officer, could easily produce a different result.

What councils should learn from the case

- A resolution is not acceptance. A council resolution to "accept" an offer is an internal decision, not a contract. Acceptance is only effective when communicated by an authorised person in a way that conveys final assent.
- Control communications carefully. Councils should be clear about who is authorised to communicate acceptance and when. Informal conversations, emails, or statements after meetings can carry real risk if made by someone with apparent authority.
- Minutes of council meetings are not contracts. Publishing draft minutes is a transparency measure, not a contractual act. However, councils should remain alert to how minutes and resolutions are described, particularly in high-value transactions.
- Rescission powers matter. Until acceptance is communicated, councils retain the statutory ability to rescind or amend resolutions. That power forms part of the contractual context and should be factored into transaction planning.
- Document the intended pathway to contract. Councils should ensure that reports, resolutions and communications clearly state that binding legal obligations arise only on execution of formal documents and then follow that pathway consistently.
- Legal oversight is critical. Transactions involving land or major assets should have legal input at each stage, particularly around authority, signing, communication and timing.

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ROAD TRANSPORT CONTRACTUAL CHAIN ORDER – FUEL COST RECOVERY AND COUNCIL CONTRACT RISK

On 20 April 2026, the Fair Work Commission (Commission) made Australia's first Road Transport Contractual Chain Order (RTCCO) under the new road transport contractual chain regime in Chapter 3B of the *Fair Work Act 2009* (Cth) (FWA). The RTCCO took effect on 21 April 2026.

The RTCCO allows participants in affected road transport contractual chains to adjust rates so increased fuel costs can be recovered and passed up the chain, with the cost burden ultimately being borne by the end user of road transport services.

Local councils commonly engage contractors, suppliers and service providers whose activities involve road transport, either directly (such as waste collection) or indirectly through subcontracting and supply chain arrangements. As a result, councils and many of their contracts and arrangements will fall within scope of the RTCCO.

In this article, we examine the RTCCO in a local government context. Practical examples and key takeaways are included to assist councils in understanding their obligations under the RTCCO and managing compliance risk.

What is the Road Transport Contractual Chain Order?

The RTCCO is a legally enforceable instrument. It was made following an emergency application under the *Fair Work Amendment (Fairer Fuel) Act 2026* (Cth) which passed on 2 April 2026.

The RTCCO applies nationally and has no fixed end date. It will automatically cease to operate if the weekly average national terminal gate price for diesel (as reported by the Australian Institute of Petroleum) falls below $2.00 per litre.

The RTCCO is subject to review by the Commission after its first month of operation and every three months thereafter.

Why was the RTCCO introduced?

The RTCCO was introduced in response to unprecedented fuel price increases caused by disruptions to global shipping routes and ongoing conflict in the Middle East, particularly affecting transit through the Strait of Hormuz.

Between 27 February 2026 (the day before hostilities started) to 27 March 2026, diesel rose from 165.4 to 310.6 cents per litre and petrol from 156.2 to 246.9 cents per litre.

Evidence before the Commission demonstrated that these increases were disproportionately affecting small operators within the road transport industry, namely self-employed workers (owner-drivers and road transport employee-like workers) and small businesses (small fleet operators).

The Commission found that the road transport industry operates through contractual chains in which smaller parties at or towards the end of the chain often lack the bargaining power and contractual flexibility to renegotiate rates when fuel prices rise sharply.

The Commission accepted that, without regulatory intervention, smaller operators would be forced to absorb fuel cost increases, threatening their viability and potentially harming the national economy and the public interest.

The RTCCO is intended to:

- ensure fuel cost increases can be recovered at each level of a road transport contractual chain;
- prevent cost pressures being unfairly concentrated on vulnerable participants;
- promote transparency and accountability within road transport supply chains; and
- ensure that the ultimate cost of fuel price rises is borne by the end user of road transport services.

Scope of the RTCCO

Understanding what constitutes a 'road transport contractual chain' is critical.

Under section 15RA of the FWA, a road transport contractual chain is defined as a chain or series of contracts or arrangements:

- under which work is performed for a party to the first contract or arrangement by a regulated road transport contractor, a road transport employee-like worker, or an employee; and
- in which at least one party to the first contract or arrangement is a constitutional corporation.

A person is 'in' a road transport contractual chain if they are:

- a **primary party** (eg. council and head contractor) to the first contract or arrangement;
- a **secondary party** (eg. subcontractors/suppliers involved later in the chain for transport) to a subsequent contract or arrangement in the chain; or
- a regulated road transport contractor or road transport employee-like worker (eg. owner-drivers / employee-like workers / small fleet operators) performing work under the chain.

The concept of a road transport contractual chain is intentionally broad. It is not limited to freight or logistics companies. For example, it can capture:

- purchasers of goods or services;
- suppliers who subcontract delivery activities;
- contractors whose work includes transporting goods or materials as part of a broader service; and
- councils and other public sector bodies who sit at the head of contractual arrangements.

The definition of 'road transport industry' is also broad and includes:

- the road transport and distribution industry;
- long distance private road transport;
- waste management; and
- passenger vehicle transportation (excluding rail-based services).

This wide scope means many arrangements that do not look, at first glance, like 'road transport contracts', may still fall within the road transport contractual chain.

Employee carve-out – a critical qualification

An important consideration is the employee carve out in section 15RA(3) of the FWA. This provides that individuals performing work in the capacity of an employee are not 'in' a road transport contractual chain for the purposes of the FWA.

Practically, this can break the chain where:

- a supplier of goods or services, for example a plumber, delivers equipment or materials to site using its own employees; and
- there is no separate engagement of a regulated road transport contractor or employee-like worker in delivering the equipment or materials.

In those circumstances, the fact that goods are transported to a council site does not, in itself, create a road transport contractual chain.

Obligations imposed by the RTCCO

The RTCCO imposes different obligations depending on a party's position in the road transport contractual chain.

Primary parties

Primary parties must:

- adjust the rate they pay to other primary parties to ensure recovery of increased fuel costs compared with prices on or before 6 March 2026; and
- take reasonable steps to ensure that secondary parties further down the chain similarly adjust their rates so that increased fuel costs are recovered.

Secondary parties

Secondary parties must adjust the rate they pay to their counterparties (including regulated contractors and employee-like workers) to ensure recovery of increased fuel costs.

Timing and methods

Rate adjustments must occur at least:

- fortnightly; or
- twice per calendar month.

The obligations can be satisfied in various ways, including:

- adjusting overall rates or rate components;
- introducing a fuel levy or surcharge;
- direct reimbursement of fuel costs; or
- application of an existing 'rise and fall' formula or benchmarking model.

The Commission has made clear that compliance is not an exercise in perfection but must have a sound and reasonable mathematical basis of what is necessary to provide for cost recovery.

Penalties for non-compliance

Compliance with the RTCCO is mandatory. Failing to comply with or contravening a term of the RTCCO is a contravention of the FWA and can attract significant civil penalties as well as compensation orders.

The maximum penalty that can be imposed for each contravention is currently **$19,800** for an individual and **$99,000** for a corporation, and the Court also has power to order compensation and other usual remedies for contraventions of the FWA.

How does the RTCCO apply to local councils?

Local councils frequently sit at or near the head of contractual chains. Common examples include:

- waste collection and waste management contracts;
- civil works and infrastructure maintenance;
- construction and capital works projects;
- parks, roads and fleet services; and
- procurement of goods where delivery is subcontracted.

While councils are not constitutional corporations themselves, the RTCCO will often still apply because at least one other primary party (generally the contractor or supplier) will be a constitutional corporation.

Waste contracts

Waste collection contracts are particularly likely to be caught, as waste management is expressly included in the definition of the road transport industry. Councils should assume these contracts are within scope unless clearly carved out.

Civil and maintenance contracts

Contracts for civil works, road maintenance, plumbing or similar services may fall within a chain where:

- transport of materials or equipment is subcontracted; and
- road transport work is more than merely incidental and is performed by regulated contractors.

Standard supply contracts

Supply contracts require careful analysis. The key distinction is:

- **delivery by supplier's employees** – typically outside the RTCCO due to the employee carve out; versus
- **delivery by third-party couriers or transport providers** – likely to create a road transport contractual chain.

Example scenarios

The examples below illustrate how the RTCCO operates in practice:

Scenario 1:

Waste collection contract	Outcome
A local council engages WasteCo Pty Ltd to provide residential waste collection services. WasteCo subcontracts owner drivers for collection routes. The contract is for work in the road transport industry. Council and WasteCo are primary parties. Owner drivers engaged by WasteCo are regulated road transport contractors.	The RTCCO applies. Council must adjust rates and take reasonable steps to ensure WasteCo has taken measures to reimburse owner drivers for fuel cost increases.

Scenario 2:

Direct supply with employee delivery	Outcome
A council purchases concrete pipes from Supplier Ltd. Supplier Ltd delivers the pipes using its own employees and trucks. No separate delivery fee is charged. Transport work is performed by employees only.	The RTCCO does not apply due to the employee carve out. No road transport contractual chain is created.

Scenario 3:	
Supply with subcontracted delivery	**Outcome**
A council purchases road signage from Supplier Ltd. Supplier Ltd engages CourierCo to deliver the goods. Council and Supplier Ltd are primary parties. CourierCo is a regulated road transport contractor. Supplier Ltd becomes a secondary party in respect of transport.	The RTCCO applies. Council must adjust rates payable to Supplier Ltd (where fuel costs are relevant) and take reasonable steps to ensure Supplier Ltd adjusts rates payable to CourierCo.

Scenario 4:	
The employee carve out in a broader context	**Outcome**
A council engages a landscaping contractor. The contractor transports plants and materials using its own employees but occasionally uses a third-party haulage company for bulk deliveries.	The RTCCO applies only to the part of the arrangement involving the subcontracted haulage. Council may need to trace and isolate the transport component of the contractual chain.

Council RTCCO compliance checklist

The obligation on primary parties to take 'reasonable steps' is context specific. The Commission has indicated it does not extend to taking every conceivable step.

Instead, the Commission suggested that this would involve *'inquiries to be made and assurance received about how rates have been adjusted to allow for cost recovery'*.

For councils, reasonable steps may include:

- notifying contractors of the RTCCO and their obligations;
- requesting confirmation of compliance;
- seeking high level information about subcontracting arrangements; and
- following up where no response is received.

Key takeaways

- **Assume exposure first, then narrow** – given the breadth of the RTCCO, assume contracts may be captured and then carefully assess carve-outs. Identifying impacted contracts early is key.
- **Send correspondence to counterparties of impacted contracts** – notify counterparties to inform them of the RTCCO and enquire whether they are complying with it.
- **Pay close attention to subcontracting** – downstream delivery and transport arrangements are critical.
- **Use existing adjustment mechanisms where possible** – fuel surcharge schemes and rise-and-fall clauses may already satisfy the RTCCO.
- **Note the employee carve-out and other RTCCO carve outs** – the employee carve out will exclude many standard supply arrangements from the RTCCO.
- **Document reasonable steps** – maintaining records of enquiries and clear communications will be essential.

If your council engages contractors who subcontract transport (including waste, civil works or deliveries), contact us to discuss what the RTCCO means for your contracts and pricing mechanisms.

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RETAIL LEASING LAW CHANGES NSW – KEY IMPACTS FOR COUNCILS

Retail leasing is not typically a primary focus for councils. However, most councils deal with it in some form - cafés in parks, kiosks, small shops in civic buildings and mixed-use community spaces.

Some of these arrangements may fall within retail leasing laws, depending on how they are structured and used.

With NSW retail leasing law proposing to undergo its most significant reform in decades, that risk becomes more relevant - making this something councils should keep on the radar.

What's proposed to change

The *Retail Leases Amendment (Review) Bill 2025 (NSW)* is the next stage of reform to the *Retail Leases Act 1994 (NSW)*. It has been introduced to Parliament but is not yet in force.

Although much of the reform is framed as procedural and structural, there are two significant shifts relevant to how councils approach retail leasing in practice.

1. Broader approach to what is "retail"

Earlier changes (from 1 January 2023) already expanded the types of businesses treated as retail - for example gyms and small bars are now captured regardless of location.

The proposed reforms go further, moving away from traditional 'shops' and whether retail is the dominant use, towards a more practical question – how the premises are actually used in practice. In other words, even a part retail use may be enough in some circumstances.

2. Ancillary areas likely to be caught

The Bill also indicates that areas ancillary to a retail use, such as:

- car parks
- storage areas
- signage or display rights

may be treated as part of the retail lease and covered by the Act if the reforms proceed.

This is a significant shift. Rather than focusing only on the core tenancy, it looks at the overall arrangement, including the spaces and rights that support the retail use.

Why this matters for councils

For councils, the issue is the risk of unintended application of the Act. Council arrangements may not be structured as "retail leases" but may function like them in practice.

Common examples include:

- community centres with a café or kiosk
- aquatic or recreation facilities with food operators
- visitor or tourism sites with small retail components
- civic buildings with incidental commercial uses

These are often mixed-use arrangements, where retail is only one part of the overall purpose.

If an arrangement is characterised as a retail lease under the Act, a different set of rules applies and those rules may even override already agreed terms.

Some of those rules include:

- additional disclosure obligations
- limits on the recovery of certain outgoings
- restrictions on clauses dealing with matters such as relocation, demolition, assignment and termination.

If the proposed reforms are passed, it will become easier for a whole arrangement to fall within the Act, even if this was not the original intention.

The proposed treatment of ancillary areas is another key issue for councils. It is common to lease a café or shop, while separately licensing things like parking, storage, outdoor seating or signage. Currently, those "side" arrangements are often treated and documented separately from the retail lease itself.

If the reforms proceed, that distinction becomes much less reliable. Where those areas support the retail use, they may be treated as part of the same retail lease - even if documented separately. This may affect how income is structured, what costs can be recovered, and overall flexibility.

Practical considerations

Councils should take a closer look at where retail risks may arise:

1. Focus on mixed-use sites - Identify premises with any customer-facing or retail element, even if retail is not the primary purpose.

2. Look beyond labels - Whether it is called a "licence" or "commercial lease" is less important than how the space actually functions.

3. Pay attention to ancillary arrangements - Separate agreements for parking, storage, signage or outdoor areas are the most likely to be drawn into the Act if the reforms proceed.

4. Check key compliance points - Where an arrangement may be retail, confirm whether disclosure requirements were triggered, whether outgoings are recoverable as drafted, and whether key clauses would hold up.

5. Keep an eye on the reforms - The Bill is not yet law, but it signals where things are heading, with much of the detail to be set out in regulations, which can change more readily.

Other reforms to keep in mind

The Bill also proposes a number of more administrative changes, including:

- updates to disclosure requirements
- greater flexibility around disclosure timeframes
- changes to when lease preparation costs can be recovered.

These changes will affect how councils approach retail leasing in practice, particularly around process, timing and cost recovery. They also reinforce a broader shift towards a more regulated and standardised retail leasing framework.

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ENHANCED VICTIMISATION PROTECTIONS UNDER THE *INDUSTRIAL RELATIONS ACT 1996* (NSW) – PRACTICAL GUIDANCE FOR COUNCILS

Recent amendments to the *Industrial Relations Act 1996* (NSW) (Act), have significantly expanded victimisation provisions, which are set to have a direct impact on employers, including local and state government entities. This article aims to highlight relevant legislation, provide practical steps and examples to support compliance and risk management.

New employee protections and a new approach to enforcement

Under the Act, victimisation occurs when an employee or prospective employee is subjected to a detriment because of a protected reason.

The amendments add additional protected reasons. It is now unlawful to victimise an employee or prospective employee on new grounds, including because they:

- make a complaint or inquiry about their employment or to a public authority about their employer, including about matters other than about their employment;
- engage or propose to engage in industrial organising activities;
- are entitled to a benefit or claim a benefit under workers compensation legislation or in relation to other entitlements for a workplace injury;
- have a characteristic that is protected from discrimination under the *Anti Discrimination Act 1977*; or
- have a role or responsibility under industrial relations legislation or an industrial instrument.

The provisions relating to enforcement of victimisation provisions have also been amended and enhanced as follows:

- In victimisation proceedings, there was always a rebuttable presumption (subject to proving some threshold matters) that a reason for the detrimental action was the alleged protected reason. However, for the presumption to now be rebutted, the Commission must be satisfied that, *objectively*, the alleged protected matter was not a substantial and operative reason of the detrimental action; and
- when determining if the alleged matter was not a substantial and operative cause of the detrimental action, the Commission may consider conscious *and unconscious* factors.

Conscious and unconscious factors in decision-making

Under the new and expanded victimisation provisions, the role of the decision maker and the chain of decision making will be pivotal when the Commission determines whether detrimental action has been taken unlawfully.

When addressing victimisation claims, council must be aware of both conscious and unconscious factors that may be found to have influenced the decisions.

Demonstrating the conscious factors that have been taken into account will generally be straightforward, assuming objective material is available that supports the reasons and process together with witnesses to support those reasons and processes.

Where it will be undoubtedly challenging is how councils can demonstrate what unconscious factors they have taken into account when decisions are made that may have a detrimental outcome for an employee.

Unconscious factors in decision making are mental processes that influence our choices without us being aware of them. These invisible forces can shape preferences, judgments, and actions without the decision maker realising it. Examples of these are unconscious biases related to gender, age, ethnicity or other characteristics that can affect how evidence is interpreted or how parties are perceived. In addition, prevailing workplace cultures or societal norms might influence perceptions.

But lack of insight into one's motives is no defence.

In the decision of the Full Federal Court of Australia in *Barclay v Board of Bendigo Regional Institute of Technical and Further Education* (which was cited in the second reading speech in relation to the amendments as the preferred approach in NSW), the Court said:

> *What is required is a determination of … the "real reason" for the conduct. The real reason for a person's conduct is not necessarily the reason that the person asserts, even where the person genuinely believes he or she was motivated by that reason. The search is for what actuated the conduct of the person, not for what the person thinks he or she was actuated by. In that regard, the real reason may be conscious or unconscious, and where unconscious or not appreciated or understood, adverse action will not be excused simply because its perpetrator held a benevolent intent. It is not open to the decision-maker to choose to ignore the objective connection between the decision he or she is making and the attribute or activity in question.*

Yes, that's right – the real reasons do not even need to be appreciated or understood by a decision maker.

So short of getting a hypnotist to prove there were no unconscious factors influencing a decision, how can council possibly address this in their decision making?

Implications

These provisions under the Act reflect a broader shift toward accountability in NSW workplaces. They offer stronger protections for employees and place a greater burden on employers to justify detrimental actions.

They also offer an enhanced pathway for employees to take and we expect to see an increase in these types of claims.

Council employers should be deliberate about who makes decisions. To rebut the presumption and to address unconscious factors, the organisation may need to take a conflict of interest approach.

We recommend proactive steps, including:

- Always deal with, resolve and close out complaints as soon as possible;
- Do not over-escalate a complaint or inquiry;
- Limit knowledge of a complaint or inquiry to those who need to action it;
- Structure decisions carefully:
  - consider seeking recommendations from those who are not the final decision makers, or whether the decision should be left to the final decision maker;
  - avoid having conflicted managers involved in or making final calls.
- Document reasons thoroughly: Ensure decision-making processes are transparent and well recorded. Keep detailed notes of meetings, communications, and rationale;
- Train leaders; and
- Consider outsourcing the decision and having the service provider decide based on objective and documented facts.

Remember that the reverse onus provision means councils must be prepared to defend their actions with evidence, not just assertions.

Understanding these changes and implementing robust decision-making processes will be critical to managing risk. And when it comes to defending your decisions, be prepared for a rigorous process – because the Commission will want to know not just what you did, but what you were thinking (consciously or not) when you did it.

New provisions in action

While not involving a council, *Walter v Transport Secretary* [2026] NSWIRComm 1008 is a recent case which provides some helpful insights to the new jurisdiction.

The case concerned allegations of victimisation under the new expanded provisions, where the employer successfully demonstrated that there was no unlawful basis for the detriment imposed.

Mr Walter alleged victimisation after refusing a routine drug and alcohol test, citing privacy concerns, and him making a complaint regarding alleged inappropriate workplace behaviour.

As a result of Mr Walter's refusal to undertake the test, Mr Walter was issued a letter reminding him of his obligations and requiring certain remedial actions. The letter stated:

> *You are reminded that any future failure by you to meet the expected standards of conduct in the workplace may be subject to further remedial and / or disciplinary action.*

While the Commission found (it seems reluctantly) that the warning letter could constitute a *"detriment"* within the meaning of s 213 of the Act, with the new test in mind, the Commission found that:

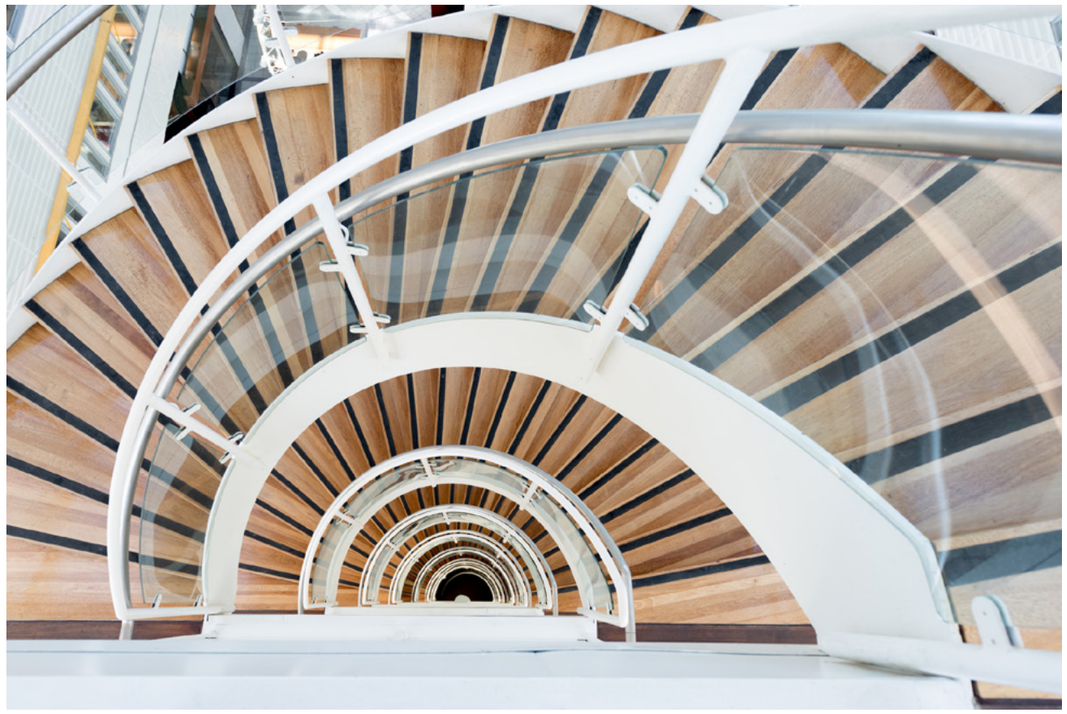
- ***Subjectively***, the officers of the employer who gave evidence were clear that they initiated the investigation into Mr Walter for failing to participate in the drug and alcohol test; and
- ***Objectively***:
  - all of the evidence pointed to the subjective reasons being the sole reason that Mr Walter was subjected to an investigation into his failure to fully participate in the test; and
  - Mr Walter's complaint played no part in the employer's process leading to the warning letter.

With respect to any unconscious factors in this matter, these did not appear to feature heavily in the Commission's reasoning.

The Commission concluded that the employer had discharged the reverse onus, being that the investigation and subsequent letter were not substantially or operatively caused by Mr Walter's complaint.

Important in its determination was that the documentary evidence was consistent with the decision makers evidence as to the relevant events.

De-risk your next decision. Contact us for a council victimisation risk check.



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Thank you for taking the time to read our Council Connect publication. We hope you found it informative. If you have any comments on this issue, or suggestions for our next issue, we'd love to hear from you. Please email **info@bartier.com.au**

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