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Respect, disconnect and reform

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What's happened in 2024
and what's ahead for the APS
in the new year.

John Wilson and Keiran Pender

'TIS the season. And as we have done every December in recent years, now seems an opportune moment to reflect on key developments in public sector employment law and look ahead to what faces the APS in 2025.

IR and the election season

In 2024, the Albanese government continued its frenetic pace on industrial relations reform. The right to disconnect became law, as did better protections for workers in contractor-style arrangements. Amendments were also made to the Public Service Act 1999, which governs the APS, including adding a new APS value of stewardship.

The right to disconnect, together with changes to flexible working arrangements made in 2023, and increasing flexibility being baked into enterprise agreements, is evolving the way that all workplaces do business, including the public service. Technological change and the rise of artificial intelligence also continue to have an impact. These evolutions will inevitably continue at pace in the year ahead.

With an election due between February and May next year, there is much uncertainty ahead on the APS industrial relations radar. While the re-election of Labor would likely be business as usual, the Coalition has foreshadowed an intention to wind back some key employment reform of the Albanese government if elected, and may slash public sector jobs. Nationals leader David Littleproud even said, "The first thing we'll do is sack those 36,000 public servants in Canberra." What a minority government of either persuasion would mean for IR reform is anyone's guess.

This year also brought approval of new enterprise agreements across the public service, including through a range of whole-of-service commonly agreed conditions. With the new agreements out of the way,

and the bulk of the Albanese government's flagship IR reform done, 2025 should be a more stable year for public sector conditions - unless the Coalition win and do proceed with major reform and job-cutting.

The forthcoming election will also underscore ongoing challenges around public servant impartiality. APS employees are not second-class citizens; public servants can join political parties, attend rallies and hand out how-to-vote cards. But there are limits on political activity, particularly when it has a nexus with the worker's job, and these issues become even more fraught when someone takes to social media.

Respect at work

In September, the final outstanding recommendation of the Sex Discrimination Commissioner's landmark Respect@Work report was fulfilled with the passage of significant reform to the way legal costs are managed in anti-discrimination cases, including sexual harassment claims.

Previously, an unsuccessful litigant faced the risk of adverse costs - potentially hundreds of thousands of dollars - which was a significant inhibitor to people seeking to vindicate their legal rights. Following the reform, complainants can seek their own legal costs if they win, but do not face the risk of paying their employer or the harasser's costs if unsuccessful - unless they have been vexatious or unreasonable. This is an important change which will make anti-discrimination protections much more real. We know, though, including from the latest APS State of the Service report, that bullying, sexual harassment and other forms of discrimination remain all too prevalent in the public service.

A related issue bubbling away over the past year has been the use of non-disclosure agreements to settle harassment claims in the public service. Following the Respect@



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Work report, the APS Commissioner issued a direction for agencies to consult with the APSC before entering into NDAs with harassment complainants. The Attorney-General, Mark Dreyfus KC, has said that the government's position is not to ask for NDAs, and only agree to them where requested by the complainant. But there has been some debate on whether that reflects the experience on the ground.

The Albanese government has also introduced reforms to Parliament to better protect front-line APS workers from violence and aggression, through the establishment of a workplace protection order regime. It will provide for orders which stop a person from accessing a particular federal workplace or contacting a particular worker; non-compliance can lead to imprisonment. This is an increasingly serious issue - in the year to June 2024, Services Australia front-line staff experienced almost 1700 serious incidents. The bill, introduced in November, should become law in the new year.

Whistleblower protections

This time last year, the Attorney-General's Department had just released a consultation paper on major reform to the Public Interest Disclosure Act, the law which protects public sector whistleblowers. Certainly there has been some developments in this space over the ensuing 12 months - for the first time, parliamentary workers now have whistleblower protections through the new independent parliamentary standards commission, and protections for whistleblowers in the tax and aged care sectors have been

beefed up. But the long-awaited PID Act overhaul has yet to eventuate.

The year 2025 may see the enactment of major changes to the PID Act - likely in the second half of the year, following the election. This would be an important step forward towards a robust speak-up culture in the APS, which has been hampered by uncertainty and inaccessible legal protections. Several members of the cross-bench have also been pushing a private member's bill to establish a whistleblower protection authority, so such wider institutional reform is likely to remain on the agenda.

Treasury has also recently commenced a statutory review of private-sector whistleblower protections. All going well, there is the possibility for greater alignment and harmonisation between differing regimes in the public and private sectors - that, in our view, can only be a good thing.

2025 awaits

A busy year ahead, then, for the public service and the employment law issues affecting them. We look forward to continuing to canvass these issues for readers in 2025. Until then, happy holidays and thanks for reading.

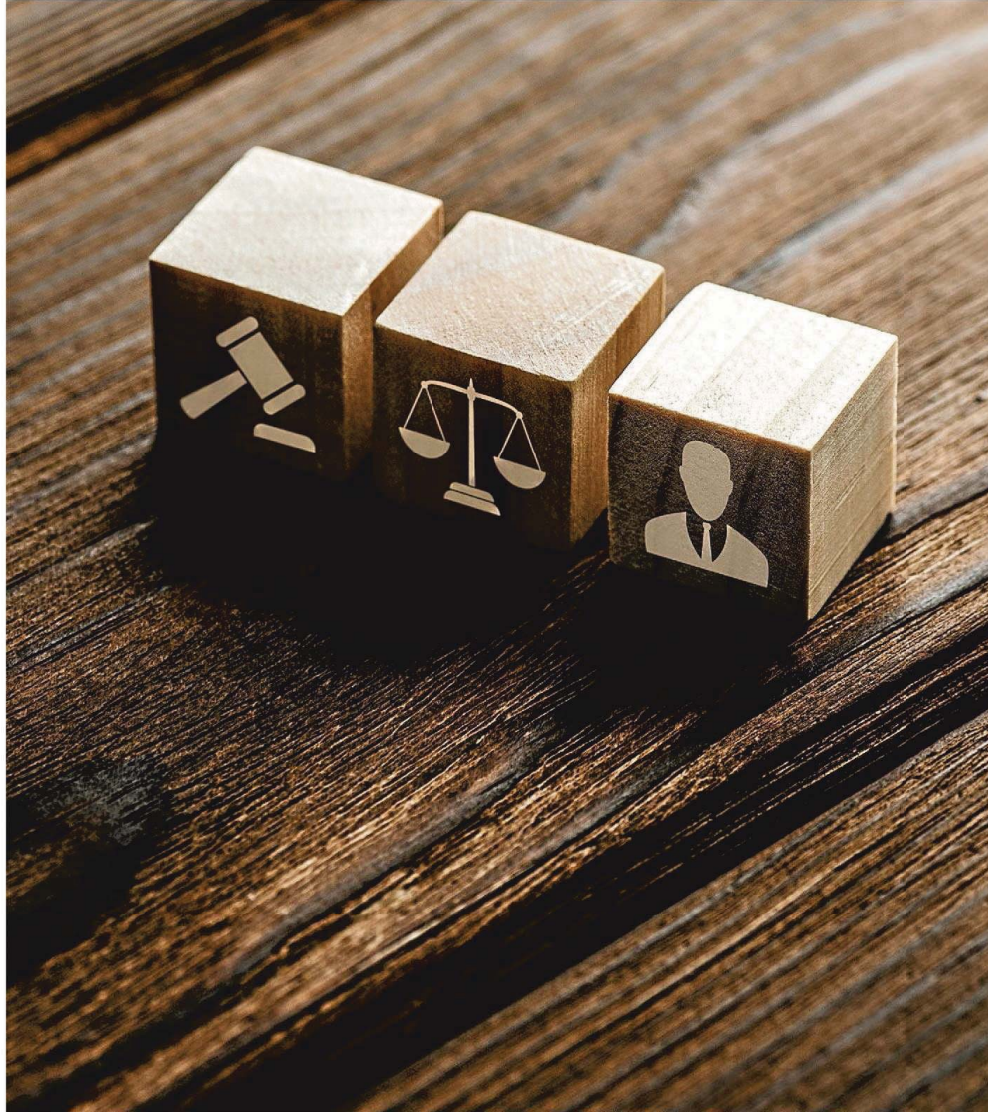
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There were several developments in industrial relations for the APS in 2024. Picture Shutterstock