

ATONE AGRI EMPLOYMENT LAW SERIES

THE REAL COST OF GENERAL PROTECTIONS CLAIM

ARTICLE 2 OF 2

NO COMPENSATION CAP. REVERSED BURDEN OF PROOF.



WORKPLACE
RIGHTS



DECISION
MAKING



DOCUMENTATION
& EVIDENCE



CONSISTENT
PROCESSES



UNCAPPED
COMPENSATION



REVERSED
BURDEN OF PROOF



LEGAL FEES
\$50K+



REPUTATIONAL
DAMAGE

The Real Cost of General Protections Claims

No cap. Reversed burden of proof. Higher financial and reputational stakes.

What agribusiness employers need to understand before a routine workplace decision becomes a costly legal dispute.

Taking the Risk One Step Further

In our previous article, we explored the real cost of unfair dismissal claims.

Many Employers assume unfair dismissal is the biggest employment law risk their business faces. In reality, the claim that often creates the greatest concern for Employers is a General Protections claim.

Why?

Because unlike unfair dismissal:

- Compensation is not capped and as a result financial costs can be significant.
- It's a legal framework that favours employees with the burden of proof shifting to the Employer.
- Risk extends well beyond dismissal decisions and can impact the entire employment lifecycle.

A routine rostering change, performance discussion, reduction in hours or casual re-engagement decision can sometimes create exposure if an employee claims the action was connected to a workplace right.

For agribusiness employers, this can significantly increase both legal risk and financial exposure.

What Do General Protections Claims Actually Cover?

General protections laws prohibit employers from taking adverse action against a worker because they have exercised a workplace right.

Workplace rights may include:

- Asking questions about pay or employment conditions.
- Taking personal, annual or other approved leave.
- Raising workplace complaints or concerns.
- Reporting workplace health and safety issues.
- Seeking support, representation or assistance.

Adverse action may include:

- Dismissal.
- Reduction in hours or shifts.
- Changes to duties or responsibilities.
- Missing out on opportunities or benefits.
- Non-re-engagement of casuals employees.

Importantly, employment does not need to be terminated for a claim to arise.

Why Even a Defensible Claim Can Be Expensive

Like unfair dismissal claims, general protections matters can become costly long before a court reaches a final decision.

Employers may face:

- Legal costs.
- Management time.
- Operational disruption.
- Reputational pressure.
- Settlement discussions driven by commercial realities.

The difference is that general protections claims carry significantly greater upside for claimants because compensation is uncapped and court proceedings are involved. That combination can place substantial pressure on businesses to resolve disputes early, even where they believe they have acted appropriately.

The Three Differences That Matter

1. No Compensation Cap

Unlike unfair dismissal claims, compensation in general protections matters is not capped.

Potential claims may include:

- Past and Future Loss of Income.
- Emotional Distress.
- Reputational Impact or damage.
- Other losses flowing from the adverse action.

As a result, six-figure outcomes are not uncommon.

2. The Burden of Proof is Reversed

This is where many employers are caught off guard.

In a general protections claim, the employer must prove the decision was not made for a prohibited reason.

If an employee exercises a workplace right and a negative employment outcome follows, the law may presume a connection exists unless the employer can clearly demonstrate otherwise.

In these matters, the issue is often not whether the employer was right.

The issue is whether the employer can prove the decision was made for lawful reasons.

Real-World Example

1. An employee reports a concern about machinery safety.
2. Two weeks later, management decides to reduce their hours due to lower operational requirements.
3. The reduction may be entirely legitimate.
4. However, the employee claims their hours were reduced because they raised a safety issue.

The question is no longer whether the operational decision was reasonable.

The question becomes:

Can the employer prove the reduction in hours was unrelated to the safety complaint?

Without clear documentation showing the operational reasons behind the decision, defending the claim can become difficult.

3. Risk Exists in Everyday Management Decisions

General protections obligations extend well beyond dismissal.

Risk can arise from:

- Rostering changes.
- Performance management.
- Casual re-engagement decisions.
- Allocation of work.
- Changes to duties or responsibilities.

Many claims originate from ordinary management decisions that appeared reasonable at the time.

In some cases, timing alone can be enough to trigger allegations.

Real-World Example

1. A seasonal casual employee raises concerns about their pay and asks questions about overtime entitlements.
2. At the end of the season, the business chooses not to re-engage them for the following year.
3. Management may genuinely believe another worker was a better fit.
4. However, the employee alleges they were overlooked because they raised pay concerns.

Because asking questions about pay is a workplace right, the business may need to prove the decision was based entirely on legitimate operational factors.

Without evidence supporting the decision-making process, the business may face significant exposure.

Why Agribusiness Is Particularly Exposed

Several key factors common within agriculture can increase general protections risk:

- Frequent workforce and rostering adjustments.
- Seasonal and casual re-engagement decisions.
- High levels of workplace health and safety activity.
- Multiple supervisors making operational decisions.
- Informal communication and limited documentation.

Many adverse action allegations arise from day-to-day management decisions that were operationally justified but poorly documented. This is where otherwise defensible decisions can become difficult to defend.

Agribusiness Example

1. During harvest, a worker refuses to operate machinery they believe is unsafe.
2. The supervisor reallocates shifts because alternative duties are limited and harvest deadlines are tight.
3. From the supervisor's perspective, the decision is operational.
4. From the employee's perspective, they have raised a safety concern and then lost work.

Without clear documentation explaining the operational reasons for the roster change, the circumstances may give rise to a general protections' allegation.

What Does It Actually Cost?

If a matter progresses through the courts, agribusinesses may face:

- **\$50,000 to \$150,000+ in legal fees.**
- Plus, uncapped compensation.
- Significant management time and business disruption.

Even early resolution can cost tens of thousands of dollars.

Unlike Unfair Dismissal claims:

- Court proceedings apply.
- Cost orders may be made.

Where Employers Commonly Get It Wrong

Common Mistakes Include:

- Taking action shortly after an employee exercises a workplace right.
- Failing to document reasons when decisions are made.
- Not recognising protected workplace activity.
- Inconsistent decisions between managers or sites.
- Treating workplace health and safety concerns as purely operational issues.

Often, the problem is not the decision itself.

It is the inability to demonstrate how and why the decision was made.

Real-World Example

1. An employee lodges a formal complaint about their supervisor.
2. A month later, the employee is placed on a performance improvement plan.
3. The performance concerns may be genuine and long-standing, however, if previous concerns were never documented, the timing can create a perception that the performance process is linked to the complaint.

In these circumstances, the employer may struggle to demonstrate that the performance management process would have occurred regardless of the complaint.

Five Practical Steps to Reduce Your Risk

While no agribusiness can completely eliminate the possibility of a General Protections claim, there are several practical steps that can significantly reduce exposure and place the operation in a stronger position if a dispute arises.

1. Document Significant Employment Decisions

When making decisions such as:

- Reducing hours.
- Changing duties.
- Commencing performance management.
- Reallocating work.
- Deciding not to re-engage a casual employee.

Record the reasons at the time the decision is made.

A simple file note created today is far more persuasive than trying to reconstruct events six months later.

Practical Tools:

- Supervisor file notes.
- Digital employee records.
- Performance management forms.
- Meeting records.
- Centralised HR software.

2. Pay Attention to Timing

Before taking action, consider whether an employee has recently:

- Raised a complaint.
- Taken leave.
- Reported a safety concern.
- Asked questions about pay or conditions.
- Requested workplace representation.

Even where there is a legitimate business reason for a decision, timing can create an appearance of connection.

Ask yourself:

"How would this look to an external investigator who only sees the timeline of events?"

Practical Tools:

- Decision approval checklists.
- Pre-action risk assessments.
- Supervisor consultation processes.
- Management review procedures.

3. Separate Complaints from Performance Management

A common mistake is allowing workplace complaints and performance concerns to become intertwined.

Where an employee has raised a concern:

- Manage the complaint through one process.
- Manage performance through a separate process.
- Maintain separate records and documentation.

This helps demonstrate that employment decisions were based on legitimate operational or performance reasons rather than the exercise of a workplace right.

Practical Tools:

- Complaint registers.
- Performance Improvement Plan (PIP) templates.
- Investigation templates.
- Documented performance review processes.

4. Train Supervisors & Managers

Many General Protections claims arise from decisions made by frontline supervisors rather than business owners.

Supervisors should understand:

- What workplace rights are.
- What constitutes adverse action.
- When decisions need to be documented.
- When to seek advice before acting.

The best systems in the world can be undermined by inconsistent management practices.

Practical Tools:

- Supervisor training programs.
- Toolbox talks.
- Employment law awareness training.
- Workplace relations guides.
- Decision-making frameworks.

5. Use Consistent Systems & Records

Consistency is one of the strongest risk controls available to employers.

When decisions are documented consistently across sites, supervisors and workforce groups, agribusinesses are better positioned to demonstrate that decisions were made for legitimate operational reasons.

Consistency also reduces the risk of different managers applying different standards.

Practical Tools:

- Centralised HR systems.
- Digital employee files.
- Skills and competency registers.
- Training records.
- Safety management systems.
- Contractor management systems.
- Workflow approvals for employment decisions.

A Simple Risk Check

Before making a decision that affects an employee, ask:

- Has the employee recently exercised a workplace right?
- Could the decision be perceived as connected to that activity?
- Are the business reasons clearly documented?
- Would the decision withstand external scrutiny?
- Should I pause and get independent advice before proceeding?

Taking a moment to consider these questions can significantly reduce risk.

What Good Practice Looks Like

High-performing employers typically:

- Document decisions as they occur.
- Separate complaint processes from performance management processes.
- Treat workplace health and safety concerns with appropriate care.
- Train supervisors and managers on their employment obligations.
- Apply consistent systems and processes across all sites.

Because in these matters:

Documentation is not administration; it is your defence.

The Bottom Line

General protections claims are:

- Higher value.
- Harder to defend.
- Broader in scope.

The good news is that they are also highly preventable when agribusinesses have strong systems, disciplined decision-making and consistent record-keeping practices in place.

Key Takeaways

- Compensation is uncapped.
- The employer carries the burden of proof.
- Exposure extends well beyond termination decisions.
- Timing and documentation are critical.
- Many claims arise from routine day-to-day management decisions.

Series Conclusion

- Unfair dismissal claims are the employment law risk most Employers recognise.
- General protections claims are often the risk they underestimate.
- Unfair Dismissal claims have a compensation cap; General Protections claims do not.
- Unfair Dismissal claims require the employee to prove their case.
- General Protections claims require the employer to prove theirs.

Yet both highlight the same underlying lesson:

Employment risk is rarely created when the claim is filed. It is usually created much earlier through inconsistent decisions, poor documentation and processes that cannot withstand external scrutiny.

The businesses that manage employment risk most effectively can demonstrate what happened, why it happened and how the decision was made.

Final Thoughts

How AtOne AGRI Supports Farmers & Agribusinesses

AtOne AGRI helps farmers and agribusinesses create the systems, records and processes needed to manage employment obligations with confidence. By improving visibility, consistency and record-keeping across HR, Safety and Contractor Management, agribusinesses are better positioned to demonstrate compliance, manage risk and defend their decisions when challenged.

Through AtOne AGRI's integrated HR, Safety, Skills Register and Contractor Management systems, agribusinesses can document employment decisions, maintain training and competency records, track workplace concerns, manage contractor compliance and retain the evidence needed to support business decisions.

In employment matters, it is often not enough to have done the right thing. You also need to be able to prove it.