FWC Bulletin

6 March 2025 Volume 3/25 with selected Decision Summaries for the month ending Friday, 28 February 2025.

Contents

Presidents final statement on building and construction agreement applications

14 Feb 2025

The President of the Fair Work Commission, Justice Hatcher, has issued a statement providing a final update on our approach to the approval of enterprise agreements in the building and construction industry and enterprise agreement approvals more generally.

In the statement, the President outlines the additional measures put in place in relation to the approval of enterprise agreements in the building and construction industry. The President indicates confidence in the level of compliance for enterprise agreement applications now being lodged in the industry.

More information is available in the full statement:

- Presidents final statement on building and construction agreement application (pdf)

New model terms for enterprise agreements made

21 Feb 2025

Under the Closing Loopholes No. 2 Act we had to make new model terms for enterprise agreements and copied State instruments.

This included a:

- flexibility term for enterprise agreements
- consultation term for enterprise agreements
- term about dealing with disputes for enterprise agreements
- term for settling disputes about matters arising under a copied State instrument for a transferring employee.

On 20 February 2025, the Full Bench issued a decision and 4 determinations with the new model terms. The new model terms will operate from 26 February 2025.

Read the decision and determinations:

- Decision [2025] FWCFB 39
- Determination – Model Consultation Term for enterprise agreements - PR784578
- Determination – Model Flexibility Term for enterprise agreements - PR784579
- Determination – Model Disputes Term for enterprise agreements - PR784580
- Determination – Model Disputes Term for copied State instruments - PR784583

Information published about unfair deactivation and other new functions

26 Feb 2025

The Closing Loopholes No. 2 Act provided us with new powers to deal with disputes about:

- unfair deactivation and unfair termination of regulated workers, and
- changing from casual to full-time or part-time employment under the new employee choice pathway.

It also required us to make new model terms for enterprise agreements and copied State instruments.

We have published new information about these functions on our website. New forms are also now available.

Unfair deactivation and unfair termination disputes

We can receive applications from:

- eligible employee-like workers who believe they have been unfairly deactivated from a digital labour platform, and
- eligible regulated road transport contractors who believe their services contract in the road transport industry has been unfairly terminated.

We have published further information and new application forms on our website: Unfair deactivation or termination for regulated workers.

Casual to full-time or part-time employment

A new pathway from casual to full-time or part-time employment is now available for eligible employees in the Fair Work system, unless they are employed by small business employers. This new pathway is called 'employee choice'.

Until 26 August 2025, the casual conversion pathway will still apply to eligible casual employees who are employed by a small business employer.

An employer or employee may be able to apply to us to deal with a dispute under these pathways, if they haven’t been able to resolve it at the workplace.

We have published further information and a new application form on our website: Casual to full-time or part-time employment.

New model terms for enterprise agreements in operation

Under the Closing Loopholes No. 2 Act, we had to make new model terms for enterprise agreements and copied State instruments.

This included a:

- flexibility term for enterprise agreements
- consultation term for enterprise agreements
- term about dealing with disputes for enterprise agreements
- term for settling disputes about matters arising under a copied State instrument for a transferring employee.

On 20 February 2025, the Full Bench made the new model terms. The new model terms operate from 26 February 2025.
Read our Terms and dates to put in an agreement page to find out:

- how to include a flexibility term, a consultation term and a term about dealing with disputes in your enterprise agreements, and
- how the new model terms for enterprise agreements work.

If you have any questions about model terms, you can contact the Agreements Team at member.assist@fwc.gov.au.

Decisions of the Fair Work Commission

The summaries of decisions contained in this Bulletin are not a substitute for the published reasons for the Commission's decisions nor are they to be used in any later consideration of the Commission's reasons.

Summaries of selected decisions signed and filed during the month ending Friday, 28 February 2025.

1 INDUSTRIAL ACTION – suspension of protected industrial action – s.425 Fair Work Act 2009 – Full Bench – application for order to suspend industrial action until 6 September 2025 – Full Bench expedited hearing and, given public interest, issued brief reasons with full reasons to follow – Full Bench summarised background – industrial action concerned Sydney Trains and NSW Trains services – bargaining for new agreement between applicants and Combined Rail Unions (CRU) since May 2024 – protected industrial action (PIA) undertaken since September 2024 – PIA disrupted operation of Sydney Trains rail network, caused significant inconvenience to commuters and caused significant uncertainty as to Sydney Trains' reliability – parties close to agreement on key matters – bargaining derailed by CRU claim for $4,500 'sign-on' bonus – applicants saw this as new claim – CRU contended was existing entitlement – Full Bench observed instead of 'maturely seeking to work through this problem' at then-upcoming conference, there was immediate resort to 'disruptive industrial action' – this action enlivened s.471(4)(c) notices issued by Sydney Trains that employees engaging in partial work ban would not be entitled to payment – per s.471(4A)(b) large numbers of train drivers and guards did not attend work resulting in significant rail network disruption – Full Bench satisfied PIA being engaged in, satisfying prerequisite for s.425 operation – s.425 requires Commission to make order suspending industrial action if satisfied appropriate to do so – four s.425 considerations – 1) per s.425(1)(a) whether suspension would be beneficial to bargaining representatives and assist resolving matters at issue – Full Bench considered suspension would benefit bargaining representatives – noted recent events including quick resort to further PIA – parties engaged in mutual recrimination, both sides faced public backlash – held suspension would allow parties to confirm agreed matters and focus on merits, rationale and affordability of outstanding 'sign-on' claim – 2) per s.425(1)(b) duration of protected industrial action – noted PIA occurring for about five months – suspected bargaining had reached point where continuance of PIA unlikely to contribute to finalisation of 'sign-on' dispute – held duration of PIA weighed in favour of suspension – 3) per s.425(1)(c) whether suspension would be contrary to public interest or inconsistent with objects of the FW Act – considered suspension not contrary to public interest – held suspension would be in public interest – suspension would pause further disruption to train services in Sydney and regional NSW and allow public confidence in rail network reliability to be restored – held suspension not inconsistent with relevant object of FW Act expressed at s.3(f) – 4) per s.425(1)(d) any other matters Commission considers relevant – considered some Australian Rail, Tram and Bus Industry Union (RTBU) members 'taking matters into their own hands' and encouraged/organised industrial action beyond that authorised by RTBU leadership – held cooling off period would allow pressure to subside and RTBU leadership to

regain control over events – Full Bench satisfied suspension of PIA appropriate – required by s.425 to make suspension order – duration of suspension considered – rejected applicants' submission suspension should be until 6 September 2025 – noted this was earliest time applicants could apply for intractable bargaining declaration to terminate all PIA – Full Bench stated purpose of s.425 suspension not to operate as de facto termination of bargaining – however satisfied lengthy suspension required to allow cooling off – ordered PIA suspended until 1 July 2025 – further conference to be convened – parties invited to consider s.240(4) consent arbitration.

Application by Sydney Trains and Anor

B2025/255 [2025] FWCFB 38
Hatcher J Sydney 19 February 2025
Easton DP
Harper-Greenwell C

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2 TERMINATION OF EMPLOYMENT – merit – revocation – ss.394, 600, 603 Fair Work Act 2009 – unfair dismissal redetermination – prior to initial hearing respondent notified Commission of applicant's failure to file materials – applicant's materials were with Commission but not served on respondent – Commission directed applicant to serve materials – applicant confirmed materials would be served on respondent, however did not do so – hearing proceeded without respondent – application upheld despite absence of respondent per s.600 [[2025] FWC 150] – respondent subsequently submitted applicant had failed to file materials causing the impression proceedings had been discontinued – decision revoked per s.603 – Commission held applicant unfairly benefited from failure to provide respondent materials and had misled Commission – earlier decision made on assumption respondent in receipt of all submissions – matter listed for redetermination – evidential disputation – found dismissal occurred during meeting between parties on 24 September 2024 – applicant contended she was summarily dismissed, with no previous warnings nor reasons given – respondent advised of several previous meetings between parties where applicant was notified of unsatisfactory performance, including meeting of 20 September 2024 where applicant's unruly behaviour resulted in meeting being terminated – respondent asserted two weeks' notice of termination given to, but rejected by, applicant – Commission observed applicant's testimony at first hearing was accepted as sworn oral evidence – conflicted with respondent's submissions but as these were untested and unsworn, applicant's assertions were accepted – found respondent testimony reliable and preferred over applicant's where discrepancies existed – considered harshness of dismissal per s.387 – observed warnings are not confined to an expression in writing – a warning is adequately conveyed if the substance of a communication expresses to an employee their performance has been unsatisfactory – found applicant forewarned of unsatisfactory performance per s.387(e) – held applicant's unsatisfactory performance and behaviour at meeting of 20 September 2024 satisfied valid reason for dismissal per s.387(a) – concluded dismissal not harsh, unjust or unreasonable – dismissal not unfair – observed not unexpected that a second determination, accounting for new evidence in light of a factual disputation, can produce a different decision – application

dismissed.

Mistrioti v Glenpickle P/L

U2024/12162 [2025] FWC 391
Colman DP Melbourne 11 February 2025

3 TERMINATION OF EMPLOYMENT – Misconduct – ss.387, 394 Fair Work Act 2009 – applicant employed as stevedore since 2013 – worked with respondent since 2000 – applicant member and delegate of Maritime Employees Union – on 31 March 2024 (Easter Sunday), applicant drank glass of wine with neighbour for a quick 'Easter toast' prior to commencing shift at 10pm – applicant believed allowable blood alcohol concentration (BAC) limit was 0.02% – did not believe glass of wine would put him at risk of being over – applicant involved in accident during shift – quay line crane operated by applicant collided with shuttle operated by another employee, which caused damage to straddle – both operators submitted to Drug and Alcohol testing – applicant produced two positive BAC readings for alcohol of 0.025% and 0.017% – applicant suspended on 1 April 2024 pending investigation – on 16 April 2024, applicant attended disciplinary meeting and given opportunity to provide his views – applicant terminated on 2 May 2024 for knowingly consuming alcohol before shift, having BAC readings above 0.00% and due to previous disciplinary history including breaches of Drug and Alcohol Policy (Policy) – applicant indicated he believed cutoff level for alcohol under Policy was 0.02%, evidenced by poster on HR noticeboard which was regularly viewed by employees – applicant involved in two previous disciplinary incidents involving breach of Policy – Commission noted prior Policy breaches – on 23 October 2019, applicant did not wear safety harness before entering cage and inadvertently left a safety chain attached to cage – on 26 January 2020, applicant was in an accident where vehicle he was in was rear-ended by another vehicle – applicant suspended on both occasions for failing to submit to mandatory Drug and Alcohol testing – applicant denied being directed by management to submit to Drug and Alcohol testing – Policy had been amended from March 2023, reducing allowable BAC to 0.00% – Commission found respondent took some steps to communicate changes to Policy to employees – observed matters raised by applicant regarding his knowledge of Policy was a matter of 'general context' [*Goodsell*] – held valid reason for dismissal in relation to conduct per s.387(a) – accepted strict reading of Policy and two prior letters of warning enabled respondent to regard applicant as having engaged in third breach – Commission considered other reasons per s.387(h) – accepted Policy is an essential component of respondent's strategy for managing risk in a dangerous workplace and applicant's breach of Policy weighed in favour of dismissal – found respondent took some steps to communicate changes to Policy with employees – on 16 March 2024 respondent sent text message to employees and email with heading 'Drug and Alcohol Policy', however no indication from message Policy had been changed – found not an appropriate way to communicate such a significant change to Policy with employees – no evidence respondent requires employees to read documents sent to their personal email or personal mobile – observed unlikely employees would have received and read Policy during course of duties – possible a number of employees received email during non-work hours and left email as 'unread' – accepted only communication about

changes to Policy was during toolbox talks on 17 and 19 March 2023, which applicant attended – Commission found likely employees did not regard changes communicated during toolbox talks as memorable or significant – not reasonable employees would remember every single issue discussed during a one year period where they attended more than one such hundred meetings – Commission indicated there should have been a dedicated training session for employees about changes to Policy, including awareness of number of hours needed to be alcohol free to ensure 0.00% reading when commencing work and there should have been signed confirmation from each employee they read and understood changes – held steps taken by respondent to communicate changes to Policy were inadequate and not appropriate for employees who operate machinery and do not regularly use computers at work – found on balance of probabilities, applicant was not aware cutoff level for alcohol had changed in March 2023 – Commission found most of applicant's previous conduct subject of previous warnings occurred at least 4.5 years prior to his dismissal, except unauthorised leave incident which was on lower end of seriousness scale – held dismissal was harsh and unreasonable – seriousness of conduct in breaching Policy outweighed by following factors: (1) applicant's age (55 years) and length of service – (2) applicant not aware of changes to Policy – (3) respondent did not provide adequate training in relation to changes including steps required to ensure compliance with Policy when attending work – (4) applicant confirmed test result complied with Policy which he believed applied on 31 March 2024 – reinstatement ordered and remuneration for lost pay awarded (50% of amount applicant would have earned from dismissal to date of reinstatement less amount received as payment in lieu of notice and less any income earned during this period) – parties to confer regarding quantum for lost pay.

Hancock v Sydney International Container Terminals P/L

U2024/5603 [2025] FWC 516
Wright DP Sydney 20 February 2025

4 INDUSTRIAL ACTION – order against industrial action – ss.418, 471(4)(c) Fair Work Act 2009 – Sydney Trains and NSW Trains (applicants) applied for orders that industrial action taken by employees of applicants and organised by the Australian Rail, Train and Bus Industry Union (RTBU) stop – applicants and RTBU involved in protracted negotiations in relation to a proposed enterprise agreement – negotiations involved various forms of protected industrial action by employees of applicants, including members of RTBU and extensive litigation – on 2 February 2025, RTBU provided notice to applicants under s.414 that its members would engage in a partial work ban involving restriction on maximum speed train crew would operate trains, being 23km/h less than posted speed limit on sections of track that are 80km/h or higher ('go-slow' ban) – on 5 February 2025, applicants issued notice under s.471(4)(c) to train crew advising if they participated in 'go-slow' ban, applicants would not accept any work from them and they would not be paid for period of industrial action – 'go-slow' ban to commence on 12 February, but pushed back by RTBU to Friday, 14 February 2025 – on 13 February 2025, RTBU sent a circular to members describing s.471 notice, which they referred to as a 'lock out notice' – unprecedented number of employees failed to attend work on 14 February 2025 – out of 394 absent

train crew and guards, 273 called in sick and balance had not given reason for non-attendance – number increased to 521 absent at 12 noon: 292 called in sick and 229 provided no reason for non-attendance – applicants stated there had been a 40% and 28% increase in sick leave for train drivers and guards respectively compared to last 6 Fridays preceding 14 February – application heard on short notice by Commission on Saturday, 15 February 2025 – as at 8.30am on 15 February, 210 train crew and guards had called in sick – RTBU submitted they did not advise anyone to use sick leave during this period – RTBU indicated it was possible a subset of RTBU's delegates (convenors) may have directly encouraged employees not to attend – text message in evidence from convenor sent to a group of rail employees: '[t]he go slow is on tomorrow…If you can afford to take a hit to your pay you don't have to show up to work at all…Let's fuck the network up' – RTBU stated convenor had strong feelings about state of negotiations and was speaking for himself and not on RTBU's behalf – RTBU indicated if they wanted to disrupt rail network it would simply notify a stoppage – Commission observed not disputed relevant employees notified of their intention to take sick leave and absented themselves from work for the day – coordinated campaign of non-bona fide taking of sick leave and not attending work fell within definition of industrial action per s.19(1)(c) of FW Act – found distinct lack of evidence to support conclusion RTBU was organising a deliberate and covert campaign of sick leave – circular issued by RTBU advised of significance of s.471 notice specifying that employees would not be paid if they elected not to attend or if they attended and implemented a 'go-slow' ban, it made no mention of sick leave or any other kind of leave – Commission did not believe evidence in relation to convenor's text message took argument about RTBU organisation of sick leave much further, since made no mention of sick leave and referred to employees taking a 'hit to their pay' by not attending work, consistent with circular message from RTBU – no conclusive evidence as to whom or how many people were sent text message (aside from fact it was distributed to media) – nothing to suggest text message sent with RTBU's authorisation – acknowledged text message reflected personal views of sender – found evidence suggested RTBU did not take option to actively campaign to have members not attend work at all, instead RTBU left decision about whether to attend and implement 'go-slow' ban or not attend at all to employees – not satisfied on evidence from increase in sick leave numbers that RTBU organised or was organising covert campaign of sick leave amongst its members – Commission declined to make orders against RTBU on that basis – high sick absences on 14 February explained by fact this was the day the 'go-slow' ban was to commence – some evidence that employees concerned they would attend for work and not take any protected action, but lose payment for the day as a result of s.471 notice and some external delay on network unrelated to any protected action on their part – found to be plausible concern and may have prompted some illegitimate claims for sick leave on the day – found not sufficient to conclude possibility that such action was presently continuing or would be ongoing – Commission observed prospect of making orders restraining action described in s.471(4A)(b) and which is likely to be employee claim action, even in circumstances where action is coupled with request for or notification of sick leave, seemed problematic given s.418(1) requirements – application dismissed.

Sydney Trains and Anor v Australian Rail, Train and Bus Industry Union

5 TERMINATION OF EMPLOYMENT – Misconduct – ss.387, 394 Fair Work Act 2009 – applicant formerly employed as garbage truck driver – commenced on casual basis in 2008 – full time basis from September 2014 – applicant a member and delegate of the Transport Workers' Union (TWU) and was elected Health and Safety Representative (HSR) for approximately 7 years – applicant dismissed on 16 July 2024 for repeated safety breaches and failure to follow reasonable and lawful instructions over a 9 month period – applicant's conduct leading to termination included: (1) Two vehicle accidents on 9 October and 11 October 2023 whilst driving truck – (2) operating on the wrong side of the vehicle by driving truck on the 'operator/pickup' side on more than one occasion in February 2024 – (3) speeding by driving over the 10kph limit on public road adjacent to yard on 28 February 2024 – (4) conduct in relation to stand down, where applicant told other drivers he was stood down despite direction to keep letter confidential, threatened his manager with the loss of his house and his manager's manager with the loss of his job, refused to leave site and attempted to make 50 copies of stand down letter to put in the pigeonholes of all drivers – (5) following a TWU dinner function the previous night where applicant drank 6 beers, on 21 June 2024 the applicant produced two positive blood alcohol concentration (BAC) readings of 0.013% and 0.007% despite respondent's 'zero tolerance' BAC policy – applicant provided with three written warning letters and an opportunity to show cause – Commission held valid reason for dismissal in relation to conduct per s.387(a) – Commission considered the applicant's conduct – (1) the two vehicle accidents of October 2023: found applicant aware regular basic safety checks were an important part of his duties – (2) operating on the wrong side of the vehicle: stated it would be easier and quicker as suggested by the applicant, however not satisfied it would be safer – (3) speeding incident: satisfied it was inconsistent with the respondent's reasonable and lawful direction that drivers limit their speed to 10kph in and around the yard – (4) conduct in relation to stand down: indicated applicant displayed 'volatile' conduct by threatening his managers and refusing to leave site, and 'commotion' that followed resulted in work being delayed for all drivers in the yard for up to three hours – (5) positive breathalyser test results: Commission found tests to be reliable – Commission acknowledged the results were 'low-level positive' and it would not have been unlawful for the applicant to drive a side loader under the *Road Transport Act 2013* (NSW) at the time since the result was below 0.02%, however respondent had zero tolerance BAC policy – applicant submitted his application of 'David Beckham cologne' at home and hand sanitiser on arrival at the yard could have affected the validity of the results – Commission immediately discounted cologne theory – not seriously in dispute by the two expert witnesses that any ethanol traces would have evaporated after approximately 15 minutes – applicant lives more than 15 minutes away from work – expert witness gave evidence that use of cologne and hand sanitiser would have no impact on an 'active mode test' as was used for applicant – found valid reason cannot be resolved by turning attention only to whether certain conduct was in breach of company policy, to consider conduct in totality, whether of sufficient gravity to constitute a sound, defensible, well founded

and valid reason for dismissal [*Hilder*] – concluded drug and alcohol policy breach was one of several incidents over a 9 month period involving applicant's conduct which was inconsistent with respondent's policies or instructions – applicant would have had general understanding of respondent's policies and his obligations to comply with them due to his experience in role, the training he received and his roles as a union delegate and HSR – held applicant was notified of valid reason per s.387(b) and warned multiple times about unsatisfactory performance per s.387(e) – other relevant matters considered per s.387(h) – over 16 years' experience and age acknowledged, however hopeful applicant will find alternative employment – no evidence applicant's role in bargaining was true reason for dismissal – evidence fell short on establishing applicant was singled out for operating on the wrong side of the vehicle and for the breathalyser tests – Commission found respondent did not follow its drug and alcohol policies when it allowed the applicant to conduct a handover and perform yard work for two hours after positive second reading, paid him during stand down period and failed to offer him transport home following positive reading – Commission acknowledged additional training required for managers in how to respond if employee returns positive BAC reading – held dismissal was reasonable and proportionate response in the circumstances – dismissal not unfair – application dismissed.

Barber v Veolia Recycling and Recovery P/L

U2024/9197 [2025] FWC 403
McKinnon C Sydney 12 February 2025

Other Fair Work Commission decisions of note

Appeal by Priestley and Anor against decision and orders of Boyce DP of 22 November 2024 [[PR781527] and [PR781528]] Re: Blackfisch Films P/L

CASE PROCEDURES – non-compliance with directions – ss.365, 604 Fair Work Act 2009 – appeal – Full Bench – appellants applied for permission to appeal ex tempore decision and orders in related s.365 general protections applications – at first instance, Commission dismissed applications due to non-compliance with direction for appellants to file reply materials – appellants did not file reply materials by initial due date of 4pm on 19 November 2024 – Commission sent first appellant email the following day requesting overdue reply materials by 4pm on 21 November 2024 and warned application will be 'dismissed without further notice' if further non-compliance with direction – email from Commission only sent to first appellant, since he was also listed as representative for second appellant – on 21 November 2024, Commission sent first appellant a further email reminding of deadline to file reply materials – no reply materials filed – Commission listed matter for 'strike out hearing' the next day – appellants did not participate – Commission dismissed appellants' applications 'for want of prosecution' via ex tempore decision recorded on transcript – held appellants failed to comply with: direction to file reply materials, show cause email of 20 November 2024, reminder email of 21 November 2024 and failed to attend show cause hearing – orders issued dismissing applications following hearing – on 27 November 2024, representative on behalf of appellants emailed Commission requesting points be considered: confirmed appellants filed 'substantial submissions and evidence' in their initial submission and did not understand why they were required to file further evidence; first appellant was homeless and did not have access to internet when Commission sent follow up correspondence and notice of listing for hearing; second appellant was not copied into emails from Commission; first appellant had level of schooling up to Year 6 (age 10) and second appellant was in a better position to review and act on written communication; 3.5 business hours of notice before strikeout hearing did not afford appellants sufficient time to address

Commission's concerns prior to hearing – requested orders be vacated and appellants be afforded opportunity to file submissions regarding misunderstanding – Commission sent a copy of transcript of hearing to appellants and informed parties matter was unable to be redetermined – appellants filed applications to appeal – Full Bench satisfied appropriate to grant permission to appeal due to lack of reasonable grounds for dismissal of applications and denial of procedural fairness – Full Bench observed basis of power to dismiss applications not made clear in first instance decision – observed no proper basis for applications to be dismissed – Full Bench satisfied first instance decision affected by error for 3 reasons – (1) approach adopted to dismissing applications for want of prosecution – exercise of discretion by a member of Commission to summarily dispose of proceedings on grounds of want of prosecution involves a balancing exercise in which a variety of factors are to be considered [*Hoser*] – found first instance decision did not suggest balancing exercise or consideration given to matters relevant to exercise discretion to dismiss – first instance decision did not consider extent of any prejudice to respondent, whether delay or additional costs likely to be incurred as a result of failure to file reply materials, impact of dismissal of substantive claims on appellants, or whether inconvenience would be caused to Commission – held caution not exercised before dismissal of applications and discretion of Commission miscarried – (2) first instance decision to dismiss for want of prosecution was 'unreasonable and plainly unjust' – Full Bench observed appellants had already filed evidence and submissions in chief addressing jurisdictional objections raised (not employees and not dismissed) and respondent filed its own material – found no apparent reason jurisdictional objections could not have been determined on material already filed – no obligation for a party in any case to file material in reply – party may be disadvantaged if they do not file evidence in reply, however does not mean matter cannot proceed – held failure to file reply submissions and evidence provided no basis to infer appellants were not seeking to pursue their claims or matter could not be determined – no basis to suggest Commission was faced with 'gross non-compliance with directions' – held no need to deal with dismissal of applications immediately and in absence of appellants, or to assert there was 'gross disregard' of procedural directions – (3) appellants denied procedural fairness – Full Bench found procedural fairness not afforded to appellants, since they did not receive notice of direction to file submissions in relation to foreshadowed dismissal of their applications nor notice of listing for show cause hearing – observed first appellant homeless and living in Aboriginal Tent Embassy in Sydney with limited access to internet – first appellant did not see emails from Commission until 25 November 2024 when he was able to use internet at a charity in Redfern – second appellant was 'couch hopping' between family members from early September 2024 and was unable to assist first appellant with emails from mid-November 2024, since she was in and out of hospital and never received emails during this period – satisfied appellants did not receive communications from Commission until after applications were dismissed – found appellants deprived of opportunity to be heard as to whether applications should be dismissed – held error on grounds of denial of procedural fairness – jurisdictional objections of respondent remain to be determined – Full Bench concluded permission to appeal granted – appeal allowed – first instance decision and orders quashed – applications to be remitted to a different member of Commission to determine jurisdictional objections and if appropriate, deal with under s.368.

C2024/8619 and Anor | [2025] FWCFB 40
Gibian VP | Sydney | 20 February 2025
Roberts DP
Butler DP

Appeal by Doessel Group P/L against decision of Slevin DP of 26 September 2024 [[2024] FWC 2669] Re: Pascua

TERMINATION OF EMPLOYMENT – contractor or employee – national system employee – ss.35, 400, 604 Fair Work Act 2009 – permission to appeal – Full Bench – appellant sought permission to appeal Commission's rejection of appellant's

jurisdictional objection to unfair dismissal (UD) application – Commission at first instance found respondent to be national system employee and therefore able to make s.394 application – Full Bench noted substantive merits of UD application not yet heard – Full Bench refused permission to appeal, providing reasons in decision – Full Bench observed factual background and first instance decision – respondent worked as legal assistant for MyCRA Lawyers (MyCRA), a Queensland based business providing specialist credit repair services – respondent lives in and worked, at all relevant times, from home in the Philippines – respondent terminated for breach of contract due to unlawfully copying company and client information to personal drive – denied by respondent – respondent commenced UD proceedings against appellant, as party to her Independent Contractor's Agreement (ICA) setting terms and conditions of her work for MyCRA – in first instance decision, Commission considered nature of all obligations and conditions within ICA in evaluative judgement [*JMC*] – determined respondent engaged as employee, rather than as contractor (as appellant contended) – Full Bench observed appellant's grounds of appeal, noting various reasons advanced as to why Commission erred in finding respondent an employee: respondent had capacity to control order of files she dealt with and to some extent, hours of work; use of specific skills and experience in providing credit repair services; payment of hourly rate in excess of general paralegal rates in the Philippines; appellant did not control respondent's file management and respondent initiated contact to enter into business arrangement prior to making of ICA – appellant also submitted ICA used term 'independent contractor' 52 times and 'employee' just five times; Commission applied current definition of 'employee' and 'employer' from s.15AA which was not in force at time of termination; and respondent could not be an employee as she is a Philippine national who has never worked in Australia nor held a work visa enabling her to do so – Full Bench considered whether to grant permission to appeal, noting discretion to do so for UD decisions limited under s.400 to grounds involving significant error of fact, and only if in public interest to do so – in considering whether to grant permission to appeal, Full Bench noted it convenient to separately consider whether respondent engaged as employee or independent contractor – Full Bench held no sufficiently arguable case of appealable error to justify permission, nor any issue of significance relevant to public interest – appellant's contention that Commission erroneously applied amended provisions of Act held to be without merit: Act as it existed prior to s.15AA's addition applied to first instance proceedings, with no evidence Commission applied s.15AA in assessing whether respondent was engaged as an employee or independent contractor – Full Bench rejected contention that respondent's performance of work relevant to legal character of relationship between parties – observed nothing preventing an Australian employer contractually engaging an employee to perform work overseas, albeit location of work may affect degree of contractual control over nature of work – Full Bench observed approach where rights and duties of parties 'comprehensively committed to written contract' that is not varied or alleged to be a sham, those rights and duties determinative as to legal character of relationship [*Personnel Contracting*] – when characterising relationship created by contract, critical to consider extent to which putative employer has right to control nature of employee's performance of work, extent to which putative employee seen to be working in own business as distinct from putative employer's business, and other terms and conditions such as remuneration and working hours, which may be relevant albeit less critical – Full Bench found nothing to suggest Commission did not apply this approach, noting appellant's contentions sought to rely on manner in which contract was performed rather than legal rights and obligations it enlivened – Full Bench observed ICA did not suggest respondent operating own business, but was subject to KPIs and a high degree of control over work from appellant – Full Bench discussed further issue in relation to Commission's jurisdiction to determine UD application; being respondent lives in Philippines – Full Bench noted Commission raised issue in first instance hearing, and was satisfied respondent a national system employee per s.13 – Full Bench noted effect of s.21(1)(b) of *Acts Interpretation Act* 1909 (Cth) requiring in absence of contrary intent, legislation be construed to apply to employment relationships with sufficient connection to Australia to justify conclusion employment in and of Australia [*Valuair Ltd*] – Full Bench considered effect of s.35(2)(b), which would exclude respondent if she was 'an employee who is engaged outside Australia and external Territories to perform duties outside Australia and external Territories' – Full Bench observed a

number of decisions in which 'engaged' as within s.35(2)(b) construed: as generally referring to an employer's 'hiring' of employee by way of formation of the contract of employment [*Munjoma*], and for electronic contracts, s.13B of *Electronic Transactions Act* 2000 (NSW) provides an electronic communication taken to be received at addressee's place of business – Full Bench noted potentially significant implications of question of whether parts of Act applicable to an employee if they are engaged under employment contract formed by electronic communication of acceptance sent to employer located in Australia, despite employee working outside of Australia – Full Bench noted impropriety of making inference as to nature of respondent's engagement with appellant, given issue was not directly argued before Commission at first instance and evidence on this matter was incomplete – Full Bench stated it may be necessary for Commission to return to this question in resolving application to satisfy itself Commission has jurisdiction – Full Bench refused permission to appeal for above reasons.

C2024/7389 [2025] FWCFB 43
Gibian VP Sydney 21 February 2025
Clancy DP
Roberts DP

Appeal by Opal Packaging Australia P/L against decision of Matheson C of 28 June 2024 [[2024] FWC 1717] Re: Calovski

TERMINATION OF EMPLOYMENT – misconduct – ss.394, 400, 604 Fair Work Act 2009 – permission to appeal – Full Bench – appeal of first instance decision reinstating respondent (worker) – permission to appeal required – Full Bench noted factual background established at first instance – worker an experienced forklift operator – forklift driven by worker involved in accident at appellant's site – forklift heavily used since previous service and had anomalies in service history – worker noticed a red metal plate had fallen from part of forklift during shift – worker and colleagues resolved to park forklift for repair – worker drove forklift toward parking position – forklift did not stop in parking position and continued to travel until colliding with roller door and other plant/equipment – worker reported brakes had failed – brake pedal compressed but no braking force – further suggested worker aimed forklift at roller door to otherwise avoid driving into boiler on one side or starch kitchen on other side – appellant contended worker caused forklift to be driven in unsafe manner causing damage – worker returned negative drug and alcohol test – forklift inspected by regular service company – service technician did not report issue with brakes – evidence given if brakes failed a 'soft pedal' would not be expected – service technician did not test brakes for water contamination – water contamination could cause 'soft pedal' – Commission considered this a flaw in investigation – appellant dismissed worker after investigation – appellant concluded more likely worker accidently hit forklift's accelerator rather than brake – appellant also considered worker was dishonest in maintaining accident result of brake failure – worker dismissed – first instance s.394 application made – at first instance Commission concluded two possible explanations for incident: 1) worker failed to brake before hitting first object and then panicked such he did not brake or continued to accelerate; or 2) worker tried to apply brake but pedal went soft meaning worker could not brake – Commission found first theory not more plausible than second given worker's 25 years' forklift driving experience, worker not under influence at time of incident, worker's account consistent and no prior history of untruthfulness in employment – Commission concluded unable to be satisfied on balance of probabilities which of two theories caused incident – observed appellant bore onus of proving worker's alleged serious misconduct took place – found no valid reason for dismissal – ordered reinstatement, continuity of employment and service, and lost pay – appeal filed – appellant raised two grounds of appeal – first ground contended Commission erred in finding unable to determine between two possible causes of incident – second ground contended Commission misapplied [*Briginshaw*] principles, particularly by finding 'soft pedal' scenario had to be ruled out to establish employee error – Full Bench noted appeal power only exercisable if error on part of primary decision maker – no general right of appeal – can only appeal with permission –

further noted s.400 applied to appeal – s.400 imposes 'stringent' public interest test involving broad value judgment [*Coal & Allied*] – intention of s.400 to constrain potential for appeals concerning unfair dismissal decisions [*Sleiman*] – Full Bench found grounds of appeal did not meet required standard – observed appeal 'little more than an attempt to have the Full Bench reconsider factual findings made by the Commissioner…' – held not in public interest to grant permission to appeal – Full Bench also not satisfied grounds demonstrated arguable case of appealable error – first appeal ground, that Commission erred in finding unable to determine two possible causes of incident, considered – Full Bench noted first instance finding water contamination could cause 'soft pedal' and brake fluid was not tested by appellant to rule this out, despite being on notice brake pedal was soft – Full Bench concluded first instance findings based on evidence before Commission and no error in Commission's approach – Full Bench found open to Commission to conclude unable to be satisfied incident occurred because of theory 1 (worker operated forklift in unsafe manner) – first ground of appeal rejected – second ground of appeal, misapplication of *Briginshaw* principles, considered – appellant contended Commission inverted usual reasoning process to one where appellant effectively asked to conclusively disprove a speculative theory – Full Bench noted implicit in appellant's reasons for termination was allegation worker failed to apply brakes – appellant accepted when employer alleges misconduct it must establish on balance of probabilities misconduct occurred – Full Bench observed where fact must be proved, application of civil standard requires fact finder feel actual persuasion of occurrence of fact in issue, and mere comparison of probabilities independent of reasonable satisfaction will not justify finding of fact [*Lehrmann*] – further observed seriousness of an allegation, inherent unlikelihood of alleged occurrence and gravity of consequences flowing from finding are matters that properly bear upon whether reasonably satisfied or actual persuasion felt event occurred [*Briginshaw*] – appellant's allegations about worker serious – Full Bench found Commission approached determination whether worker operated forklift in unsafe manner consistently with relevant principles – appellant contended Commission required it to conclusively rule out competing allegation when Commission observed appellant should have tested forklift following incident to rule out water contamination – Full Bench rejected appellant's reading of first instance decision – found Commission did no more than observe if appropriate testing carried out, whether brakes subject to water contamination would have been known with certainty – Commission found it was within means of appellant to investigate serious safety incident and rule out known causes of soft pedal – failure to do so was regrettable and weighed in favour of harshness finding – Full Bench did not criticise these first instance observations – held no arguable error arose with Commission's application of *Briginshaw* principles – second appeal ground rejected – held not in public interest to grant permission to appeal – permission to appeal refused.

C2024/4878 [2025] FWCFB 16
Gibian VP Sydney 30 January 2025
Dean DP
Wright DP

Chandra v Lambert Estate Wines P/L

TERMINATION OF EMPLOYMENT – Performance – s. 394 Fair Work Act 2009 – applicant employed from March 2023 to late August 2024 as Finance and Administration Manager – respondent considered applicant responsible for delayed financial reporting and auditing and payroll anomalies in April and May 2024 – respondent used credit with seek.com to advertise for 'bookkeeper/accountant' position without informing applicant – applicant confronted respondent in warehouse with hostility and refused to move discussion elsewhere – respondent did not progress recruitment – respondent met with applicant on 17 May 2024 regarding issues including performance concerns, unresponsiveness and payroll errors and issued first warning letter two days later expecting performance improvement – applicant transferred particular company records to himself in anticipation of potential need to defend performance externally – various tasks remained incomplete throughout May 2024 – applicant's performance deemed unsatisfactory at

performance review on 28 June 2024 – respondent subsequently emailed applicant and expressed disappointment, noted new procedures would be implemented to avoid issue, and hoped system would have been put in place to avoid 2023-2024 fiscal year problems – respondent's email did not name applicant as culpable but respondent's owners considered inaccuracies resulted from applicant's failure to conduct inventory cycle counts amongst other shortcomings – respondent gave 10 minutes notice before calling applicant to second formal performance discussion on 2 August 2024 – applicant acknowledged error to limited extent – respondent issued second official written warning letter the following Monday, stating his employment may be terminated if performance not improved by 30 August 2024 – respondent chased up applicant's failure to produce inventory control plan by 13 August 2024 – applicant responded in emails in following days seeking company's inventory control policies to assist in his preparation – respondent separately wrote to applicant outlining inventory processes being a financial control within his responsibility since he commenced his role a year and a half prior – respondent decided on dismissal considering applicant's failure to produce inventory control plan by deadline, applicant's unawareness of inventory policy or procedure after 18 months, and only producing inventory reconciliation for one product since 30 June 2024 – respondent met applicant on 30 August 2024 – respondent discussed applicant's failure to complete inventory control plan on time, insufficiency of plan subsequently developed, and other end of year reporting concerns – applicant disagreed with many criticisms – respondent dismissed applicant following meeting with notice – respondent contended other alleged unsatisfactory performance issues identified after dismissal, including taking of respondent's documents without authorisation – applicant contended no valid reason for dismissal existed rendering dismissal unfair – applicant alternatively contended procedural fairness denied in dismissal decision – valid reason assessed by reference to facts existing at time of dismissal, not coming to light after dismissal – ability of employee to undertake role and standard reasonably required of an employee is competence not perfection [*Crozier*] – Commission found irrelevant whether job description on personnel file actually provided because wording consistent across both and applicant aware of responsibilities from outset – contentions of progressive allocation of tasks beyond scope of contracted duties and tasks unevidenced and rejected – found respondent gave regular and meaningful guidance and direction and rejected contention of insufficient guidance and training – required duties known and reasonably required, direction and guidance given – found significance of some mistakes contended by respondent overstated and not fraudulent or false – three specific examples of being unresponsive or slow to respond to tasks or reminders established – Commission found underperformance pattern emerged with some errors and mistakes more pronounced and arising from lack of proactivity and focus – found payroll errors sufficient to impact trust and confidence in applicant – found while operational managers responsible for certifying employee hours, applicant responsible for checking certification existed before inputting hours into payroll – payroll errors not significantly mitigated and still constituted breach of respondent's legal obligations, – payroll errors in combination with other performance failures supported valid reason existing – found applicant was required to conduct regular cycle inventory counts, prepare an end of financial year inventory control plan – found applicant's failure in his end of year reporting responsibilities was serious and central to his role and business' trust – held failures in end of year reporting was valid reason for dismissal given employment length, reminders and observations of previous financial year – commissions and omissions leading to applicant's mistakes and errors concerning matters known and reasonably required to be his duties – totality of applicant's errors sufficiently regular and material to performing his role – found warehouse confrontation incident was not a valid reason for dismissal and would have been harsh – rejected applicant's assertion of not being given a full year to address 2024/25 goals, noting June 2024 performance review's context was a first warning – combined effect of performance issues, failures, reactivity and unresponsiveness constituted valid reason – not necessary to determine whether private possession of company's financial records was valid dismissal reason, but noted evidence consistent with behaviour constituting misconduct and a valid dismissal reason – opportunity to respond s.387(c) – Commission noted performance discussions in May, June and August suggested credible warning process – held evidence's overall weight showed

procedurally fair given first and second warnings written and discussed following numerous prior informal discussions, continued guidance and pursuit of performance improvement in subsequent communications, reference to performance improvement sought in first warning letter, June 2024 performance review concerning future performance and seeking improvement, and respondent affording almost two months between first warning letter and dismissal; end of year reporting performance failures – inferred May 2024 bookkeeper advertisement intended to replace applicant and was point when respondent predisposed towards dismissal – found respondent's performance process not a sham, respondent realised recruitment process was unfair to applicant and did not proceed, and thereafter respondent was predisposed but had not predetermined dismissing applicant – predisposition's extent did not cause respondent to disregard performance in final three months to extent of denying procedural fairness – dismissal not inevitable from process commenced in May 2024 given end of year accounting issues informed dismissal – Commission agreed with applicant dismissal decision made prior to 30 August 2024 meeting – notwithstanding opportunity at meeting, applicant's response would not have materially altered dismissal decision – potential disadvantage of applicant having no real opportunity to use 30 August 2024 meeting to discuss respondent concerns – Commission found not a sham and procedural fairness afforded despite aspects of process had or potentially disadvantaged applicant – performance deficiencies over reasonable period collectively constituted valid reason for dismissal – document possession also constituted misconduct – potential or actual process disadvantages did not deny applicant procedural fairness, or deficiencies insufficient to make dismissal unfair – plentiful opportunities afforded for applicant to meet performance requirements – dismissal not unfair – application dismissed.

U2024/10963 [2025] FWC 453
Anderson DP Adelaide 14 February 2025

Carmody v Bureau Veritas Minerals P/L

TERMINATION OF EMPLOYMENT – valid reason – alleged data manipulation – s.394 Fair Work Act 2009 – applicant summarily dismissed – respondent operated laboratory providing services including testing raw material samples of rock or soil to ascertain physical and chemical properties and reporting back to clients on findings on that sample – applicant employed since March 2023 – from January 2024 worked as a quality control officer (QCO) examining raw data for errors or anomalies and resolving any before providing accurate report to clients – in January 2024 client raised concerns about data integrity in applicant's report for sample of data – respondent investigated applicant's assumptions about data anomalies – respondent considered resulting estimates to be data manipulation – counselled applicant to use available tools when anomalies arose to report correct scientifically determined test results – applicant contended he had not falsified or manipulated data but had assumed there had been mis-typed numbers and so adjusted sample weights – applicant drafted suggested revised practices for technicians and QCOs as some expectations and practices were unclear or inconsistently applied – respondent stated the suggested revised practices aligned with principles outlined in counselling – in August 2024 same client raised concerns about further sample test results reported by applicant – respondent identified data entry error that ought to have been reasonably identified as anomalous in quality control review – respondent concluded August 2024 report was product of applicant's falsification and manipulation of data – commenced show cause process with applicant on 2 September 2024 – given parallels with January 2024 incident applicant dismissed on 13 September 2024 for serious misconduct – applicant submitted no valid reason for dismissal existed because (1) his conduct represented reasonable professional assumption and estimation and consistent with training and practices, (2) inaccuracy was caused by technician's data entry error and (3) he did not falsify or manipulate data – submitted dismissal was a harsh and disproportionate response to error – respondent argued valid reason existed because they had reasonably lost trust and confidence in applicant's capacity to provide accurate reports to client – respondent submitted dismissal was not harsh or disproportionate because QCOs were reasonably expected to exercise care and

diligence and failures were not minor or singular – respondent alternatively submitted no compensation should be paid if dismissal unfair, given applicant's material contribution to dismissal – Commission noted it must make finding whether conduct occurred based on evidence before it – noted 'proper level of satisfaction' conduct occurred on balance of probabilities required [*Briginshaw*] – held there was no evidence that applicant had deliberate intention to deceive or distort or alter data to show incorrect or misleading information – Commission found applicant dealt with laboratory results by transposition and estimation – not satisfied that conduct of transposition of data rose to level of manipulation – not satisfied that applicant's result estimation was reasonable conduct – Commission indicated August 2024 report was result of multiple errors – Commission held valid reason for dismissal existed based on applicant's serious and material failure to exercise due care with respect to quality control function he performed on or about 28 August 2024 – Commission considered harshness regarding proportionality and notice – held applicant did not exercise competent professional judgement in August 2024 report – held failures concerned an individual report to a client, but were multiple and occurred in context of a broadly similar failure in January 2024 – found failures were avoidable, given previous counselling – acknowledged respondent's loss of trust and confidence was reasonable given applicant's counselling on similar errors in January 2024 and awareness that client did not accept practice of making and reporting estimates – Commission concluded dismissal was reasonably open to respondent in circumstances – held dismissal not harsh on basis of proportionality – notice considered – found dismissal lacked necessary level of intent or disregard for client's interests to be serious and wilful misconduct – found applicant's summary dismissal objectively unfair – Commission held dismissal to be harsh only on the basis that applicant was summarily dismissed rather than dismissed with notice or payment in lieu – found reinstatement was inappropriate as loss of trust and confidence was reasonably based – Commission held that compensation was payable – employment contract provided greater notice period than Act – Commission resolved discrepancy on basis parties lawfully agreed to greater period – applicant's employment contract provided one month notice – compensation ordered of $5,824 gross plus superannuation.

U2024/11718 [2025] FWC 259
Anderson DP Adelaide 29 January 2025

Kongvongsa v TNC Holdings P/L

TERMINATION OF EMPLOYMENT – extension of time – exceptional circumstances – s.394 Fair Work Act 2009 – applicant's alleged dismissal took effect on 29 October 2024 – unfair dismissal application lodged on 8 December 2024 – application 19 days outside 21 day filing period – applicant sought extension of time under s.394(3) – reason for delay was alleged physical assault by her boss on 27 October 2024 – applicant reported incident to police the next day – applicant felt she had no choice but to resign – stated resignation caused 'extreme trauma and emotional distress' – medical certificate provided by applicant on 12 December 2024 detailing incapacity – medical certificate filed four days after application lodged – Commission satisfied there were exceptional circumstances – held reason for delay was the alleged physical assault and the 'substantial negative impact' on applicant's mental health and wellbeing – held reason for delay was 'reasonable and acceptable in all the circumstances' – despite medical certificate being filed after application lodged, it addressed applicant's incapacity and significant impact of alleged assault and subsequent resignation on applicant's mental health and wellbeing – found applicant being unsure of next steps to take was not reasonable or acceptable reason for delay – held no prejudice to employer if extension of time granted – found competing contentions of parties regarding merits – respondent argued boss touched applicant on neck inadvertently and did not offend applicant – given respondent admitted physical 'touching' some merit to applicant's claim she was unfairly dismissed – full facts and circumstances to be considered after final hearing with relevant witness evidence – held exceptional circumstances, 'out of the ordinary course and unusual' [*Nulty*] – extension of time granted – matter to proceed to conciliation.

U2024/14720 [2025] FWC 323
Saunders DP Newcastle 5 February 2025

Wilson v Brisbane Crane Trucks P/L

TERMINATION OF EMPLOYMENT – extension of time – s.394 Fair Work Act 2009 – applicant notified of redundancy on 15 October 2024 – applicant lodged unfair dismissal application on 21 November 2024 – lodged 16 days outside statutory time limit – respondent opposed extension of time – objected on grounds of genuine redundancy – extension of time test requires Commission to be satisfied of 'exceptional circumstances' taking into account s.394(3) factors – high barrier for an applicant to meet exceptional circumstances test [*Nulty*] – a 'credible explanation for the entirety of the delay, will usually weigh in the applicant's favour [however]…it is a question of degree and insight' [*Stogiannidis*] – applicant gave five reasons for delay – (1) had conducted job search because she was primary earner for family – (2) is pregnant and diagnosed with gestational diabetes – (3) had taken on more domestic responsibilities because partner had increased his part-time hours – (4) had 'pregnancy brain' and struggled with absorbing material – (5) discovered on 18 November 2024 respondent published job advertisement which largely corresponded with applicant's former role; claimed this is why redundancy not genuine – respondent informed her redundancy was for financial reasons – Commission noted discovery of job advertisement was a material fact – Commission previously held discovery of facts following a purported redundancy can give rise to exceptional circumstances [*Higgins*] – Commission cited applicant's application noting she suspected redundancy not genuine during 21-day time period – found applicant suspected redundancy was not genuine because she had made workplace bullying complaint and pregnancy announcement shortly before being made redundant – held applicant gave credible explanation of how pregnancy and associated gestational diabetes impacted her for whole period of delay – found applicant had rightly prioritised job search to provide for family which had been prolonged due to pregnancy – Commission concluded applicant's reasons for delay were 'uncommon and exceptional' – extension of time granted.

U2024/13918 [2025] FWC 387
Lake DP Brisbane 17 February 2025

Nest Employee Services P/L t/a Nido Early School and Ors

ENTERPRISE AGREEMENTS – varying agreement – multiple employers – s.216AA Fair Work Act 2009 – 33 employers applied separately under s.216AA for approval of a variation to the *Early Childhood Education and Care Multi-Employer Agreement 2024-2026* (Agreement) to add themselves and their employees to be covered by Agreement – applications treated as independent but heard together for convenience – Commission provided context for applications: Agreement approved by Full Bench on 10 December 2024, covering 60 employers and 12,000 employees, following bargaining under supported bargaining authorisation, issued by earlier Full Bench in 2023 – Agreement was the first supported bargaining agreement, underpinned by *Children's Services Award 2010* and *Educational Services (Teachers) Award 2020*, with coverage of UWU, AEU and IEUA members in early childhood education and care (ECEC) sector – Commission observed context of Agreement's making in that Agreement an eligible industrial instrument for purpose of applying for Early Childhood Education and Care Worker Retention Payment (EWRP) – Commission observed further that approval of Agreement based on undertakings, one of which was that original employers would apply for EWRP – each applicant employer contended variations agreed to by relevant employees; many applications countersigned or supported via declaration by UWU – in hearing, Commission heard from each applicant employer, some represented by Community Early Learning Australia, Community Child Care Association, and Australian Childcare Alliance, as well as relevant unions – Commission granted applications – provided reasons as follows – Commission observed that applications made by consent where employer

and employees jointly agreed to variation, and that relevant variation approval requirements appeared to be self-contained set of provisions – Commission considered whether variations validly made – employees voted for variations by majority in each case, some cases involved informal voting – Commission nonetheless satisfied proper processes utilised and each employer took reasonable steps to ensure terms of Agreement and their effects explained to employees – considered whether applications validly made – noted service requirements in *Fair Work Commission Rules* (requiring each employer already covered by supported bargaining agreement, and others, be served a copy of application when made) – requirements modified by substituted service orders given context of industry, nature of ECEC agreement and because public list of variation applications on Commission's website – in any case, to extent original or modified service requirements not complied with, Commission waived compliance with service rules under Rule 6 – Commission considered requirement of s.216AA(2)(b) that application be accompanied by 'copy of agreement as proposed to be varied' – considered this to require copy of Agreement as it stood at time variation made by employers – satisfied employers had provided this – Commission further observed where an employer had not provided up to date copy of Agreement with application, there would be strong case for Commission to use s.586(b) powers to waive 'minor irregularity in form or manner of application', as variation has sole effect of adding additional employer and its employees – considered approval requirements in s.216AB – observed Commission must approve variations if satisfied: 1) that if application had been made for supported bargaining authorisation by same affected employees and employer the Commission would have been required to make the authorisation under ss.243 and 243A – 2) that majority of affected employees voted to approve variation – Commission previously satisfied of this – 3) that variation genuinely agreed by affected employees in accordance with s.216AD – requirement 1) considered – Commission satisfied circumstances of employers consistent with those found by Full Bench in authorisation decision [[2023] FWCFB 176], noting prevailing pay and conditions and existence of relevant common interests – requirement 1) satisfied – Commission considered impact of undertakings as other appropriate matter under s.243(1)(b)(iv) out of abundance of caution, noting no express capacity for Commission to seek or accept undertakings in considering applications at hand – impact of undertakings considered as Agreement approved only on basis of undertakings, which by virtue of s.191(2), became terms of Agreement to 60 employers previously covered by Agreement – appropriate 'assurances' given in various forms that employers would apply for EWRP as per approved Agreement undertaking – Commission noted assurances do not form part of Agreement as formal undertaking given under s.190, but Commission expected applicant employers to honour assurances – Commission noted future applications would be assisted where employer noted having made EWRP application, or intention to do so – requirement 3) considered – Commission found each variation genuinely agreed to in accordance with s.216AD and Statement of Principles on Genuine Agreement – no other legislative proscriptions within s.216AB relevant (public interest grounds, employers in general building and construction work, existing single interest employer authorisations), nor considerations within s.216AE – Commission approved each variation, with effect from date of decision.

B2024/1697 and Ors [2025] FWCA 282
Hampton DP Adelaide 28 January 2025

Witherden v DP World Sydney Limited

TERMINATION OF EMPLOYMENT – Misconduct – reinstatement – ss.387, 394 Fair Work Act 2009 – applicant employed as stevedore at high turnover facility for 25 years – suffered on-the-job shoulder injury in April 2022 – self-medicated with cocaine – applicant subjected to random drug test on 27 May 2024 – tested positive for cocaine metabolites – respondent provided applicant with show cause letter for breach of respondent's Alcohol and other Drugs Policy (AODP) on 3 June 2024 – applicant responded on 6 June 2024 admitting to breach and expressed regret for his actions – argued long term employment and commitment to rehabilitation should afford him second chance – show cause meeting held 7 June 2024 – applicant

dismissed on 7 June 2024 with immediate effect – respondent reasoned applicants' knowledge of real risk of serious injury from high-risk work when unfit to work – zero tolerance for drugs in the workplace – applicant submitted respondent failed to explain what 'fit for work' meant under AODP – willing to seek support from mental health professionals – attended approximately 5 counselling sessions – applicants' inability to find other employment caused loss of identity and worsened mental health issues – Commission considered how AODP defines 'fit for work' – AODP recognised drug dependency as a treatable condition – respondent's discretion to offer rehabilitation to employees – Commission reflected AODP did not provide for automatic dismissal for instances of first offence – disciplinary response will depend on circumstances – Commission heard evidence cocaine metabolises quickly but metabolites linger – expert evidence provided applicant would have been suffering from withdrawal impairment – Commission considered whether dismissal was harsh unjust or unreasonable – held applicant's positive drug test was serious breach of AODP – valid reason for dismissal – evidence established applicant was given opportunity to respond to show cause letter related to his conduct – held respondent took applicant's response into account when terminating employment – Commission considered other relevant matters – during 25 year employment disciplinary sanctions against applicant limited to 2 warnings – noted an employee's seniority and responsibility are factors which attract sympathy when considering outcome, but equally demand high level of policy compliance [*Toms*] – first time positive result of test under AODP – considered applicant's cooperation and remorse – respondent argued applicant has not been honest with cocaine usage in days leading to 27 May 2024 – Commission held applicant not deliberately dishonest with respondent – Commission raised issue of truthfulness of applicant's evidence during hearing – applicant's witness statement stated he attended approximately 5 counselling sessions – gave oral evidence he attended "maybe one or two" additional sessions post dismissal – unable to verify additional sessions through production of records – Commission found answer inaccurate – counsellor confirmed applicant attended no additional sessions – considered applicant's impairment at work – expert evidence provided cocaine has a "very short half-life" – would not be present 24 hours after consumption – Commission held there was no evidence to support applicant's intoxication at work on 27 May 2024 [*Goodsell*] – Commission considered adequacy of AODP – did not specify testing for inactive metabolites – held information available to applicant about AODP inadequate – considered respondent's failure to consider options other than dismissal – respondent recognised drug dependency as "treatable condition" requiring treatment to overcome – applicant's expression of remorse in 6 June 2024 response and 7 June show cause meeting should have prompted consideration of rehabilitation – respondent argued severe misconduct – Commission found single breach of AODP considered misconduct but not serious misconduct [*Sharp*] – held dismissal was harsh and unreasonable – held dismissal unfair – remedy considered – applicant sought reinstatement – respondent submitted reinstatement inappropriate due to severity of misconduct – Commission held reinstatement not inappropriate – remuneration order considered – considered inaccurate evidence provided by applicant – held 9 month suspension without pay appropriate penalty – ordered reinstatement to same position as before dismissal with continuity maintained.

U2024/7478 [2025] FWC 294
Wright DP Sydney 3 February 2025

Hobson v Murrin Murrin Operations P/L

TERMINATION OF EMPLOYMENT – high income threshold – ss.332, 382, 394 Fair Work Act 2009 – applicant claimed he had been unfairly dismissed – respondent claimed applicant not a person protected from unfair dismissal due to s.382(b) – respondent claimed applicant not covered by a modern award or enterprise agreement and sum of applicant's annual rate of earnings exceeded high income threshold -high income threshold prescribed as $175,000 at the time of dismissal – applicant received base salary and allowances – allowances included site allowance

($20,000), family medical allowance ($5,000), 3% superannuation employer contribution ($5,662.82) as well as compulsory superannuation payments – applicant's base salary was $163,794 at time of dismissal – applicant on reduced pay as he was on unpaid personal leave – respondent's insurer paid applicant 75% of gross salary pursuant to respondent's salary continuance policy – applicant claimed he was not being paid his allowances – asserted his total earnings amounted to $122,845 (75% of his base salary) – respondent claimed relevant quantum was applicant's annual salary rather than the amount paid to applicant in the preceding 12-month period – Commission noted s.332(1) outlined what constituted an employee's earnings – earnings included wages, amounts applied or dealt with in any way on employee's behalf, agreed money value for non-monetary benefits – s.332(2) outlined what was not counted as employee's earnings, included payments the amount of which cannot be determined in advance, reimbursements and superannuation contributions – Commission noted s.332 defined term 'earnings' broadly – respondent cited Full Bench decisions [*Zappia*] and [*Rossi*] – Full Bench in *Zappia* concluded 'what needs to be ascertained is the annual rate of earnings at that time, not the annual earnings to that time (the amount earned in the 12 months to that time)' – Full Bench in *Rossi* found s.332 definition of earnings included earnings that an employee is entitled to prior to dismissal even if they have not been paid at that point – Commission held applicant's annual rate of earnings was what he was entitled to under employment contract and remuneration policy – determined applicant's base salary constituted part of his earnings – held applicant's site allowance, medical allowance, additional superannuation contribution (as opposed to his compulsory superannuation) also formed part of his annual rate of earnings – total amount was calculated to be $194,457.82 – amount exceeded the high income threshold – applicant not protected from unfair dismissal – application was dismissed.

U2024/11966 [2025] FWC 157
Roberts DP Sydney 21 January 2025

Taylor v Classic Sports Industries P/L

TERMINATION OF EMPLOYMENT – genuine redundancy – s.394 Fair Work Act 2009 – applicant employed from 5 December 2023 – applicant met with respondent on 25 November 2024 – told that business had been undergoing review for some months and her role was now redundant – told that there were no suitable alternative positions available for redeployment within respondent or its related entities – applicant's employment terminated on 26 November 2024 – respondent contended applicant's position was redundant due to organisational changes – contended decision made after restructure – whether dismissal genuine redundancy – Commission considered s.389(1), whether respondent complied with any obligation in a modern award or enterprise agreement to consult – Commission found applicant's duties fitted within definition of clerical work in *Clerks-Private Sector Award 2020* (Clerks Award) and Clerks Award applied to applicant's employment – held that notice and discussion about change should have commenced when definite decision to restructure had been made – noted applicant told about redundancy the day before she was dismissed – found that consultation requirements in cl.38 Clerks Award not met and applicant not consulted about role being made redundant – Commission considered s.389(2), whether redeployment within business or related entity was reasonable – considered redeployment principles [*Helensburgh Coal*] – noted that 2 new roles were created as part of review – noted applicant was not made aware that restructure would affect her and so did not apply for one role she knew she could perform – noted that new positions were finalised at the same time respondent was considering making applicant's role redundant – found that given timing of recruitment process it would have been reasonable in all of the circumstances to redeploy applicant into one of the new roles – rejected proposition that dismissal was a genuine redundancy – Commission considered s.387, whether dismissal was harsh, unjust or unreasonable – noted it was unfair not to let applicant know her position was in jeopardy and thereby deprive her of the opportunity to make a case for being redeployed – satisfied dismissal was harsh, unjust or unreasonable – held applicant dismissed unfairly – remedy considered – Commission ordered compensation of

$23,586.58 gross.

U2024/14382 [2025] FWC 385
Slevin DP Sydney 17 February 2025

Singh v CDC NSW Region 4 P/L T/A CDC NSW

TERMINATION OF EMPLOYMENT – Misconduct – ss.387, 394 Fair Work Act 2009 – applicant employed as full-time bus driver from 7 August 2007 until dismissal on 7 August 2024 – summarily dismissed for using mobile phone while driving – in May 2024, applicant disclosed he had received an injury while driving – respondent undertook investigation and reviewed CCTV footage from day of alleged incident – footage showed applicant used mobile phone while operating bus – respondent issued Show Cause Notice (Notice) on 13 May 2024 – Notice referenced respondent's National Code of Conduct, Work Health and Safety Policy, Cardinal Rules and Use of Mobile Phones (Buses) Policy – respondent terminated applicant's employment 7 August 2024 following show cause process – applicant filed s.394 application – submitted he did not handle mobile phone while driving, was not in breach of workplace policies and should not have been dismissed – submitted he was using a Sikh religious or devotional diary, not a mobile phone – noted previously 'unblemished' record of over 17 years – Commission considered criteria for harshness as per ss.387(a) and 387(b) – applicant submitted had no opportunity to respond to Notice as outcome already determined by respondent – noted test in [*King*] that: 'The question of whether the alleged conduct took place and what it involved is to be determined by the Commission on the basis of the evidence in the proceedings before it. The test is not whether the employer believed, on reasonable grounds after sufficient enquiry, that the employee was guilty of the conduct which resulted in termination' – argued if Commission believed applicant, respondent's case must fail – sought reinstatement, noting threshold set out in [*Perkins*] had not been met – respondent asserted dismissal fair and conducted with procedural and substantive fairness – submitted evidence showed applicant not dismissed unfairly – noted applicant aware of his obligations under relevant policies – requirements were lawful and reasonable – noted policies clear, including that breach of mobile phone policy considered a serious offence that would result in summary dismissal – submitted dismissal constituted 'valid reason' as per [*B, C and D*] – respondent observed positive reporting obligations to the Regulator concerning use of mobile phones by drivers – noted applicant did not raise use of diary or deny having used his phone during show cause process – Commission found evidence 'consistent with the use of a smart phone and not the actions of opening or turning a page of a paper diary' – found applicant responsible for transporting people in safe manner and that conduct was inconsistent with that objective – highlighted test for whether termination harsh, unjust or unreasonable as set out in [*Byrne*] and [*AMH*] – found policies reasonable and lawful – most crucial piece of evidence CCTV footage – Commission noted use of object 'consistent with operating a phone and totally inconsistent with opening a diary' – satisfied respondent had valid reason to terminate applicant – noted respondent did not follow best practice during show cause process – found seriousness of offence outweighed any deficiencies in procedural fairness – found was relevant for respondent to view the CCTV footage for entirety of 5 May 2024 as applicant did not provide a time for alleged injury on shift – found applicant's termination not harsh, unjust or unreasonable – applicant 'blatantly breached' policies – application dismissed.

U2024/10161 [2025] FWC 142
Riordan C Sydney 4 February 2025

AB v Australian Nursing and Midwifery Federation-New South Wales Branch

CONDITIONS OF EMPLOYMENT – flexible working arrangement – ss.65, 65B, 65C Fair Work Act 2009 – applicant employed as an organiser with respondent since 2012 – applicant took long service leave and a career break between May 2021 and July

2022 – during leave applicant moved with her child 500 km from respondent's office to escape family and domestic violence – upon return to work applicant travelled to office approximately once a fortnight and respondent paid for that travel – in February 2023 applicant requested to organise a different Local Health District (LHD) closer to her home to spend more time caring for her school aged child – this request granted – applicant and respondent corresponded between March 2023 and July 2024 discussing her circumstances and related matters including respondent no longer approving travel requests – respondent submitted no valid request for flexible working arrangements made – Commission held relevant request was letter dated 28 May 2024 and made validly (s.65(3); [*Quirke*]) – held request was in writing, set out details of change sought: applicant to choose her travel arrangements and have those approved, providing she considered certain matters – held request (in context of lengthy history of correspondence) identified reason for change (caring for her school age child) [*Quirke*] – held change constituted 'working arrangements' because the change concerned the time and location of work performed – respondent replied to request within 24 days (not the 21 days required by the Act) – Commission held a deficiency in the form, process or substance of a response to a validly made request does not prevent it from dealing with dispute – held that even if the respondent's response was deficient, requiring further discussions would be futile – found respondent refused request – noted applicant's request did not provide respondent with certainty to allow it to assess the actual impact of the request – Commission ordered it appropriate for grounds of respondent's refusal to be taken to be reasonable business grounds (s.65C(1)(b)(i)) – Commission declined to make order that respondent must grant request – Commission held no reasonable prospect that dispute would resolve without making of an order (s.65C(3)) – applicant submitted Commission should order that: respondent reimburse her for reasonably incurred expenses related to her travel; she be permitted to travel within working hours and travel outside of that time be treated as paid work; and applicant's travel be limited to three days overnight travel per fortnight – respondent submitted those matters irrelevant to flexible working arrangements and were related to her choice to live away from the office – Commission held reimbursement beyond scope of working arrangements (s.65(1)) – applicant submitted order was required as she is required to live away from the office to escape family and domestic violence and care for her child – applicant accepted she is also required to travel to the office to perform her role – Commission held less costly for respondent to fly applicant from her home (and LHD) to the office than the alternative – respondent submitted equity between other employees meant orders should not be made – Commission considered appropriate to make transitional orders: until 4 July 2025 applicant's travel be limited to 3 nights per week, be permitted to undertake travel between 7am and 7pm and for this to be taken as work time.

C2024/5098 [2025] FWC 338
Matheson C Sydney 7 February 2025

Werner v SkinKandy VIC P/L t/a SkinKandy

TERMINATION OF EMPLOYMENT – termination at initiative of employer – forced resignation – ss.386, 394 Fair Work Act 2009 – applicant employed as store manager – dispute about whether applicant resigned or was constructively dismissed – applicant had extended period of personal and compassionate leave due to loss of loved ones in crisis unfolding in Middle East – applicant sought to extend period of leave but request was not accommodated due to business needs – applicant sought an understanding with respondent that would allow her more time to look after her mental health, cultural and religious beliefs – applicant of Jewish faith, this included observing Shabbat when possible – applicant believed she had reached agreement with her manager to allow her to work alternative Saturdays to observe Shabbat – applicant's manager moved to a new position and her new manager was resistant to changes agreed and gave notice of expectation to work every Saturday – applicant lodged workers compensation claim on basis of mental injury from being bullied at work, but claim was not accepted – applicant made proposal to bring employment relationship to an amicable end – respondent rejected proposal and sought

clarification on applicant's resignation – applicant subsequently resigned which was accepted by respondent without requirement to work or be paid out notice – Commission accepted applicant resigned her employment, but considered whether applicant's resignation was forced due to respondent's conduct [*Bupa*] – Commission considered whether applicant had no effective or real choice but to resign because of respondent's conduct [*O'Meara*] – Commission accepted applicant's perspective she had legitimate concerns her manager had bullied her into working regular Saturdays contrary to her religious beliefs or choosing to resign – respondent did not call either of applicant's managers to give evidence – applicant's evidence about events unfolding in Middle East provided basis for request to support her community and observe Shabbat – Commission found there was little evidence respondent took applicant's complaint of bullying by her manager seriously or endeavoured to investigate it thoroughly to address concerns – applicant was not comfortable to return to work unless complaints about her manager were resolved – respondent's response to proposal to resolve issues was met with a response that sought applicant's immediate resignation – Commission satisfied applicant was left with no effective choice but to resign due to respondent's conduct – Commission held respondent's request for immediate resignation constituted a dismissal within meaning of s.386 – Commission held only reason for termination was applicant was not fit for work and respondent did not want to proceed with bullying investigation – Commission held there was no valid reason for termination – Commission considered procedural fairness considerations to be neutral to determination of fairness – Commission took into account respondent's failure to deal with applicant's bullying and harassment concerns to be a factor that weighed in favour of a finding of unfairness – Commission determined dismissal was harsh, unjust and unreasonable – dismissal unfair – applicant sought reinstatement – Commission held reinstatement inappropriate due to applicant's lengthy absence from employment, circumstances leading to dismissal and breakdown of employment relationship – Commission determined compensation appropriate remedy – Commission found applicant would have remained in employment for 12 weeks to allow investigation process to be completed – applicant would have only received remuneration for 5 weeks of that period due to leave accruals available – Commission made deductions for amounts earned since termination – Commission considered whether level of compensation arrived at appropriate [*Sprigg*] – observed appropriate respondent accept some responsibility for exhausting applicant's paid leave entitlements – amount of compensation increased by $3,750 plus superannuation, being a 3-week proportion of anticipated employment period applicant was unfit for work and would not have received an income, due to respondent exhausting applicant's paid leave entitlements – Commission ordered compensation of $8,733 plus superannuation.

U2024/9499 [2025] FWC 389
Connolly C Melbourne 11 February 2025

Smith v Kohli Traders P/L

TERMINATION OF EMPLOYMENT – contractor or employee – ss.15AA, 394 Fair Work Act 2009 – applicant filed s.394 application on 8 October 2024 – respondent argued applicant an independent contractor and not eligible to make application – respondent filed uncontested evidence that applicant engaged under Independent Contractor Agreement (ICA), emails and list of invoices for work performed – applicant filed uncontested evidence as to nature of work performed, including copy of ICA – Commission noted impacts of new s.15AA and that legal test for determining whether person employee or independent contractor 'significantly altered' from 26 August 2024 – transitional provisions required consideration of prior test for service before 26 August 2024 – Commission assessed relationship between applicant and respondent for period of 13 January 2023 (commencement date) to 25 August 2024 without reference to s.15AA – in [*Personnel Contracting*] and [*Jamsek*] High Court established that: 'Where the rights and duties of the parties are comprehensively recorded in a written contract, the legal rights and obligations established by the contract are decisive of the character of the relationship as long as there are no arguments that the contract was a sham, the contract has been varied or waived, or

are subject to an estoppel' – Commission found ICA to be 'a comprehensive written document that records the legal rights and obligations [of applicant and respondent]' – noted applicant able to perform work for other businesses, required to submit invoices for work performed, source own equipment and own insurance – ICA consistent with independent contracting relationship – applicant submitted ICA constituted a 'sham' on basis additional duties 'snuck' into agreement by respondent – Commission highlighted test for a sham established in [*Sharrment*] – accepted dispute about additional duties but found dispute did not have legal effect – found ICA a genuine independent contracting agreement – held applicant an independent contractor for 13 January 2023 to 25 August 2024 period – relationship for 26 August 2024 to 3 October 2024 period assessed by applying s.15AA, although Commission did not consider there was need to reestablish relationship given findings for previous period – nonetheless noted that 'real substance, practical reality, and true nature of the relationship between [applicant] and [respondent] was that of an independent contracting relationship. The post-contractual performance of the contract was consistent with there being an independent contracting relationship' – applicant found to be an independent contractor for 26 August 2024 to 3 October 2024 period – held applicant not eligible to make application under s.394 – no jurisdiction – application dismissed.

U2024/11979 [2025] FWC 304
Crawford C Sydney 5 February 2025

Dimayuga v The Adventure Group Hotels P/L

TERMINATION OF EMPLOYMENT – Misconduct – s.394 Fair Work Act 2009 – applicant employed as room attendant/housekeeper – applicant dismissed on 29 July 2024 – reason for dismissal was combination of alleged misconduct relating to robbery incident, and applicant's response to it – applicant allowed unknown person ('Doe') into guest's room where subsequent theft occurred – applicant mistakenly assumed Doe was motel guest locked outside room and partner had room key – Doe convinced applicant to open room to check on supposed partner, but room empty and Doe closed door on applicant – applicant resumed cleaning duties but after two minutes applicant reported interaction as she felt uneasy – guests of relevant room later reported stolen possessions – applicant invited to disciplinary meeting on 25 July 2024 – applicant read from pre-prepared response statement – applicant said she was victim of professional scammer/imposter – respondent alleged applicant showed no remorse during investigation and did not take ownership of wrongdoing – applicant informed of termination via letter – Commission turned to whether there was a valid reason for dismissal relating to applicant's capacity or conduct – applicant argued no policy or procedure or specific training existed for this situation – parties agreed no policy or procedure existed, but disagreed over documentation provided to applicant at commencement of employment – Commission stated not necessary to resolve this disagreement – Commission acknowledged applicant clearly understood motel rooms should only be accessed by guests and staff – Commission found this was 'common sense' despite there being no policy – other options were available to applicant rather than granting access to room, such as asking Doe for name or guest's name and crosschecking or directing Doe to front desk – Commission not persuaded lack of training was reasonable justification – Commission observed applicant was sorry incident occurred but did not accept wrongdoing – Commission accepted respondent's evidence that if applicant had accepted wrongdoing and shown genuine reflection, respondent would have decided disciplinary action other than termination – Commission satisfied applicant's action constituted misconduct – was a valid reason for dismissal – Commission turned to notification of valid reason s.387(b) and (c) – applicant submitted at disciplinary meeting on 25 July 2024, respondent had pre-determined outcome and applicant's response not considered – Commission did not accept this given applicant received written notice of misconduct allegation three days prior to disciplinary meeting – Commission turned to any other matters s.387(h) – applicant argued termination harsh for 4 reasons – (1) dismissal disproportionate to conduct – (2) no policy existed nor training given – (3) applicant's three years' service with respondent – (4) no prior warning or disciplinary action given – regarding

(1), Commission considered applicant's fast action after letting Doe into room weighed in favour of finding dismissal disproportionate, however, applicant's 'extensive experience' weighed against a finding that dismissal was disproportionate to her misconduct – regarding (2) Commission not persuaded – regarding (3), Commission found this weighed against applicant due to applicant's extensive experience in role regarding (4), Commission factored into consideration – Commission found dismissal proportionate – Commission gave significant weight to valid reason for dismissal – Commission held dismissal was not harsh, unjust or unreasonable – application dismissed.

U2024/9215		[2025] FWC 350
Lim C	Perth	7 February 2025

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Websites of Interest

Department of Employment and Workplace Relations - https://www.dewr.gov.au/workplace-relations-australia - provides general information about the Department and its Ministers, including their media releases.

AUSTLII - www.austlii.edu.au/ - a legal site including legislation, treaties and decisions of courts and tribunals.

Australian Government - enables search of all federal government websites - www.australia.gov.au/.

Federal Register of Legislation - www.legislation.gov.au/ - legislative repository containing Commonwealth primary legislation as well as other ancillary documents and information, and the Federal Register of Legislative Instruments (formerly ComLaw).

Fair Work Act 2009 - www.legislation.gov.au/Series/C2009A00028.

Fair Work (Registered Organisations) Act 2009 - www.legislation.gov.au/Series/C2004A03679.

Fair Work Commission - www.fwc.gov.au/ - includes hearing lists, rules, forms, major decisions, termination of employment information and student information.

Fair Work Ombudsman - www.fairwork.gov.au/ - provides information and advice to help you understand your workplace rights and responsibilities (including pay and conditions) in the national workplace relations system.

Federal Circuit and Family Court of Australia - https://www.fcfcoa.gov.au/.

Federal Court of Australia - www.fedcourt.gov.au/.

High Court of Australia - www.hcourt.gov.au/.

Industrial Relations Commission of New South Wales - www.irc.justice.nsw.gov.au/.

Industrial Relations Victoria - www.vic.gov.au/industrial-relations-victoria.

International Labour Organization - www.ilo.org/global/lang--en/index.htm - provides technical assistance primarily in the fields of vocational training and vocational rehabilitation, employment policy, labour administration, labour law and industrial relations, working conditions, management development, co-operatives, social security, labour statistics and occupational health and safety.

Queensland Industrial Relations Commission - www.qirc.qld.gov.au/index.htm.

South Australian Employment Tribunal - www.saet.sa.gov.au/.

Tasmanian Industrial Commission - www.tic.tas.gov.au/.

Western Australian Industrial Relations Commission - www.wairc.wa.gov.au/.

Workplace Relations Act 1996 - www.legislation.gov.au/Details/C2009C00075

Fair Work Commission Addresses

Australian Capital Territory
Level 3, 14 Moore Street
Canberra 2600
GPO Box 539
Canberra City 2601
Tel: 1300 799 675
Fax: (02) 6247 9774
Email:
canberra@fwc.gov.au

New South Wales

Sydney
Level 11, Terrace Tower
80 William Street
East Sydney 2011
Tel: 1300 799 675
Fax: (02) 9380 6990
Email:
sydney@fwc.gov.au

Newcastle
Level 2, 130 Parry Street,
Newcastle, 2302

Northern Territory
10th Floor, Northern Territory House
22 Mitchell Street
Darwin 0800
GPO Box 969
Darwin 0801
Tel: 1300 799 675
Fax: (03) 9655 0420
Email:
darwin@fwc.gov.au

Queensland
Level 14, Central Plaza Two
66 Eagle Street
Brisbane 4000
GPO Box 5713
Brisbane 4001
Tel: 1300 799 675
Fax: (07) 3000 0388
Email:
brisbane@fwc.gov.au

South Australia
Level 6, Riverside Centre
North Terrace
Adelaide 5000
PO Box 8072
Station Arcade 5000
Tel: 1300 799 675
Fax: (08) 8410 6205
Email:
adelaide@fwc.gov.au

Tasmania
1st Floor, Commonwealth Law Courts
39-41 Davey Street
Hobart 7000
GPO Box 1232
Hobart 7001
Tel: 1300 799 675
Fax: (03) 6214 0202
Email:
hobart@fwc.gov.au

Victoria
Level 4, 11 Exhibition Street
Melbourne 3000
PO Box 1994
Melbourne 3001
Tel: 1300 799 675
Fax: (03) 9655 0401
Email:
melbourne@fwc.gov.au

Western Australia
Level 12,
111 St Georges Terrace
Perth 6000
GPO Box X2206
Perth 6001
Tel: 1300 799 675
Fax: (08) 9481 0904
Email:
perth@fwc.gov.au

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