FWC Bulletin

5 June 2025 Volume 6/25 with selected Decision Summaries for the month ending Saturday, 31 May 2025.

Contents

ECEC Multi-Employer Agreement: NPL statement published

30 Apr 2025

Deputy President Hampton has published a National Practice Leader's statement (NPL statement) on our approach to applications to vary the *Early Childhood Education and Care Multi-employer Agreement 2024–2026* (ECEC agreement).

The NPL statement sets out a tailored approach toward the applications, in the context of the early childhood care and education sector and the large volume of applications being made.

Read the Deputy President's NPL statement (pdf)

The last approval decision was on 15 April 2025, and 289 employers and approximately 40,000 employees are now covered by the ECEC agreement. To see all the employers covered, visit our Early Education and Care supported bargaining webpage.

New video about unfair termination

30 May 2025

We have a new video about unfair termination in the road transport industry.

This video answers some common questions and explains:

- what unfair termination is
- who can make an unfair termination application
- some of the rules that apply.

The video will help everyone understand these new rights.

Visit unfair termination for more information.

Changes to how we send correspondence and documents

02 Jun 2025

This change will mostly affect unfair dismissal and general protections dismissal cases. You will notice changes from 2 June 2025.

We have been designing a new online portal and case management system. This is part of our ongoing commitment to improve the way you access our services. Our goal is to promote a 'start online, stay online' approach.

Our new case management system will go live first. This change will mostly impact the way we work internally. There will also be some changes to the way we send documents and correspondence to you.

How we send documents

We will change the way we send documents in unfair dismissal and general protections dismissal cases. This change will only impact the initial stages of your case.

We will email you with a link to share.fwc.gov.au from 2 June 2025. You will use this link to access your documents. This link is secure. When you click the link:

1. enter your case number and email address
2. we will send you a one-time password
3. enter this password to access and download your documents.

Correspondence

We will stop sending automatic replies when you email lodge@fwc.gov.au.

Your application or enquiry will usually be actioned within 5 business days. You will receive confirmation that it has been actioned and any further steps that need to be taken.

You can contact us on 1300 799 675 if you haven't heard from us after 5 business days.

Next steps

This limited release is the first step in a multi-year project. We will soon release a new online portal. This will be for unfair dismissal and general protections dismissal applications only. We will continue to listen to your feedback and will improve the portal over time.

Annual Wage Review 2025 decision announced

03 Jun 2025

The Annual Wage Review 2025 decision was announced at 10am AEST on Tuesday, 3 June 2025.

Read the:

- Announcement of the decision (pdf)
- Annual Wage Review Decision 2025 [2025] FWCFB 3500 (pdf)

Watch a replay of the hearing:

- replay of the Annual Wage Review 2025 decision

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 Saturday, 31 May 2025.

1 ENTERPRISE AGREEMENTS – dispute about matter arising under agreement – disciplinary process – ss.739, 604 Fair Work Act 2009 – appeal – Full Bench – appellant lodged appeal against first instance decision of Commission – appellant is an Advanced Life Support Paramedic and Bright Team Manager with respondent – employed since 2009 – respondent imposed disciplinary sanction on appellant in form of transfer from Bright to Dandenong in Victoria, following independent report's conclusion on 22 July 2022 that appellant engaged in bullying conduct towards coworkers – appellant did not challenge report's findings, however stated decision to transfer was unreasonable; respondent failed to comply with principles of procedural fairness per clause 75 of *Ambulance Victoria Enterprise Agreement 2020* (Agreement); conduct did not amount to serious misconduct; and sanction of transfer not available under clause 74.6(f)(iv) of Agreement – Commission held at first instance that appellant's behaviour amounted to serious misconduct and respondent had not acted unreasonably or unjustly in deciding to transfer him – appellant's 9 grounds of appeal claimed Commission made errors – (1) error of law by finding bullying conduct is necessarily serious misconduct – (2) erred by finding investigator's report had concluded appellant committed serious misconduct – (3) error in definition of serious misconduct – (4) erred by finding that because conduct amounted to bullying, it was not necessary to consider whether respondent acted unreasonably – (5)-(8) error in consideration of whether respondent complied with clause 75 of Agreement regarding procedural fairness – (9) failed to take into account relevant considerations in assessment of whether respondent complied with clause 75 – Full Bench observed 'correctness standard' applied to first question of whether appellant's behaviour amounted to serious misconduct – acknowledged second question whether respondent acted unreasonably or unjustly was evaluative in nature, however, Agreement authorises Commission to determine whether respondent acted unreasonably or unjustly, which is a unique outcome [*SZVFW*] – Full Bench considered appeal grounds – (1) found Commission made error of law by equating bullying conduct with serious misconduct – rejected respondent's contention this appeal ground was product of unfair or selective reading of Commission's decision – found it was clear Commission proceeded on basis that finding of bullying must mean relevant conduct amounted to serious misconduct – observed clause 74.6(f)(iv) of Agreement indicates transfer is a disciplinary option for respondent in case of serious misconduct related to conduct that meets definition of workplace bullying or harassment pursuant to FW Act and *Equal Opportunity Act 2010* (Vic) – observed s.789FC of FW Act defines when a worker is bullied at work – 'serious misconduct' not directly defined, however, clause 74.1 of Agreement indicates 'misconduct includes serious misconduct' and has same meaning as provided in respondent's Misconduct Policy, which defines 'serious misconduct' in terms similar to *Fair Work*

Regulations 2009 – found bullying and serious misconduct are 'two entirely distinct concepts' for purposes of Agreement – not in contest appellant engaged in bullying, however, in dispute that conduct was serious misconduct – (2) Full Bench found appellant's behaviour did not amount to serious misconduct – report found appellant engaged in bullying, not serious misconduct – matter would need to be redetermined in order to determine whether there was serious misconduct – (3) Full Bench found no substance to this ground – (4) Full Bench agreed with respondent that Commission clearly accepted need to consider whether respondent acted unreasonably or unjustly by considering location of transfer and impact of decision on appellant – (5)-(9) in relation to remaining procedural fairness appeal grounds, Full Bench found respondent afforded appellant procedural fairness as required by clause 75 of Agreement and was provided with opportunity to show cause as to why proposed disciplinary outcome should not be implemented – Full Bench ordered permission to appeal granted – appeal allowed – first instance decision quashed – application remitted for redetermination.

Appeal by Frost against decision of Connolly C of 23 August 2024 [[2024] FWC 2237]
Re: Ambulance Victoria

C2024/6456 [2025] FWCFB 94
Asbury VP Brisbane 12 May 2025
Colman DP
O'Neill DP

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2 ENTERPRISE AGREEMENTS – approval – appeal – Full Bench – ss.185, 188B, 604 Fair Work Act 2009 – Mining and Energy Union (MEU) lodged appeal against approval of *Specialised Mine Services Enterprise Agreement 2023* (SMS Agreement) – application for approval made in September 2023 – in first instance matter, MEU made several requests for application documents, including names of signatories and demographic information; SMS Agreement made by ballot of only four employees – Commission refused to provide unredacted documents and, after receiving MEU's written objection to SMS Agreement, approved it with undertakings – MEU provided with unredacted application documents in appeal matter – unredacted documents substantiated contentions made by MEU that Mr Perkins and Mr Yvanoff, a director and a shareholder of respondent respectively, were involved in making SMS Agreement, that they were also General Manager and Business Manager of a mining contractor Nortek P/L which undertook same or similar work to respondent – MEU applied for orders that Mr Perkins, Mr Yvanoff, respondent and Nortek all give evidence and produce records relating to employment of persons ostensibly covered by SMS Agreement, identified as signatories to Agreement or involved in bargaining process – evidence given led MEU to contend that employees that purportedly made SMS Agreement were at time covered by Nortek's Agreement by virtue of provisions dealing with transfer of business and instruments – Nortek Agreement covered 119 employees at lodgement and had over half a year left until nominal expiry date at time SMS Agreement lodged – Nortek Agreement application made by Mr Yvanoff and signed by Mr Perkins – rates in Nortek Agreement higher than those in SMS Agreement – in approval decision for SMS Agreement, Commission did not refer to submissions of MEU about Mr Yvanoff and Mr Perkins, the relationship between respondent and Nortek, whether any of the four employees that

made the SMS Agreement were covered by Nortek, nor the implications of this – MEU pressed four overarching grounds of appeal – (1) with respect to lack of unredacted application documents – MEU submitted by refusing to provide unredacted application documents, Commission acted contrary to principles of open justice and failed to afford procedural fairness to appellant – (2) MEU submitted SMS Agreement not genuinely agreed to: Commission erred in being satisfied that employees who made SMS Agreement had sufficient interest in its terms and were sufficiently representative of employees SMS Agreement expressed to cover; Commission erred in finding respondent had taken all reasonable steps to explain SMS Agreement, its terms and their effect – (3) Commission did not correctly apply better off overall test (BOOT), failing to undertake global assessment required by s.193A(2) or assess how the first undertaking would ensure employees better off overall – (4) Commission erred in accepting undertakings that resulted in substantial changes to SMS Agreement and were not capable of meeting relevant concerns – MEU submitted in public interest to grant permission for appeal due to issues of importance for Agreement approvals – respondent submitted documentation sought by MEU including payslips, letters of offer from both respondent and Nortek in relation to employees that made SMS Agreement – Full Bench exercised discretion under s.607(2) to admit this as further evidence and take it into account as there were no further steps MEU could have taken to adduce documents at first instance due to lack of hearing, and matters raised in submissions raised possibility that SMS Agreement not a genuine exercise in bargaining – Full Bench discussed new evidence, MEU submissions and statutory framework – in discussing approach to agreement approval appeals, Full Bench observed it not sufficient that a Full Bench would form different view to Commission at first instance to overturn decision; for appeal to succeed, MEU must demonstrate Commission acted upon wrong principle, took into account urgent consideration or failed to take into account a material consideration, or made plainly unreasonable or unjust decision [*House*] – upon assessing new evidence to make findings of fact based on appeal, question arose as to whether transfer of business had occurred between respondent and Nortek – parties invited to make submissions on this question to which MEU did, but respondent did not – Full Bench observed respondent failed to properly engage with matter on appeal, and that Mr Yvanoff and Mr Perkins provided evasive and contradictory evidence; though they made truthful concessions against their interests, it was in manner suggesting a 'dearth of knowledge' about legislative framework for agreements, and in face of documentary evidence effectively ruling out any response – Full Bench observed it surprising that Mr Yvanoff appeared to not understand significance or implications that SMS employees were already covered by Nortek Agreement, despite experience – Full Bench also of opinion that case advanced by SMS at first instance 'disingenuous in some respects' – Full Bench presented findings – in respect of transfer of business as asserted by MEU – Full Bench satisfied requirements in s.311(1)(a)-(c) met as three of the four employees that made SMS Agreement previously worked for Nortek and performed substantially the same work – Full Bench satisfied also of connection between SMS and Nortek due to outsourcing arrangement between companies, and tendency of Mr Yvanoff and Mr Perkins to use words such as 'us' and 'we' in reference to both companies – Full Bench also held evidence adduced by MEU supported inference that respondent and Nortek associated entities under s.50AAA of *Corporations Act 2001* (Cth),

meaning Nortek Agreement may have been a transferrable instrument and it would have applied to three SMS employees at time they purported to make SMS Agreement – Full Bench nonetheless declined to make finding on transferable instrument matter given it arose late in proceedings and necessary connection under s.311 established by outsourcing of work by Nortek to respondent – Full Bench found employees who made SMS Agreement had no stake in it; all employees that made SMS Agreement were casual employees and paid significantly higher rates than in SMS Agreement as agreed prior to SMS Agreement being made, and that they could not have been employed in a way consistent with *Black Coal Mining Industry Award* 2020 (Award) – Full Bench satisfied SMS Agreement was entirely inauthentic and a sham, designed to establish an enterprise agreement with lower rates than those in Nortek Agreement, to then engage a larger number of likely Nortek employees to undertake work contracted to Nortek – Full Bench observed it notable that Nortek and not respondent has contractual arrangement with relevant mine site, despite respondent's employees now undertaking that work, and that Mr Perkins and Mr Yvanoff involved in management – strategy achieved by selecting a small number of likely cooperative Nortek employees known to Mr Perkins to take up employment with respondent to make SMS Agreement – SMS Agreement made without bargaining – alternate explanation advanced by Mr Yvanoff and Mr Perkins not accepted by Full Bench – Full Bench concluded there was insufficient evidence upon which Commission could have been satisfied that respondent took all reasonable steps to explain terms of SMS Agreement to employees that purportedly made it – Form F17B declaration of Mr Perkins before Commission at first instance recounted an oral explanation to employees, but indicated no explanation of differences in terms and entitlements compared to previous Agreement as must be taken into account per paragraph 8 of *Statement of Principles on Genuine Agreement* (Statement of Principles) – according to Form F17B, only differences between SMS Agreement and relevant Award were properly explained, which was not relevant to employees who purportedly made SMS Agreement as they were covered by Nortek Agreement – even if no transfer of business had arisen, explanation of differences between SMS Agreement and relevant Award would have been insufficient as explanation did not cover fact that Award does not provide for certain roles to be employed casually, that under SMS Agreement, casual loading would not be compounded on overtime as it is in Award, or that employment of a casual employee under SMS Agreement ends at conclusion of each shift – Full Bench made findings on consideration – granted permission to appeal due to public interest and to ensure enterprise agreements are product of genuine exercise in bargaining – Full Bench considered appeal ground (1): that Commission acted contrary to principles of open justice by failing to provide unredacted copy of application documents – Full Bench noted established principles that, absent special circumstances justifying confidentiality, Commission files should be freely available for inspection by public [*Ron Southon*] and that appropriate mechanism for seeking unredacted copies of documents is to request them from relevant Member [*CEPU v AWU*; *Renewable Technical Services P/L*] – MEU had followed these principles, and no exceptional circumstances were identified by first instance Member's Chambers or in decision refusing request – Full Bench noted that an examination of unredacted documents would in fact have substantiated MEU's concerns about SMS Agreement – Commission at first instance did not distinguish

from established authorities on providing unredacted documents and due to substantiation of MEU's concerns made in first instance matter, Full Bench upheld appeal ground – Full Bench turned to appeal ground (2): that Commission failed to afford MEU procedural fairness by failing to provide unredacted copy – Full Bench observed that to protect privacy of four employees that made SMS Agreement, partially redacted documents could have been provided to MEU and noted significance of demographic information in whether employees had sufficient interest in terms of SMS Agreement – Full Bench upheld appeal ground 2, finding that had MEU been provided with unredacted documents, outcome of SMS Agreement approval likely to have been different – Full Bench turned to appeal grounds (3)-(5): whether SMS Agreement genuinely agreed per s.188 and Statement of Principles – Full Bench dealt with grounds 3-5 together for convenience – Full Bench observed no indication in approval decision that Commission took Statement of Principles into account, and that Commission only engaged 'on a peripheral level' with factually verifiable concerns in MEU submissions about whether SMS Agreement genuinely agreed – Full Bench upheld grounds 3-5 and found SMS Agreement not genuinely agreed and accordingly not capable of approval – Full Bench found not necessary to determine ground 6(b) concerning BOOT but noted several matters – for Commission to have been satisfied that SMS Agreement passed BOOT, it needed to consider whether the Award rates for the classifications covered by the SMS Agreement including relevant penalty rates were more than those under SMS Agreement, which did not compound casual loading and penalty rates – Full Bench found no indication in approval decision that this pay rate comparison conducted, and it was not readily apparent that SMS Agreement better off overall given lack of casual and penalty rate compounding – also not apparent if undertaking resolved issue – Full Bench concluded by noting importance of open justice including provision of access to material filed in Commission has been heightened by recent cases of unions appealing approved enterprise agreements and exposing sham agreements or those made by ingenuine arrangements – Full Bench stated Commission Members are reliant on application declarations, with no power to revoke of vary their own approval decisions on their own initiative – Full Bench noted in appropriate cases, open justice may require information about identity of those who made Agreement – Full Bench discussed operation of sham agreements in context of lengthy appeals – noted MEU had no standing to be heard at first instance, since not a bargaining representative for SMS Agreement, unless granted leave of Commission, but as a registered organisation would generally be person aggrieved under s.604 – Full Bench noted it desirable had MEU been afforded opportunity to raise concerns at first instance – Full Bench ordered: permission to appeal granted, grounds 1-5 upheld, first instance approval decision quashed and application for approval of SMS Agreement dismissed.

Appeal by Mining and Energy Union against decision of Dean DP of 27 November 2023 [[2023] FWCA 3811] Re: Specialised Mine Services P/L

C2023/7933 [2023] FWCFB 103
Asbury VP Brisbane 23 May 2025
Beaumont DP
Roberts DP

3 TERMINATION OF EMPLOYMENT – Misconduct – ss.394, 400, 604 Fair Work Act 2009 – permission to appeal – Full Bench – appellant challenged first instance decision requiring it reinstate respondent – appellant had terminated respondent's employment after respondent failed blood alcohol concentration (BAC) test following crane accident at Port Botany Terminal – former Drug and Alcohol Policy (Policy) provided maximum BAC of 0.02 – new Policy set limit of 0.00 – following accident respondent immediately recorded 0.025 BAC and recorded 0.017 BAC at confirmatory test soon after – at first instance Commission found respondent not made aware of change to Policy – held dismissal harsh and unreasonable – reinstatement, 50% backpay and continuity of service ordered – appellant filed lengthy appeal grounds covering seven topics: (1) Commission did not, or did not sufficiently, take particular matters into account; (2) Commission erred in taking particular matters into account; (3) Commission erred in making certain findings; (4) Commission made significant errors of fact; (5) Commission erred in making significant errors of fact; (6) Commission erred in making certain conclusions and; (7) Commission erred in making order for reinstatement – Full Bench noted no right to appeal and permission to appeal required – acknowledged s.400 demonstrates intention that avenue to appeal decision in unfair dismissal proceeding is to be limited – permission to appeal can only be granted if Full Bench satisfied in public interest to do so – appellant contended appeal in public interest – suggested, inter alia, appeal would enable Full Bench to determine whether necessary for employer to establish employee is aware of change in a policy before employer may terminate employee for breach of the changed policy – Full Bench considered permission to appeal – held not persuaded in public interest to grant permission to appeal – found Commission applied orthodox principles and referred to relevant prior authorities such as *Hilder* and *Goodsell* – found many of appellant's arguments not argued at first instance – further found none of appellant's grounds disclosed sufficiently arguable case of appealable error – despite usually being unnecessary and inappropriate to conduct detailed examination of grounds for purposes of determining whether permission should be granted [*MTGI Trust*], Full Bench provided observations on appellant's grounds – noted first instance determinations on merits and remedy were discretionary in nature – appeal against such determinations requires appellant demonstrate error of type referred to in *House* and mere preference for different result not sufficient – observed, of appellant's grounds, failure at first instance to give sufficient weight, or giving too much weight, to a relevant consideration is not, in itself, sufficient to establish appealable error – asking appeal bench to substitute its own view because it would have weighed relevant factors differently not permissible approach on appeal – Full Bench considered each of appellant's grounds – not satisfied any ground disclosed appealable error in *House* sense – permission to appeal refused.

Appeal by Sydney International Container Terminals P/L against decision of Wright DP dated 20 February 2025 [[2025] FWC 516] Re: Hancock

C2025/2081 [2025] FWCFB 106
Gibian VP Sydney 22 May 2025
Saunders DP
Grayson DP

4 RIGHT OF ENTRY – application for permit – dispute over right of entry – ss.512, 513 Fair Work Act 2009 – Construction, Forestry and Maritime Employees Union (CFMEU and applicant) applied for two right of entry permit (ROE) applications for Mr J Thompson and Mr D Howard (permit applicants) – Mr Thompson was a CFMEU organiser and Mr Howard was a Civil and Regional Construction Coordinator – permit applicants were engaged in Federal Court (Court) and Queensland Industrial Relations Commission (QIRC) proceedings – Commission invited Fair Work Ombudsman (FWO) if it wanted to be heard in relation to ROE applications – applicant provided submissions regarding matters before the Court and QIRC – applicant provided correspondence with FWO regarding Mr Howard – allegations were made that he had engaged in 'menacing behaviour' – FWO requested CFMEU Administrator review video footage of Mr Howard appearing to make threats towards a site manager – FWO asserted Mr Howard threatened site manager by 'shirtfronting' him and stating 'put a gun in your mouth and see where it goes' – FWO claimed footage raised concerns as to whether Mr Howard was a 'fit and proper person to hold a right of entry permit' – CFMEU Administrator reviewed video footage and asserted no 'shirtfronting' occurred and considered Mr Howard was 'play acting for the cameras' – CFMEU Administrator indicated Mr Howard had in fact said 'keep running your mouth and we'll see where it goes' – CFMEU Administrator informed FWO the footage did not support the withdrawal of the application – FWO informed Commission it did not want to be heard – Commission considered whether proposed permit holders were fit and proper persons taking into account matters regarding integrity, conduct or personal characteristics (per s.512) – noted permit holders had completed required training for role – permit holders disclosed ongoing proceedings at Court – allegations concerning Mr Howard were that he had on two occasions attended a construction project site and failed to observe visitor entry requirements – Mr Howard also alleged to have pushed past a manager, used abusive language and had thrown a document at a manager – alleged to have participated in blockade of site – allegation concerning Mr Thompson was that he had on one occasion refused to comply with visitor entry requirements by accessing site through a security fence and not reported to site office – applicant claimed contested allegations raised in separate proceedings were not relevant to assessment of whether permit applicants were fit and proper persons – Commission disagreed noting s.513(1)(g) requires Commission to take into account 'any other matters that the FWC considers relevant' to determine whether an official is a fit and proper person to hold a permit – found this could include ongoing litigation involving unresolved allegations [*Merkx*] – acknowledged contested nature of allegations regarding Mr Howard – noted FWO and CFMEU Administrator had concluded video footage was not damning of Mr Howard's conduct – other permit qualification matters weighed in favour of Mr Howard – satisfied Mr Howard is a fit and proper person to hold a ROE permit – noted Mr Thompson was subject of allegations regarding only one incident – found allegations were also of a contested nature – noted material submitted revealed very little about what Mr Thompson was alleged to have done – found Mr Thompson is also a fit and proper person – applications per s.512 granted – concluded if findings were made in Court proceedings that permit applicants contravened ss.499 and 500 of Act and they (or applicant) are ordered to pay pecuniary penalties in relation to those contraventions, the Commission would be required to either

impose conditions on, suspend or revoke the entry permits of permit applicants, unless it would be harsh or unreasonable in the circumstances.

Application by the Construction, Forestry and Maritime Employees Union for an entry permit for Thompson and Howard

RE2025/91 and Ors [2025] FWC 1177
Gibian VP Sydney 29 April 2025

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5 CONDITIONS OF EMPLOYMENT – unfair deactivation – ss.536LD, 536LU Fair Work Act 2009 – applicant made claim Uber Australia (Uber) unfairly deactivated him from Uber driver digital labour platform (digital labour platform) – applicant sought Uber reactivate him per s.536LP – Raiser Pacific P/L (Raiser) submitted it was the proper respondent to application, since it operated digital labour platform – Commission found Raiser to be correct respondent – Raiser objected to application on ground applicant not protected from unfair deactivation per s.536LD, since he had not been performing work through or by means of digital labour platform, or under a contract or contracts facilitated through digital labour platform for at least 6 months – Raiser entered services agreement with applicant on 16 November 2024 – applicant commenced work as driver partner through digital labour platform on 26 November 2024 – Raiser deactivated applicant's account on 12 March 2025 – at deactivation, applicant had been performing work through or by means of digital labour platform for 3.5 months – applicant agreed he had been performing work for 3.5 months, however indicated from 2017-2019 he worked on digital labour platform in both Melbourne and Sydney and had various accounts including for Uber X, Uber Black and Uber Eats – applicant claimed his earlier period of work accumulated to over 6 months of work – Commission observed s.536LD(c) requires a person has been performing work on relevant digital labour platform for a period of at least 6 months, not for a cumulative total of 6 months over time – found s.536LD(c) is concerned with person's most recent period of work, which ended with deactivation, and the section's use of 'present perfect continuous tense ('has been performing work')' connotes connection between past and present – acknowledged where there has been a previous episode of work on relevant digital labour platform, it is necessary to determine whether this belongs to same period that ended with person's deactivation – found applicant's earlier work occurred years ago from 2017-2019 and did not form part of same period that ended with applicant's deactivation – held applicant not protected from unfair deactivation – applicant did not meet 6 month requirement per s.536LD(c) – application dismissed.

Application by Jibril

UDE2025/31 [2025] FWC 1289
Colman DP Melbourne 9 May 2025

Other Fair Work Commission decisions of note

Application by Davies

REGISTERED ORGANISATIONS – certificate – employed or engaged – s.323MD Fair Work (Registered Organisations) Act 2009 – former Assistant National Secretary of the Construction and General Division (C&G) of the Construction, Forestry and

Maritime Employees Union (CFMEU) applied to Commission for certificate under s.323MD of the *Fair Work (Registered Organisations) Act 2009* (RO Act) to permit him to be employed or engaged by an organisation – applicant required to apply following commencement of Part 2A of RO Act, which placed all branches of the C&G of CFMEU under administration upon determination of administration scheme and appointment of administrator – administration scheme included provisions for 'suspension and removal of officers' and 'declarations that offices are vacant'; annexures A and B of scheme declared applicant's position as vacant – applicant consequently defined as 'removed person' under RO Act and *Fair Work Act 2009*, and therefore prohibited from being employed by any part of a registered organisation – applicant approached by CFMEU National Secretary to return from retirement to assist CFMEU during administration – Commission considered whether applicant is a 'fit and proper person' under s.323MD(2) of RO Act – Commission considered statutory context applied in first application for a certificate matter involving s.323MD [*Lowth*] – applicant submitted that despite use of word 'may' in s.323MD(1), the preferable construction of the section is that it is a provision which confers power on Commission to issue certificate which must be exercised if Commission satisfied they are a fit and proper person for purposes of s.323MD(2), unless s.323MD(3) proscriptions apply – Commission found against submission of applicant, noting use of 'may' in s.323MD(1) is 'prima facie indicative of the conferral of a discretion' and is repeated in s.323MD(2) in setting out circumstances in which Commission can grant a certificate – noted s.323MD(3) then provides circumstances where Commission 'must not' grant certificate even where fit and proper test satisfied – found section contemplates that certificate will not necessarily be granted in all cases in which fit and proper person test is satisfied – Commission observed it inappropriate to speculate when narrow discretion may be exercised, noting it irrelevant to matter at hand – Commission considered specifics of matter at hand – noted s.323MD does not dictate matters that must be taken into account when making fit and proper person assessment – Commission noted applicant's extensive history in union movement, including roles as delegate and organiser since 2000, and Assistant National Secretary from 2017 until retirement in 2022 – applicant gave evidence on nature of work he undertook for CFMEU, demonstrating commitment to health and safety in building industry – no evidence before Commission suggesting applicant not a fit and proper person, having never been convicted of a criminal offence – Commission observed aspect of applicant's past conduct calling fitness and propriety in question, being findings made in Federal Court proceedings concerning Bendigo Theatre Site – applicant attended worksite in July 2014 due to safety concerns, refused to show occupier his right of entry permit, under misapprehension of s.58(1)(f) of *Occupational Health and Safety Act 2004* (Vic) – applicant subsequently received right of entry training from CFMEU's National Legal Officer – following this, in 2019 Commission considered whether to suspend or revoke applicant's right of entry permit but decided against doing so due to applicant's contrition, passage of time and training subsequently received [*Re Davies*] – applicant was later granted new entry permit and deemed fit and proper person to hold entry permit – in present matter, Commission noted conduct and findings insufficient to dissuade it from finding applicant a fit and proper person to be employed or engaged by an organisation under s.323MD(2) – certificate granted under s.323MD(1).

R2025/46 [2025] FWC 1363
Gibian VP Sydney 15 May 2025

Application by Shore and Anor

ANTI-BULLYING – worker – bullied at work – dismissed – ss.587, 789FC Fair Work Act 2009 – applicants were volunteers with Australian Volunteer Coast Guard Association (Coast Guard and respondent) since 2007 – first applicant's application alleged bullying by Deputy Flotilla Commander, Squadron Commodore, Deputy Squadron Commodore and Advisor to National Commodore – first applicant was administrator of private Coast Guard Facebook group ('Manly Roster Mates – Members Uncensored') which was created in July 2022 – first applicant stepped down from administrator position of Facebook group in mid July 2024 – on 16 July 2024, anonymous person

posted an article in Facebook group about toxic culture in Coast Guard – several comments were posted in Facebook group about Squadron Commodore – first applicant argued he was not administrator at time comments were made – on 26 July 2024, first applicant stood down from Coast Guard duties pending internal investigation into Facebook group – stand down letter noted breach of Coast Guard's policies – possible offences under State and Commonwealth Crimes Acts and Criminal Codes – first applicant sought legal advice from second applicant, who is a solicitor and former Coast Guard volunteer – Commission held conference in October 2024 – respondent's internal investigation was still pending – first applicant argued that respondent continuing investigation was a form of bullying and harassment – no resolution reached – Commission sought update from respondent in November 2024 – respondent advised National Board (Board) would be meeting to consider allegations against first applicant – first applicant provided with notice of Board meeting on 8 January 2025 – second applicant provided submissions to Board on first applicant's behalf – Board resolved to disenroll first applicant with effect from 8 February 2025 – right to appeal within one month of decision – second applicant requested extension of time due to first applicant being unwell – no appeal lodged on first applicant's behalf – Commission listed matter for hearing in February 2025 – second applicant received stand down notice and lodged his own stop bullying application on 24 February 2025 – stand down notice alleged second applicant disseminated confidential information of first applicant's bullying complaint, had a conflict of interest and harmed victims of cyber bullying – on 13 March 2025, respondent filed response to second applicant's stop bullying application and noted Board convened and resolved to disenroll second applicant – right to appeal within one month of decision – second applicant was overseas during right to appeal period – Commission acknowledged applicants were entitled to lodge stop bullying order applications per s.789FC, since volunteers are covered as 'workers', however noted applicants no longer volunteers as they have been disenrolled – Commission can only proceed with application if future risk of bullying – considered recent Full Bench Decision in *Greenan* which contemplated principles that apply to consideration to dismiss application for stop bullying order per s.587(1)(c) – applicants acknowledged volunteers have no right to claim wrongful dismissal – however, argued Board's process lacked procedural fairness – claimed they were entitled to same rights as employees – indicated terminating enrolment was in violation of their rights – submitted Board decision void and without effect – Commission noted applicants' argument based on assumption that Commission has power to substitute respondent's decision with its own – acknowledged as volunteers, applicants would likely fail for want of jurisdiction in an unfair dismissal or other dismissal-related application – found Commission has no power to reinstate applicants – no real likelihood of applicants being reinstated to their former volunteer positions in near future – held at this point in time, and in foreseeable future, no risk alleged bullying would continue at work – observed future attempts at conciliation would likely be unsuccessful – applications dismissed.

AB2024/659 and Anor [2025] FWC 1353
Lake DP Brisbane 15 May 2025

Pooler v Hodgson Lawyers P/L

TERMINATION OF EMPLOYMENT – extension of time – irregularity – ss.394, 586 Fair Work Act 2009 – respondent objected to application on basis it was filed before applicant's dismissal took effect – no factual dispute – legal dispute on effective date of dismissal – respondent sent termination letter to applicant on 3 December 2024 for performance issues, effective on 20 December 2024 with applicant to remain employed until 31 December 2024 – on 3 December 2024, applicant informed respondent she decided to complete remainder of notice with her annual leave – on 13 December 2024, applicant filed general protections application – applicant submitted her dismissal was effective from 3 December 2024 – respondent submitted applicant's dismissal had not taken effect by that time – Commission satisfied effective dismissal date was 31 December 2024, since termination letter stated respondent was giving 4 weeks' notice of termination [*Ayub*] – acknowledged

respondent correct that application was not made within '21 days after the dismissal took effect' per s.366(1)(a) – premature filing of an application involving dismissal is an irregularity which can be waived [*Mihajlovic*] – Commission to consider whether substantive application had merit; whether there would be any prejudice to respondent as a result of waiver; whether applicant could discontinue and file a new application within time; and whether if a new application was filed, there would have to be another hearing causing additional costs and inconvenience for parties [*Mihajlovic*] – respondent admitted it would not suffer any prejudice if irregularity waived – found applicant would suffer prejudice if application dismissed, and if a new application was filed it would be out of time and an extension would have to be sought, resulting in additional time and cost to parties – applicant identified protected attribute in application that dismissed due to her pregnancy – observed substantive application is not without merit – irregularity waived per s.586(b) – jurisdictional objection dismissed – matter to proceed to conference.

C2024/9058 [2025] FWC 1186
Lake DP Brisbane 30 April 2025

Scholtz v All Skills Resourcing P/L and Ors

TERMINATION OF EMPLOYMENT – extension of time – representative error – s.365 Fair Work Act 2009 – applicant lodged application to deal with dismissal dispute 17 days outside of statutory timeframe – first respondent raised jurisdictional objection that application was out of time and submitted there were no exceptional circumstances to justify an extension of time – Commission considered s.366(2) to determine whether exceptional circumstances exist – considered reason for delay per s.366(2) – applicant submitted he sought additional information from first respondent through his lawyers, however, solicitor did not take necessary steps to contact first respondent in a timely manner to prepare and file application within 21-day statutory timeframe – Commission observed applicant does not need to provide a reason for entire period of delay and the reason for delay is a factor forming part of the overall assessment required by s.366(2) – Commission found delay 'largely attributable' to representative error on part of applicant's lawyers – applicant's lawyers instead wrote to first respondent after the 21-day statutory period expired and no satisfactory explanation provided as to why they failed to act earlier – applicant's solicitor was aware of statutory period and in regular contact with applicant and able to obtain his instructions – considered whether any 'blameworthiness' for delay to applicant's own acts or omissions [*Clark* and *Jordan and MacLeod*] – found applicant relied on solicitor to take diligent steps to protect and progress his interests, including preparing and filing application – found applicant aware of 21-day period from early February – observed a reasonably prudent applicant with knowledge of deadline would have taken at least some steps to follow up on application with solicitor – applicant not entirely excused from responsibility for delay – however, found responsibility for delay rested 'overwhelmingly' with applicant's solicitor to make only limited further enquiries with first respondent and wait for a response, rather than meet statutory deadline, which solicitor was aware of – considered action taken by applicant to dispute dismissal per s.366(2)(b) – applicant spoke with first respondent shortly after termination but did not take issue with the termination in that discussion – applicant did not take steps to dispute dismissal until after statutory period had expired – considered merits of application per s.366(2)(d) – applicant raised health and safety concerns – however, evidence from applicant as to when such concerns were raised and with whom remain unclear – first respondent contended applicant's reasons for termination related to applicant discussing details of first respondent's operations with clients and other operators – first respondent also contended applicant incorrectly told some operators that one of first respondent's supervisors and another operator were to be terminated in near future – Commission indicated prospects of applicant establishing that termination was adverse action related to exercise of workplace rights were not sufficiently strong – Commission not satisfied exceptional circumstances exist [*Nulty*] – no basis for extension of time – application dismissed.

C2025/1414 [2025] FWC 1326

Zhang v Orientile P/L

TERMINATION OF EMPLOYMENT – Small Business Fair Dismissal Code – genuine redundancy – ss.385, 389, 394 Fair Work Act 2009 – applicant was employed as sales representative with respondent since 2010 – applicant's dismissal took effect on 28 February 2025 following meeting – respondent a small employer with 9 employees at time of applicant's dismissal – respondent submitted business under financial strain due to operational costs in 2025 – respondent submitted applicant dismissed because his position was redundant – applicant paid termination pay on 4 March 2025 – applicant emailed respondent on 7 March 2025 alleging unfair dismissal and other procedural breaches around termination – respondent denied allegations – applicant applied for unfair dismissal remedy on 14 March 2025 – Commission considered respondent's first jurisdictional objection that dismissal was genuine redundancy – found respondent did not consult with applicant before dismissing him and did not comply with its obligations per clause 30 of *Storage Services and Wholesale Award 2020* (Award) – satisfied not a genuine redundancy within meaning of s.389 and requirement in s.385(d) met – Commission considered second jurisdictional objection whether dismissal consistent with Small Business Fair Dismissal Code (SBFDC) – observed SBFDC does not capture redundancy situations [*Groszek*] – found dismissal not consistent with SBFDC – Commission considered whether dismissal harsh, unjust or unreasonable per s.387 – Commission found applicant dismissed since respondent no longer required three sales representatives, due to decline in sales and increased costs – applicant's duties reassigned to other two sales representatives – found dismissal related to operational requirements of business and not capacity or conduct of applicant – therefore, valid reason per s.387(a) a neutral factor in respect to harshness – noted notification of reason for dismissal per s.387(b) and opportunity to respond per s.387(c) also neutral factors, given reason for termination not related to capacity or conduct – found respondent did not have any dedicated HR management specialists or expertise at time applicant dismissed, which impacted on procedures followed in effecting applicant's dismissal per ss.387(f)(g) – considered other relevant matters per s.387(h) including the speed from which respondent made decision that business needed to make cost savings to the dismissal of applicant; fact there were no conduct, capacity or performance issues justifying applicant's retrenchment; applicant's 15 years of service with respondent; lack of consultation process; no additional payment made to applicant to reflect length of service; and adverse impact dismissal had on applicant's personal financial circumstances – Commission held dismissal harsh and unreasonable – noted although respondent had valid reason to make applicant redundant, the unreasonable and extensive failure to comply with its consultation obligations under Award meant applicant had no real opportunity to avoid or mitigate adverse impact of retrenchment – held applicant unfairly dismissed – considered remedy – reinstatement inappropriate due to downturn in respondent's business – considered compensation [*Sprigg*] – 12 weeks' pay deemed appropriate considering length of service per s.119 – lost remuneration added – compensation ordered of $31,652.93 gross including superannuation.

U2025/3076 [2025] FWC 1336
Slevin DP Sydney 14 May 2025

Dickson v Kovacs and Anor

GENERAL PROTECTIONS – contractor or employee – ss.15AA, 394 Fair Work Act 2009 – applicant lodged general protections dispute involving dismissal – applicant was hired as a nanny for a married couple (respondents) since late January 2023 – engagement came to end on 5 October 2024 – respondents made jurisdictional objection that applicant was not an employee and not dismissed – respondents conceded if Commission found applicant was an employee then employment ended at their initiative – Commission considered approach to ordinary meaning of employee and employer affected by s.15AA [*Murray*], which cited common law approach of Full

Bench [*Do Rozario*] – in *Murray*, Commission affirmed it was required to consider totality of relationship and factors including contractual terms' practical performance – Commission accepted the agreed contractual terms as evidenced in text messages were applicant's hourly rate payable by bank transfer, weekly superannuation, and applicant's responsibility for administering her own superannuation – Commission also found a term that applicant would provide care for respondent's two children, predominantly in their own home – Commission did not accept it was agreed applicant would be a contractor and not an employee – Commission observed applicant was engaged in a household and not a business or enterprise [*Personnel Contracting*] – acknowledged in case of households and domestic workers, question is not whether a person worked as a servant of another's business or carried out a business of their own, but whether they worked as a servant of the household or carried out a business of their own, of which the household's heads were clients – Commission found applicant did not appear to have been running her own business – applicant was not providing childcare services to other households on her own account or generating goodwill for herself – found applicant took on another job at a childcare centre in someone else's business and applicant did not render invoices, provide an ABN, arrange to be engaged through an incorporated entity or file quarterly reports with the ATO – Commission found that two fake payslips indicated applicant was employed by a trust, but whether engaged by a corporate entity or natural persons, does not assist in determining relationship – Commission also considered whether respondents were entitled to exercise control over applicant and require compliance with lawful and reasonable directions [*Brodribb*] – parties agreed respondents and not applicant set timing and location for children's various appointments and activities – applicant submitted she attended to an array of household tasks beyond childcare including cleaning and groceries – respondents contended applicant undertook activities at her own initiative but conceded applicant was asked to buy groceries online and empty nappy bin – respondents acknowledged applicant attended children's appointments when respondents were unable to, and applicant was directed to do daily exercises with one of their children, and they deemed applicant had provided one-on-one care to their child in an NDIS application – Commission noted nannies employed in private residences inherently subject to significant control in sense of direction or command – Commission found on facts, respondents had right to direct applicant in performance of her duties as a nanny – Commission noted applicant's ability to call in sick did not indicate her ability to set her own hours – Commission found applicant's working hours changed and were changeable and she could not set her own hours, as they were negotiated – Commission found payslips created by respondents were fake and did not assist in determining whether applicant was an employee – Commission noted respondent reimbursed applicant for purchases for children, applicant used respondent's car and when she used her own car the respondents provided child safety seats – Commission held based on relationship's real substance, practical reality and true nature, applicant was an employee – held applicant dismissed based on respondents' concession that employment ended at their initiative if applicant found to be an employee – jurisdictional objection dismissed – matter to proceed to conciliation.

C2024/7717 [2025] FWC 1218
Butler DP Brisbane 2 May 2025

Wassens v Murrells Freight Services P/L

TERMINATION OF EMPLOYMENT – extension of time – s.394 Fair Work Act 2009 – respondent raised jurisdictional objection that application was made out of time – applicant sought extension of time to lodge application – parties initially in dispute about when employment came to an end – applicant claimed his dismissal took effect on 25 September 2024 – respondent submitted applicant resigned on 23 September 2024 – Commission observed language of applicant's letter indicated resignation would take effect on 7 October 2024, being two weeks following 23 September 2024 – despite letter, applicant conceded at determinative conference that his employment came to an end on 23 September 2024 – respondent agreed – applicant lodged unfair dismissal application by midnight on 14 October 2024 – slightly more than one day

out of time – Commission considered reasons for delay and exceptional circumstances – Commission found primary reason for delay was applicant's physical incapacity affecting both arms at the time – applicant had needed a shoulder reconstruction for his right shoulder and had problems with his shoulder throughout his employment with respondent – applicant overcompensated with his left arm and had developed tendinitis and bursitis – found no issue of applicant becoming aware of dismissal after it had taken effect – no action taken by applicant to dispute the dismissal prior to lodging application – respondent did not seek to argue it would suffer prejudice if time was extended – Commission observed merits of application arguable – Commission found no issue of fairness as between applicant and other persons in a similar position – delay was short and unlikely to give rise to any significant prejudice – Commission held exceptional circumstances justified granting applicant further period to make application [*Nulty*] – jurisdictional objection dismissed – extension of time granted.

U2024/12316 [2025] FWC 1224
Butler DP Brisbane 6 May 2025

Weule v Central Queensland Services P/L

TERMINATION OF EMPLOYMENT – Misconduct – reinstatement – ss.387, 390, 394 Fair Work Act 2009 – applicant employed by respondent since July 2022 at a coal mine – applicant involved in an altercation with another employee on 13 June 2024 – applicant dismissed by respondent – dismissal notified and took effect 20 September 2024 – no jurisdictional issues – Commission considered whether dismissal harsh, unjust or unreasonable – some controversies between parties' about facts of altercation – Commission considered evidence and found: Mr Hurley (coal mine worker employee) was driving applicant and Mr Torcello (coal mine worker employee), in a car on the 'haul road' to the crib room after 10:30pm – applicant was in front passenger seat – Mr Torcello was in back seat immediately behind applicant – applicant made a comment to Mr Torcello 'I think my dozer is sick of cleaning up after your dozer' – applicant turned to face back seat and Mr Torcello and applicant argued and swore at each other – applicant turned to face front of vehicle – Mr Torcello leaned forward and grabbed applicant from behind and caused some injuries to applicant's face and thumb – Mr Hurley stopped car and told them to stop fighting – applicant got out of car and opened back door – applicant and Mr Torcello 'tussled' and applicant punched Mr Torcello twice before grabbing his hands – pair struggled further and Mr Hurley yelled at them to stop – pair both calmed down and got back in car – applicant argued that where dismissal involves workplace fighting Commission must consider all circumstances, no presumption that fighting will make a dismissal not unfair, key consideration is whether applicant was acting in self-defence [*Newton; Culpeper;* and *Fearnley*] – applicant argued he was attacked by Mr Torcello and acted in self-defence – respondent argued applicant engaged in physical violence at a mine site which was a valid reason for dismissal – Commission held whole of factual matrix to be considered – held Mr Torcello attacked applicant and applicant defended himself in a reasonable and proportionate manner – Commission held reason for dismissal was 13 June 2024 altercation – held this was not a valid reason for dismissal related to applicant's capacity or conduct (s.387(a)) – applicant was notified of the reason (s.387(b)) – Commission held that applicant ostensibly had opportunity to respond but this was not genuine because investigator did not keep an open mind as to whether self-defence could be an available justification (s.387(c)) – Commission held s.387(b) and (c) matters were not relevant or had little weight because there was no valid reason – Commission held lack of evidence of any previous warnings or disciplinary action, applicant's age (mid-fifties) and impacts of losing his job, delay in providing skills list to assist applicant in mitigating his loss, circumstances of applicant being injured at work by a co-worker, respondent's referral of applicant to medical review and subsequent welfare check and extended access to employee assistance program were all relevant matters to take into account (s.387(h)) – Commission found dismissal was harsh (in light of circumstances of altercation and lack of adverse disciplinary history), unjust because applicant was entitled to defend himself rather than allow a co-worker to attack him and his acts were proportionate and reasonable,

and unreasonable because there was no valid reason and not given a genuine opportunity to respond – Commission held it was not inappropriate to order reinstatement (s.390) because applicant was experienced, good at his job and had good relationships with other employees – Commission issued directions for further hearing about reinstatement specifics.

U2024/11923 [2025] FWC 1219
Butler DP Brisbane 7 May 2025

Davis v Odell Resources P/L

TERMINATION OF EMPLOYMENT – Misconduct – s.394 Fair Work Act 2009 – applicant employed from March 2023 as operator at Wiluna Mine at Leonora, Western Australia – applicant involved in physical altercation with colleague on 18 September 2024 – stood down without pay from 19 to 22 September 2024 – respondent emailed applicant show cause letter on 23 September 2024 instructing applicant to respond to certain allegations by 24 September 2024 and to fly to Perth and return home to Queensland – applicant summarily dismissed on 25 September 2024 for serious misconduct, by way of letter emailed on same date – employment contract explicitly stated fighting was unacceptable conduct – Commission considered whether conduct occurred and justified termination [Cahill] – considered all circumstances in which fight occurred [Newton] – applicant submitted physical altercation with colleague arose from colleague's physical and verbal threats to him and his family – submitted he calmly had discussion with colleague after an incident – indicated colleague reacted angrily so he tried to placate colleague – colleague moved towards him so he backed away – colleague then commenced what he believed was a striking action so he returned with a strike to colleague's chin – submitted he put colleague in sleeper hold because colleague was still threatening him and his family – colleague stated he had threatened applicant but did not punch or threaten to punch applicant – respondent provided video evidence of altercation from respondent vehicle's front-mounted camera in which sleeper hold appears to last about 20 seconds – Commission accepted both applicant and colleague were scared – accepted applicant thought he was acting in self-defence and was not trying to cause more harm to colleague than necessary to protect himself – found 20 seconds in a sleeper hold was too long – Commission satisfied applicant's conduct was valid reason for dismissal per s.387 – noted respondent may have prejudged matter by suspending applicant but not colleague – noted 23 September 2024 was public holiday and applicant was in transit, so it was not reasonable for respondent to refuse applicant's request for extension of time to have a full and proper opportunity to respond to show cause letter – noted applicant had no history of violence or misconduct while employed with respondent – Commission satisfied dismissal was harsh, unjust and unreasonable given facts of altercation, applicant's lack of opportunity to respond, applicant's otherwise clean record, respondent's failure to meet their obligations regarding travel and summary nature of dismissal – Commission satisfied applicant unfairly dismissed per s.385 – compensation remedy considered [Sprigg] – Commission ordered compensation to applicant of $2,890.08 gross.

U2024/11892 [2025] FWC 1150
Butler DP Brisbane 28 April 2025

Iversen v Arramwelke Aboriginal Corporation

TERMINATION OF EMPLOYMENT – Merit – compensation – s.394 Fair Work Act 2009 – applicant employed from 12 February 2020 as Chief Executive Officer – applicant's employment terminated by letter on 24 October 2024 – applicant applied for unfair dismissal remedy – Commission made multiple attempts to contact respondent from 22 November 2024 to 23 January 2025 – respondent failed to comply with Commission's directions, providing no response to attempted contact, failed to file materials per Directions, nor attend pre-hearing conference – Commission decided to determine matter in respondent's absence on the papers – applicant claimed he was

not provided any KPI's for his role, no performance review meetings were held, and he received no formal warnings about performance – Commission considered whether dismissal harsh, unjust and unreasonable – Commission satisfied no valid reason for dismissal per s.387(a) – applicant not provided with reason for termination – found applicant not notified of reason for dismissal per s.387(b) – noted applicant not provided with opportunity to respond per s.387(c) – Commission considered other matters per s.387(h) – noted s.381(2) of FW Act provides statutory guarantee that all parties entitled to a 'fair go', and absence of procedural fairness for applicant does not satisfy statutory entitlement – Commission satisfied applicant's unchallenged evidence should be believed and taken into account [*INPEX* and *Ashby*] – held dismissal was harsh and unjust – held applicant was unfairly dismissed – Commission considered remedy – reinstatement not appropriate – compensation remedy considered [*Sprigg*] – applicant unemployed since termination – Commission found applicant's separate role as elected Councillor not considered employment and stipend of $50,000 per annum not considered to be wages nor money received since termination for purposes of calculation of compensation – found no reason why applicant would not have continued employment for next three months – applicant not paid since February 2024 – Commission thought unlikely applicant would have allowed situation to go on for longer than three months – due to unfairness of situation and respondent's attitude, satisfied applicant entitled to 13 weeks' pay as compensation plus superannuation – applied contingency of 10% – Commission ordered compensation of $17,999.92 gross (11.7 weeks' pay) plus superannuation.

U2024/13608 [2025] FWC 1352
Riordan C Sydney 16 May 2025

Coats v Palmers Group P/L t/a Palmers Relocations

TERMINATION OF EMPLOYMENT – minimum employment period – Merit – compensation – ss.387, 389, 394 Fair Work Act 2009 – applicant was engaged by respondent to assist with loading and unloading of removal trucks on casual basis since April 2021 – applicant vision impaired and legally blind – applicant terminated on 13 November 2024 via text message, due to downturn in work and threatening behaviour towards management – applicant applied for unfair dismissal remedy – respondent raised jurisdictional objections that minimum employment period (MEP) not met and termination was genuine redundancy – Commission considered whether MEP met – found respondent not a small business – satisfied applicant's employment as casual employee on regular and systematic basis – employment was frequent with work being performed most weeks and systematic with applicant contacted by text message the afternoon of the day before work was required – found employment was interrupted by several events (torn ligament in knee, periods when not rostered for work and absence for leave in order to see son in UK), however none of these interruptions broke continuous service or employment – satisfied MEP of 6 months met – Commission considered whether genuine redundancy per s.389 – respondent claimed its trading conditions from mid-2024 deteriorated which led to need for reduced workforce – found some evidence in support of this contention with no work offered to applicant in three weeks between November 2023 and March 2024, however periods in question not close to when applicant was dismissed in November 2024 – acknowledged respondent did not provide evidence about its trading conditions or volumes and how decisions may have been made to reduce number of its employees generally – found no evidence of consultation with applicant as required by *Road Transport and Distribution Award 2020* (Award) – no evidence of consideration of redeployment of applicant – Commission not satisfied termination was genuine redundancy – Commission considered whether dismissal harsh, unjust or unreasonable per s.387 – considered respondent's allegations of misconduct that applicant had been threatening towards management, particularly Operations Manager, via text messages in April of an unknown year and August 2023 – no particulars provided to Commission about occasions where threatening conduct occurred – respondent alleged on 15 November 2024, after termination, applicant tried to find Operations Manager's home address – found messages that supported this contention were cut off and Commission could not be certain of complete text

message – Operations Manager did not give evidence nor did individual who initially replied to proceedings on behalf of respondent, who left respondent before application proceeded to need for response – Commission found text messages provided by respondent did not lead to finding that applicant engaged in bullying behaviour – applicant indicated that he asked for Operations Manager's email address on 15 November 2024 in order to formally dispute dismissal and not home address – Commission found overall evidence did not support applicant was making threats to management at time of termination and text messages relied upon by respondent were drawn to management's attention only after termination – satisfied no valid reason for dismissal per s.387(a) – found applicant was not warned or counselled about any aspect of his performance including matters of conduct per s.387(e) – Commission took into account applicant being vision impaired and legally blind and noted impact of dismissal would likely be disproportionately greater on him than for broader population per s.387(h) – held dismissal harsh, unjust and unreasonable – applicant unfairly dismissed – remedy considered – acknowledged reinstatement inappropriate – considered compensation as remedy [*Sprigg*] – anticipated period of employment determined to be 8 weeks until mid-Jan 2025 – compensation ordered of $6,819 and superannuation of $784.

U2024/13729 [2025] FWC 1176
Wilson C Melbourne 1 May 2025

Murphy v Xavier College Limited

TERMINATION OF EMPLOYMENT – Merit – compensation – ss.387, 394 Fair Work Act 2009 – applicant commenced employment with respondent on 8 October 2003 as a teacher – received performance warning in October 2016 – second and final warning received on 5 December 2022 – directed to participate in 12 month 'performance improvement plan' – during 2024, respondent received increased complaints regarding applicant's failure to provide students with timely feedback and keep workspace tidy – respondent sent applicant notice of concern letter – parties met to discuss on 20 August 2024 – on 26 August 2024, respondent, having considered applicant's response and identifying further performance concerns, requested another meeting – parties met on 27 August 2024 – respondent gave applicant show cause notice, advising that, subject to any response, termination of employment appropriate – applicant submitted written response – respondent advised applicant new performance concerns substantiated, and in light of previous negligence, amounted to misconduct justifying dismissal – on 4 September 2024, respondent advised applicant of immediate cessation of employment relationship and provided payment in lieu of notice – Commission considered whether dismissal harsh, unjust or unreasonable per s.387- found applicant had not properly engaged in remedial efforts and communication with respondent regarding performance and conduct issues – found while not all allegations of misconduct substantiated, on balance of probabilities, sufficient evidence existed validating reason for dismissal per s.387(a) – found applicant given reasonable notice of misconduct and forewarned of consequences satisfying s.387(b) – considered whether applicant given reasonable opportunity to respond per s.387(c) – observed despite applicant being given multiple opportunities to respond, anomalies existed – found plausible applicant perceived his dismissal a foregone conclusion, limiting purpose for a more robust response – observed employee with 21 years' experience entitled to a more vigorous investigation into events that led to termination – accepted respondent's interchangeable use of terms 'performance management' and 'conduct management' may have caused confusion as to what needed to be improved – other relevant factors considered per s.387(h) – considered applicant had long and significant period of successful service with respondent – not satisfied alleged conduct so serious or negligent to warrant termination of 21 year relationship – found anomalies identified in consideration of s.387(b) weighed in applicant's favour – found respondent failed to adequately communicate with applicant on performance management plan – considered consequences of termination outweighed those of his misconduct with respondent – acknowledged applicant lost only job he has had – held dismissal harsh and unjust, but not unreasonable – held applicant unfairly dismissed – Commission

considered remedy – satisfied reinstatement not appropriate due to breakdown of employment relationship beyond repair – compensation considered [*Sprigg*] – 14-weeks' pay reduced by five weeks' notice on termination, monies earned since termination and by 25% on account of misconduct – compensation ordered of $14,121 gross plus $1,623.92 superannuation per s.392.

U2024/11547 [2025] FWC 1284
Connolly C Melbourne 8 May 2025

Application by Camilleri

ANTI-BULLYING – bullied at work – order for mediation – s.789FC Fair Work Act 2009 – applicant employed as Field Engineer with respondent – applicant sought order against his Field Area Manager to stop bullying – applicant submitted nine instances of alleged bullying by Field Area Manager – (1) use of time records prepared by Field Area Manager as justification for removal of applicant's RDO roster; (2) Field Area Manager called meetings about performance or disciplinary matters without notice, which did not allow applicant to arrange support person; (3) Field Area Manager took disciplinary action against applicant concerning an RDO taken on 18 October 2024; (4) Field Area Manager prevented applicant from taking single days of annual leave and prevented applicant from taking leave every second Friday; (5) Field Area Manager relied on previously issued warning to applicant about working hours to justify removal of RDO, when no warning had been issued; (6) Field Area Manager took disciplinary action against applicant regarding conduct during a callout on 10 October 2024; (7) Field Area Manager unreasonably alleged applicant did not perform duties for several hours without explanation on 1 July 2024; (8) Field Area Manager unreasonably alleged applicant was not available to take a call when on standby for a callout on 7 October 2024; (9) Field Area Manager verbally approved applicant taking annual leave in January 2025 but then refused to approve annual leave – Commission found Field Area Manager did not bully applicant at work in relation to seven of nine allegations relied upon – Commission observed Field Area Manager behaved unreasonably towards applicant in relation to finding applicant had breached policy and directions regarding 18 October 2024 RDO and by alleging in writing applicant did not respond to a call-out because he was at a barbeque on 7 October 2024 – Commission satisfied Field Area Manager repeatedly behaved unreasonably towards applicant while at work and Field Area Manager's behaviour created a risk to applicant's health and safety – Commission satisfied applicant 'bullied at work' per s.789FD(1) – Commission observed third prerequisite for making of anti-bullying order is whether there is a risk applicant will continue being bullied at work by Field Area Manager – applicant remains employed by respondent and managed by Field Area Manager – Commission found Field Area Manager behaved unreasonably towards applicant on two occasions and there were shortcomings in relation to Field Area Manager's management of applicant in relation to other allegations – Commission considered requirement for Field Area Manager to continue managing applicant meant risk applicant would continue to be bullied – Commission found third prerequisite for making of an anti-bullying order was satisfied – Commission found while Field Area Manager had bullied applicant at work, applicant had acted unreasonably towards Field Area Manager on several occasions – Commission held applicant and Field Area Manager not incapable of having professional and safe working relationship – Commission considered applicant and Field Area Manager would both need to modify behaviour towards each other to prevent applicant from being bullied at work – Commission ordered applicant and Field Area Manager attend mediation with external provider and for this to be arranged and paid for by employer – Commission satisfied order for external mediation in conjunction with findings in decision would prevent applicant from being bullied at work by Field Area Manager.

AB2024/896 [2025] FWC 1349
Crawford C Sydney 15 May 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

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