FWC Bulletin

3 July 2025 Volume 7/25 with selected Decision Summaries for the month ending Monday, 30 June 2025.

Contents

Launch of our Reconciliation Action Plan

23 Jun 2025

Our first Reconciliation Action Plan (RAP) has now been endorsed by Reconciliation Australia.

Our RAP is a 'Reflect' RAP which provides a starting point to help us engage in reconciliation in a meaningful way using the Reconciliation Australia framework of 'relationships, respect and opportunities'. More information about the types of RAPs is available on the Reconciliation Australia website.

Our RAP sets out actions that we have committed to take between April 2025 and June 2026 and includes statements from our President, Justice Hatcher and our General Manager, Murray Furlong about our commitment to the RAP process.

You can read our Reconciliation Action Plan April 2025-June 2026 (pdf). It is available together with our Statement of commitment to First Nations Australians.

New Model Rules about elections in registered organisations published

30 Jun 2025

Unions and employer associations must have rules that comply with the *Fair Work (Registered Organisations) Act 2009* (RO Act). To make it easier for registered organisations to change their rules, the Registered Organisations Governance and Compliance External Review recommended that we produce Model Rules.

We have now published Appendix B to the two rule books we released in March 2025 as part of the Model Rules project. Appendix B contains model rules on the conduct of elections in registered organisations.

There are separate model rule books for:

- organisations with branches (federated organisations), and
- organisations without branches (unitary organisations).

Appendix B of the rule books was drafted in partnership with the Australian Electoral Commission following intensive consultation and collaboration with a range of stakeholders.

The Model Rules aim to:

- comply with the RO Act and the case law
- recognise practical requirements
- be user friendly with a logical structure, detailed notes and plain language, and
- embed good governance into organisational practices.

This marks the completion of the Model Rules project started in March 2024.

The General Manager specifically wishes to thank our stakeholders for their time spent providing their insights and feedback. The Model Rules are a living document. In the coming months, we will be seeking feedback to find out whether the Model Rules were helpful to organisations that submit rule changes, with a view to making further improvements over time.

Increase to the application fee for 2025–26

01 Jul 2025

From 1 July 2025, the application fee will increase to $89.70.

The change to the fee applies to the following applications under the Fair Work Act 2009:

- general protections dismissal dispute (regulation 3.02 of the Regulations, for subsection 367(2) of the Act);
- general protections non-dismissal dispute (regulation 3.03 of the Regulations, for subsection 373(2) of the Act);
- unfair dismissal remedy (regulation 3.07 of the Regulations, for subsection 395(2) of the Act);
- unlawful termination dispute (regulation 6.05 of the Regulations, for subsection 775(2) of the Act);
- order to stop bullying (regulation 6.07A of the Regulations, for subsection 789FC(4) of the Act);
- unfair contract remedy under section 536ND of the Act (regulation 3A.05 of the Regulations, for subsection 536NE(2) of the Act); and
- unfair deactivation or unfair termination remedy under section 536LU of the Act (regulation 3A.03 of the Regulations, for subsection 536LV(2) of the Act).

High income threshold

From 1 July 2025, the high income threshold in unfair dismissal cases will increase to **$183,100** and the compensation limit will be **$91,550** for dismissals occurring on or after 1 July 2025.

Contractor high income threshold

The contractor high income threshold will also increase to **$183,100**.

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 Monday, 30 June 2025.

1 ENTERPRISE BARGAINING – bargaining order – voting request order – ss.229, 240A Fair Work Act 2009 – Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (ETU) made two applications under s.229 seeking bargaining orders against Sydney Trains and NSW Trains and the Australian Rail, Tram and Bus Industry Union (RTBU) – Sydney Trains and NSW Trains applied under s.240A(1) for a voting request order permitting them to make a request under s.181(1) that employees approve a proposed multi-enterprise agreement by voting for it – Sydney Trains and NSW Trains covered by single enterprise agreement, *Sydney Trains and NSW TrainLink Enterprise Agreement 2022* (2022 Agreement) – 2022 Agreement passed nominal expiry date on 1 May 2024 – Sydney Trains and NSW Trains engaged in bargaining for enterprise agreement to replace 2022 Agreement since 31 May 2024 – other bargaining representatives involved include a group of Unions (Combined Rail Unions (CRU)) and a number of individual bargaining representatives – on 20 February 2025, ETU informed Sydney Trains and NSW Trains that it was no longer part of CRU – Full Bench considered ETU's applications for bargaining orders – Sydney Trains, NSW Trains and RTBU claimed ETU did not comply with s.229(4)(b) and (c) by not giving written notice setting out its concerns, nor providing reasonable time for bargaining representatives to respond – Full Bench acknowledged ETU provided notice of concerns to Sydney Trains and NSW Trains that they were not meeting good faith bargaining requirements in emails on 4 and 5 June 2025, regarding failure to provide information in relation to costings – however, found emails gave no notice that ETU believed Sydney Trains and NSW Trains had not met good faith bargaining requirements – observed ETU provided a more formal email to RTBU on 5 June 2025 – acknowledged ETU did not give notice to Sydney Trains and NSW Trains for full range of its concerns and did not communicate its concern that it had been excluded from meetings – however, found notice to RTBU more fulsome, yet was unclear and period of time to respond to concerns inadequate – Full Bench concluded ETU did not comply with s.229(4) requirements, nonetheless satisfied for purposes of s.229(5) it was appropriate to consider ETU's application under the circumstances – coincided with intense negotiations conducted to endeavour to resolve bargaining – Full Bench considered ETU's application for bargaining orders with respect to Sydney Trains and NSW Trains – ETU alleged Sydney Trains and NSW Trains did not meet good faith bargaining requirements per ss.230(3)(a)(i) and 230(1)(c): (1) ETU sought information about costings which were not provided; and (2) ETU excluded from negotiations at key time in process – Full Bench considered ETU's arguments – in relation to (1), Full Bench did not accept that failure of Sydney Trains and NSW Trains to respond to emails of 4 and 5 June 2025 involved failure to disclose relevant information in a timely manner, since ETU clarified request on 5 June 2025, and Sydney Trains and NSW

Trains were provided with less than 3 hours to provide costings of a new claim only notified at earliest on 2 June 2025, which those parties had not agreed to and did not intend to agree to – Full Bench did not believe costings of overall package was relevant information for purposes of s.228(1)(b) – in relation to (2), Full Bench did not consider employer contravened good faith bargaining requirements simply because employer engaged in separate meetings with different bargaining representatives, since depends on assessment of whole of circumstances [*Ferguson*] – Full Bench found some meetings were conducted by representatives of Sydney Trains and NSW Trains with representatives of CRU, without presence of ETU – this occurred after ETU decided to cease participation in CRU grouping – however, Full Bench found meetings conducted between 2 and 5 June 2025 involved representatives of ETU to exclusion of representatives of CRU – Full Bench held no basis for bargaining orders to be made – Full Bench considered ETU's application for bargaining orders with respect to RTBU – ETU alleged: (1) RTBU engaged in 'capricious or unfair conduct' that undermined freedom of association or collective bargaining for purposes of s.228(1)(d), by excluding ETU from negotiations at key times; and (2) RTBU failed to give genuine consideration to proposals of other bargaining representatives for agreement, and give reasons for its responses to those proposals for purposes of s.228(1)(d) in response to amendments proposed by ETU to clause recommended by Commission – in relation to (1), Full Bench found there was no evidence RTBU sought out or instigated separate meetings between CRU and Sydney Trains and NSW Trains, and no basis to conclude RTBU engaged in capricious or unfair conduct that undermined freedom of association or collective bargaining – in relation to (2), Full Bench found RTBU informed Commission on 2 June 2025 it accepted Commission's recommendation in relation to resolution of clause to address Section 5 issue and on 5 June 2025 indicated to Commission it did not agree to amendments proposed by ETU, however this did not mean RTBU had not given genuine consideration to proposal – Full Bench not satisfied RTBU had not met or was not meeting good faith bargaining requirements for purposes of s.230(3)(a)(i) – not satisfied reasonable in all circumstances to make orders sought per s.230(1)(c) – no bargaining orders made – Full Bench considered application by Sydney Trains and NSW Trains for voting request order per s.240A(1) – effect of order if granted, to permit Sydney Trains and NSW Trains to make a request under s.181(1) that relevant employees approve proposed agreement by voting for it – order sought due to limitations imposed upon employer requesting employees approve a multi-enterprise agreement – ETU did not provide written agreement that a request may be made to employees to approve proposed agreement per s.180A(2)(a), hence application for voting request order made – considered circumstances in which Commission can make voting request order under s.240B – observed s.240B(a) assessment of whether failure of employee organisation to agree to making of a request was unreasonable in the circumstances calls for a 'broad value judgement' involving balancing of interests of affected parties and informed by statutory context – requires objective assessment of reasonableness of stance taken by employee organisation having regard to whole of circumstances – not whether Commission believes it is reasonable for vote to be conducted, but whether particular failure of employee organisation to provide written agreement to request being made to employees to approve agreement was unreasonable – observed s.240B(b) assessment requires prospective, future focussed

consideration of whether act by employer of requesting employees approve agreement by voting for it would itself be inconsistent with or undermine good faith bargaining – past failure to comply with good faith requirements would not necessarily require a positive answer to question – Full Bench satisfied ETU's failure to agree to Sydney Trains and NSW Trains requesting employees to approve proposed agreement was unreasonable – (1) circumstances which ETU failed to agree to employees being requested to approve proposed agreement included that bargaining process had been lengthy, complex and heavily contested – however, as a result of efforts of Commission, in principle agreement reached in relation to virtually all matters which were at issue between parties – remaining matters not agreed with ETU are limited to working of Section 5 clause and Trades Uplift Claim – Full Bench noted it relevant that period which protected industrial action expires is 1 July 2025 – (2) reasons given by ETU for refusing to agree to employees being requested to approve agreement included insistence that alterations be made to clause dealing with Section 5 issue subject to recommendation by Commission – found amendments made by ETU do not change effect of provision and are 'trivial' – unreasonable for ETU to refuse to agree to proposed agreement being put to vote as a result of insistence of immaterial changes to one draft clause – (3) ETU refused to agree to employees being requested to approve proposed agreement because it seeks to pursue negotiations in relation to Trades Uplift Claim – ETU accepted it first raised issue more than 12 months after bargaining commenced – found unreasonable that ETU refused to agree to employees being requested to vote on proposed agreement because it wishes to pursue new claim not advanced in several months – (4) acknowledged effect of ETU's position would be to deprive employees of Sydney Trains and NSW Trains of an early opportunity to vote upon a highly beneficial outcome to bargaining – package includes substantial pay increases backdated to 1 May 2024 as well as other improvements in employment conditions – ETU supports wages outcome and each of conditions in agreement proposed to be put to vote, however, has reservations in regard to 'trivial changes' to clause subject to recommendation by Commission and new Trades Uplift Claim – found ETU's failure to agree to employees being requested to vote on proposed agreement also denies those employees an opportunity to vote on an agreement, if approved, would bring an end to long-running and heavily contested bargaining which has caused disruption to people of NSW and economy – Full Bench satisfied Sydney Trains and NSW Trains making request for employees to approve proposed agreement would not be inconsistent with or undermine good faith bargaining – Full Bench rejected ETU's arguments it was excluded from bargaining and not provided with relevant information – applications for bargaining orders made by ETU dismissed – voting request order sought by Sydney Trains and NSW Trains issued.

Applications by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia; Application by Sydney Trains and NSW Trains

B2025/901 and Ors
Hatcher J
Gibian VP
Matheson C

Sydney

[2025] FWCFB 117
13 June 2025

2 CONDITIONS OF EMPLOYMENT – unfair termination – ss.15Q, 536LE, 536LU Fair Work Act 2009 – applicant sole director of Maxma Transportation P/L (Maxma), which provides delivery services for range of customers – in May 2023, Maxma entered into oral contract with lighting wholesaler SAL National P/L (respondent; SAL) to deliver goods to SAL's customers – SAL terminated contract with Maxma on 1 April 2025 – applicant claimed termination was unfair – SAL made jurisdictional objection applicant not protected from unfair termination, since applicant was not a regulated road transport contractor at time of termination of contract per s.536LE(a) – Commission to determine whether applicant satisfied meaning of 'regulated road transport contractor', in particular, whether applicant 'performs all, or a significant majority, of the work to be performed under the services contract' per s.15Q(1)(b) – found during contract, Maxma had fleet of 2 vans and 8 trucks which it issued to provide daily courier services to 3-4 customers, including SAL, and one of the 2 vans were used to provide daily courier services for SAL – Maxma employs 7-10 employees, including applicant's wife who works in administration and performs occasional driver duties, remaining employees work for Maxma as drivers – Commission accepted applicant, in capacity as full-time director, not employed by Maxma, not paid wage, but receives director's fees from time to time – applicant responsible for managing Maxma's employees as well as relationships with Maxma's customers – Commission satisfied contract is a services contract per s.15H; applicant is director of Maxma and performs work under contract per s.15Q(1)(a)(ii); applicant does not perform any work under contract as employee per s.15Q(1)(c); work performed under contract is work in road transport industry per s.15Q(1)(d); and applicant not an employee-like worker who performs work in road transport industry under contract per s.15Q(1)(e) – Commission considered question for determination per s.15Q(1)(b) – found applicant did not perform all the work to be performed under the contract – Maxma's delivery drivers performed much of the work under the contract by delivering goods to SAL's customers on daily basis – accepted applicant's duties in managing contract was work he performed under contract within meaning of s.15Q(1)(b) – found applicant's work in delivering goods for SAL on average 2-3 times per month also constituted performance of work by applicant under contract within meaning of s.15Q(1)(b) – Commission did not accept applicant's argument that issue was who delivered, or was responsible for delivery of the contract, not who drove the Maxma van delivering goods for SAL – observed s.15Q(1)(b) focuses on performance of work under contract and not who is ultimately responsible for such work to be assessed – at time contract terminated, majority of work performed under contract was by employees of Maxma who attended SAL's premises on daily basis to collect and deliver SAL's goods to customers, those employees performed work from 9am to 3-3.30pm from Monday to Friday each week (30-32.5 hours per week) – contrasted to applicant's time spent managing contract, which he accepted did not take very long on account of stable nature of the work, and the 2-3 times on average he undertook delivery work for SAL each month (2.5-3.75 hours per week) – Commission satisfied at time contract was terminated, applicant did not perform a significant majority of the work to be performed under the contract – held applicant not a regulated road transport contractor at time contract terminated per s.15Q(1)(b) – applicant not protected for unfair termination – application dismissed.

3 CASE PROCEDURES – costs – paid agents – s.401 Fair Work Act 2009 – application by Australian Concert and Entertainment Security P/L (ACES) under s.401 for order for costs against Mr Alkan (respondent), principal of HR Experts – respondent represented Mr Ejaz in his unfair dismissal (UD) claim – ACES asserted respondent's unreasonable acts or omissions in connection with conduct or continuation of UD matter caused ACES to incur costs – facts of matter at hand largely not in dispute – Commission set out context of costs order matter and preceding UD claim – Mr Ejaz dismissed from employment as security guard at ACES in April 2024, following an incident at Royal Prince Alfred Hospital in which he allegedly disobeyed the direction of hospital security supervisor and pushed a police officer – phone records of respondent showed three phone calls with Mr Ejaz in following month – Mr Ejaz later lodged UD remedy claim, represented by respondent – UD matter subsequently listed for conciliation conference before Commission conciliator – on 3 June 2024, respondent sent letter to ACES with settlement offer, proposing amongst other things matter be discontinued and ACES pay Mr Ejaz amount equivalent to 20 weeks' pay plus prorate long service leave of 6 weeks – settlement offer sent on differing instructions from Mr Ejaz, who had also sought reinstatement included in settlement offer – the next day, ACES rejected settlement offer, to which respondent invited counteroffer and stated Mr Ejaz would bypass conciliation in absence of counteroffer – respondent stated he was given instruction by Mr Ejaz on day of conciliation to not attend, and then attempted to send email to Commission and ACES requesting conciliation be vacated – email not received by either party, so Commission convened scheduled conciliation, ACES representative in attendance – respondent subsequently spoke to staff member of Commission and was told conciliation not cancelled; subsequently re-sent email – ACES, through own legal representation, sent revised settlement offer which included a term that if Commission were to find in favour of ACES, Mr Ejaz would pay ACES costs of proceedings per s.611 – Commission found no evidence that respondent forwarded offer to Mr Ejaz – after speaking with Mr Ejaz, respondent emailed ACES, rejecting offer and repeated own offer – NSW Police agreed to provide bodycam footage of event leading to Mr Ejaz's dismissal, but only on the morning of UD hearing – respondent then sought adjournment of hearing to allow parties more time to consider bodycam footage, which he considered crucial evidence – adjournment request refused – on 7 August 2024, day before hearing, Mr Ejaz spoke to respondent on phone and then emailed a request to discontinue the claim – respondent emailed Mr Ejaz back confirming he would discontinue matter and put phone discussion points in writing – respondent then emailed Commission to discontinue matter – the next day, Mr Ejaz changed his mind and decided to proceed with matter – in any case, hearing not vacated, but no-one appeared on behalf of Mr Ejaz – ACES foreshadowed it would make a costs application against Mr Ejaz and respondent, though it did not do so against Mr Ejaz – after hearing, Mr Ejaz then wrote to Commission requesting information about discontinuance of matter and hearing, which concerned Commission that notice of

discontinuance may not have been valid [*Howell*] – Commission made order for respondent to produce all communications between himself and Mr Ejaz, which was partially complied with – Commission considered legal principles operated as principles to general rule that parties must bear their own costs in Commission proceedings – Commission considered whether to make costs order – ACES contended per s.401(1A)(b) that unreasonable acts or omissions by respondent caused it to incur costs in the matter – those acts or omissions were: (1) failure to attend conciliation conference on 24 June 2024; (2) failure to advise Mr Ejaz of settlement offer made on 10 July 2024; (3) failure to make proper enquiries concerning facts underpinning UD matter; (4) failure to provide Mr Ejaz with appropriate advice on prospects of claim; and (5) failure to attend listing hearing on 8 August 2024 – Commission considered non-attendance of conciliation conference per (1) – non-attendance followed offer of settlement sent by respondent which differed from written instructions – offer stated conciliation of no utility if parties could not reach settlement, respondent also stated he would not attend conciliation if no counteroffer was made prior – Commission observed offer made after very little discussion with Mr Ejaz, and that respondent the 'moving force' behind email and proposition that conciliation would be 'bypassed' if no counteroffer made – Commission found respondent's email unreasonable as respondent did not amend it per Mr Ejaz's instructions, attendance at conciliation used as means of pressing ACES into making counteroffer, and attendance at conciliation should not have been respondent's decision – Commission also found decision to bypass conciliation unreasonable, along with late, albeit unsuccessful, attempt to advise parties on day before conciliation – Commission considered whether failure to provide or advise Mr Ejaz of ACE's offer of settlement on 10 July 2024 unreasonable per (2) – Commission found respondent did not share ACES settlement offer with Mr Ejaz, despite rejecting it in strident terms, stating he and Mr Ejaz were outraged by it, and making a number of 'at best problematic' assertions in rejection email – Commission found respondent's failure to provide Mr Ejaz with offer and advice on consequences of rejecting offer was unreasonable – Commission considered whether respondent failed to make proper enquiries about Mr Ejaz's case per (3) – ACES submitted police bodycam footage showed Mr Ejaz pushing a police officer, which was denied by Mr Ejaz – respondent did not seek order for production of footage until two weeks after filing Mr Ejaz's witness statement – ACES submitted respondent's failure to properly investigate footage meant he was not able to advise Mr Ejaz of prospects of his claim – Commission rejected ACES submission, noting inability to assess footage or merits of UD application had hearing gone ahead – Commission considered whether respondent failed to provide appropriate advice regarding Mr Ejaz's claim per (4) – ACES contended so in relation to failure to properly investigate claim by seeking bodycam footage, and lack of written advice from respondent to Mr Ejaz about prospects of claim – respondent claimed most communications with Mr Ejaz over phone due to English being Mr Ejaz's second language – Commission noted relative lack of evidence about nature of advice given and no indication that respondent provided Mr Ejaz with any advice of prospects other than on night before hearing – as Commission unable to determine exact nature of advice provided, it could not be satisfied that advice was unreasonable, though Commission noted it not to be a significant factor in matter – Commission considered whether failure to attend hearing amounted to unreasonable conduct per (5) – Commission noted respondent

successfully applied for order that Police provide bodycam footage, and made two unsuccessful adjournment requests to Commission – after second adjournment request denied, respondent spoke with Mr Ejaz on phone, who then emailed respondent 'as discussed please discontinue the claim' – Commission found tenor of phone conversation to be about content of bodycam footage being neither beneficial nor detrimental to case, and canvas of other unfavourable evidence – respondent also advised Mr Ejaz that adverse decision from Commission may give rise to NSW Police pressing charges, for which Commission observed no basis – Commission noted matters leading up to discontinuance 'baffling' as nothing new revealed in phone conversations; nature of case hinged on bodycam footage and matters discussed over phone ought to have been discussed well prior to hearing – subsequent discussions between respondent and Mr Ejaz the next morning indicated to Commission that respondent had instigated Mr Ejaz to reluctantly discontinue claim, rather than having simply acted on instructions as contended by respondent – Commission found it apparent that respondent advised Mr Ejaz of no need to attend hearing – noting hearing was attended only by ACES's counsel and witnesses, Commission found it was unreasonable for respondent to threaten to and then bypass conciliation, fail to provide Mr Ejaz with settlement offer, and to discontinue claim so late in proceedings – Commission found threats to bypass conciliation and non-attendance done at respondent's initiative, and instructions of Mr Ejaz often done under direction from respondent; respondent either engaged in unreasonable action in advising Mr Ejaz to provide instructions or omitted to provide appropriate advice, contributing to claim not being settled earlier – Commission observed ACES incurred considerable legal costs to defend claim, exacerbated by unreasonable conduct of respondent per s.401(1)(b) – Commission observed award of costs to involve exercise of discretion even where prerequisites within Act met [*Hansen*] – ACES sought order for costs and disbursements in amount of $41,329, including solicitors' fees of $21,265.40 and counsel fees of $20,064, based on actual charged rates and sought on an indemnity basis – Commission applied quantum of costs per s.403 limiting amounts awardable for certain legal services, to reduce solicitor's fees to $8,888.20, but found counsel's fees as claimed to be fair and reasonable – consequently, Commission proposed order that respondent pay ACES $28,952.20, being costs he caused ACES to incur due to unreasonable acts or omissions – as respondent asked to be heard on quantum, Commission invited respondent to make submissions on quantum in final order, by close of business 27 June 2025 – ACES to be given opportunity to respond – order to be issued following receipt of submissions.

Australian Concert and Entertainment Security P/L T/A ACES Group v Alkan

U2024/5756 [2025] FWC 1696
Slevin DP Sydney 19 June 2025

4 INDUSTRIAL ACTION – suspension of protected industrial action – endangering life – s.424 Fair Work Act 2009 – on 20 February 2025, Commission issued order suspending industrial action from 6am on 21 February until 8am on 22 February 2025, by members of Australian Nursing and Midwifery Federation (ANMF) who are birth-suite competent midwives who work within birthing suite at Newcastle Private Hospital (NPH) – Commission provided reasons

for decision following issuing of order – ANMF and Healthscope Operations P/L (Healthscope) are currently bargaining for enterprise agreement that will apply to nursing and midwifery employees who work in private hospitals operated by Healthscope in NSW – Healthscope operates 12 private hospitals throughout NSW, including Newcastle Private Hospital (NPH) and John Hunter Hospital (JHH) – NPH contains birthing suite which operates 24 hours per day, seven days per week – NPH deals with planned and unplanned (or spontaneous) deliveries for large 'catchment' area – birthing suite midwives must have attained competency in relevant skill set and be designated as a birth-suite competent midwife – NPH's birthing suite must have minimum 2 birth-suite competent midwives to remain open and operate safely – NPH not licensed to accept expectant mothers under 32 weeks gestation – if expectant mother presents under 32 weeks gestation, NPH would stabilise patient and then arrange a transfer to neonatal intensive care unit (NICU) bed at JHH or alternative NICU within NSW – as of 20 February 2025, NPH has 698 expectant mothers booked in to deliver this year, 85 of whom were greater than 37 weeks gestation – a high proportion of those are of advanced maternal age and/or have conceived with assistance of IVF treatment – on 17 February 2025, ANMF issued notifications of protected industrial action at 8 hospitals operated by Healthscope in NSW – included two Stop Work Notices relating to ANMF NSW Branch members at NPH – notices reflected ANMF NSW Branch members' intention to stop work for a period of 24 hours commencing at 6:00am on 21 February 2025 and two hours commencing at 6:00am on 22 February 2025 – action authorised by a ballot declared on 28 October 2024 – as at 19 February 2025, Healthscope reported from staff enquiries that there would only be one birth-suite competent midwife available to work in the period of the planned industrial action – Healthscope sent correspondence to ANMF seeking assurance that minimum staffing levels for birth-suite competent midwives would be maintained throughout period to ensure the health, safety and welfare of patients not compromised and address risks to patients associated with insufficient staffing in birthing suite, including death and/or serious or permanent injury/disability – ANMF sent reply correspondence in which it did not provide the assurances sought and suggested NPH close the birthing suite for the period of planned industrial action and direct spontaneous deliveries to JHH – JHH advised they did not have capacity to accept any additional births, outside the standing arrangement to accept patients of less than 32 weeks gestation – on 20 February 2025, Healthscope lodged application for an order for the suspension of protected industrial action pursuant to s.424 – an urgent mention and directions/hearing was held on 20 February 2025 – Commission found effect of planned industrial action was that birthing suite at NPH would not be able to meet minimum staffing levels to remain open and operate safely – redirection of spontaneous presentations to JHH further limited JHH's capacity, likely leading to delays in the provision of public health services with an adverse impact on the health, safety, or welfare of at least some of the persons who require those services – any redirection of spontaneous presentations by NPH to JHH would be unadvisable given JHH's already limited capacity – order was issued pursuant to s.424(1)(c) suspending industrial action.

5 TERMINATION OF EMPLOYMENT – Misconduct – rehearing – compensation – ss.387, 394 Fair Work Act 2009 – applicant employed as high school teacher with respondent on 21 January 2021 and subsequently appointed as Year 9 Pastoral Coordinator on 17 April 2023 – on 7 November 2023, applicant challenged leadership of College Director – on 21 December 2023, applicant summarily dismissed for allegedly raising her voice or yelling at students that were misbehaving – College (respondent) argued applicant breached various provisions of Staff Code of Conduct and Child Protection Policies including disclosing confidential information about investigation and extracting confidential information to personal hard drive during employment – Commission previously found applicant unfairly dismissed and ordered respondent reinstate her ([[2024] FWC 1512]) – decision quashed on appeal ([[2024] FWCFB 465]) and applicant's application remitted for rehearing – hearing conducted on basis evidence in first proceeding taken as evidence in rehearing, and parties given opportunity to lead additional evidence and submissions – Commission observed it is 'absurd' to suggest high school teacher can be found to have committed serious misconduct simply because they raised voice towards misbehaving students – acknowledged shortage of school teachers in Australia, and problem will be exacerbated if schools rush to dismiss competent and well experienced teachers simply because some students complain they were spoken to in a raised voice when they were misbehaving – Commission considered whether dismissal harsh, unjust or unreasonable – observed it is unacceptable for teacher to randomly yell at students for no reason or to unfairly target certain students, however, applicant was not yelling at students for no reason and was not unfairly targeting students – applicant was trying to help respondent by imposing proportionate punishments on students that were clearly misbehaving – respondent was fully aware of applicant's actions and supported her in repeated emails about the relevant students, however, this changed after applicant challenged leadership of College Director on 7 November 2023 – found applicant's role as Pastoral Coordinator required her to assist teachers with disciplinary matters for Year 9 students, making her more at risk of complaints from students – found applicant conducted herself appropriately in dealing with students – did not accept valid reason for dismissal in relation to alleged breach of respondent's Code of Conduct or other policies – evidence demonstrated applicant disciplined students in 'responsible, thoughtful, and appropriate manner' – did not consider applicant's conduct in removing respondent's confidential information (students' grades and records of class chat conversations) from its computer system to personal device was sufficiently serious to provide valid reason for dismissal, nor done for sinister purposes, since she was trying to ensure she had a back-up copy of students' grades in case they went missing – found applicant complied with respondent's investigation process and her attendance at meeting on 13 December 2023 online rather than in person did not provide valid reason for dismissal, since no evidence she was dishonest for indicating she had flu-like symptoms – held no valid reason for dismissal per s.387(a) – Commission considered other matters per s.387(h) – acknowledged contrived nature of applicant's dismissal was relevant factor weighing in favour of finding of unfair dismissal – observed College Director drove dismissal of applicant since he was upset about email applicant sent to him

and others on 7 November 2023 – that email explained sudden shift from respondent supporting applicant to manage students to then investigating her conduct as a disciplinary matter – noted Head of Operations and Shared Services 'made a mess' of arranging evidence to justify applicant's dismissal and created false case notes and diary entries to assist with case – suspected Director of College encouraged such behaviour, given evidence indicated he had history of falsifying documents – Commission satisfied dismissal of applicant unjust and unreasonable – fact respondent conducted reasonably thorough investigation process not sufficient to outweigh other factors which support finding that applicant unfairly dismissed – Commission observed other options available to respondent to deal with concerns about how applicant was interacting with misbehaving students – respondent could have arranged for applicant to observe how other teachers deal with misbehaving students, or provided additional training and counselling, or removed applicant from Year 9 Pastoral Care role – these steps could have been fairer and more appropriate than summarily dismissing applicant – held applicant unfairly dismissed – considered remedy – reinstatement inappropriate due to applicant's conduct of keeping respondent's confidential information after her dismissal for use in case, reluctance to attend in person meeting on 13 December 2023, and unlikely to be treated fairly given ongoing presence of College Director – considered compensation [*Sprigg*] – compensation cap applied – maximum amount of compensation awarded – respondent ordered to pay applicant $55,786.90 less taxation, plus superannuation of $6,415.49.

Brownson v Australian International Islamic College Ltd

U2024/314 [2025] FWC 1551
Crawford C Sydney 5 June 2025

Other Fair Work Commission decisions of note

McLoghlin v St Columba's College Ltd

TERMINATION OF EMPLOYMENT – Misconduct – s.394 Fair Work Act 2009 – applicant employed as science laboratory technician – applicant dismissed for slapping 15 year-old student's hand towards end of biology dissection lesson on 27 August 2024 – applicant made application for unfair dismissal remedy seeking compensation – argued dismissal disproportionate – applicant stated slap was a reflex action she took to prevent student from injuring themself on dissection equipment – applicant argued respondent's process unfair – on 28 August 2024, respondent informed applicant conduct was reportable – on 2 September 2024, respondent informed applicant matter was serious – on 4 September 2024, applicant suspended with pay pending investigation – respondent sent letter with four allegations to applicant on 11 September 2024 – letter stated process would follow clause 13 of *Catholic Education Multi Enterprise Agreement* 2022 (Agreement) – applicant attended meeting on 17 September 2024 to discuss respondent's process and not substance of allegations – applicant attended meeting with external investigator on 7 November 2024 – on 29 January 2025, respondent informed allegations substantiated and proposed to terminate her employment – on 4 February 2025, applicant attended meeting – applicant stated she had not been trained to handle unruly behaviour – submitted her state of mind at the time and 16 years of service not considered – applicant claimed respondent's reliance on video taken of incident and without her consent was unfair – applicant stated respondent had ulterior motives for wanting to dismiss her – argued respondent did not follow clause 13.2 of Agreement which stated concerns were to be raised in first meeting – on 14 February 2025, applicant was terminated via letter with effect from 17 February 2025, paid five

weeks in lieu of notice – applicant argued process unfair – not informed of allegations until 11 September 2024; had to wait until 7 November 2024 to discuss allegations; supporting documents such as students' statements and teacher's report not given to applicant after being requested; and inappropriate for respondent to view video recording of incident when it was not representative of the incident and she was only given access to the video in late October 2024 – respondent argued *Child Safe Code of Conduct* (Code) prohibits staff from using physical means to control students – stated applicant had been trained on Code in February 2024 – respondent argued applicant failed to comprehend incident's severity, referring to it as 'one little incident' and something 'trivial' in meeting on 4 February 2025 – Commission found applicant slapped student's hand based on video evidence – found slap not done for protection – no evidence of safety risk – found reason for the slap was applicant was 'cross' with students, based on applicant's own evidence – found slap unwarranted, contrary to Code – found video inconclusive about whether applicant argued aggressively with student – found other allegations unsubstantiated – found respondent had no ulterior reason for dismissal – Commission found no reason why video should not have been relied upon by respondent – Commission found respondent complied with clause 13.2 of Agreement as 'concerns' are a more general concept than 'allegations' and applicant given opportunity to respond to concerns and ask questions – even if some technical non-compliance with clause 13.2, would not alter Commission's decision – Commission held valid reason for dismissal – satisfied applicant notified of reason, had opportunity to respond, and not unreasonably refused support person – considered other relevant matters per s.387(h) – Commission considered length of service with no previous disciplinary issues, however recognised this was a serious incident – Commission considered applicant's poor state of mind at time – considered documents that were not provided to applicant – teacher's report not relied upon and applicant read students' statements – noted applicant exhibited remorse and wanted to apologise – Commission found applicant lacked awareness of conduct's severity and did not accept full responsibility – satisfied dismissal was not disproportionate to gravity of applicant's misconduct – Commission held dismissal not harsh, unjust or unreasonable – dismissal not unfair – application dismissed.

U2025/2691 [2025] FWC 1554
Colman DP Melbourne 5 June 2025

Construction, Forestry and Maritime Employees Union

RIGHT OF ENTRY – application for permit – ss.512-513 Fair Work Act 2009 – Construction, Forestry and Maritime Employees Union (CFMEU) made application for right of entry permit for one of its officials – Commission considered whether union official with criminal history is a fit and proper person to hold right of entry permit, taking into account s.513 considerations – union official a CFMEU organiser with numerous criminal offences, including 2014 armed robbery convictions during a period of drug addiction and drug debt, and 2020 and 2021 police order breaches after prison release – official gave evidence of successful rehabilitation out of drug addiction, engagement in workforce and as a union organiser, and his recent exercise of entry permit rights in Western Australian industrial relations system – Commission found official to be credible witness, genuinely remorseful over robberies and regretted later police order breaches – CFMEU's application supported by statements from businesses who dealt with official as a construction worker and organiser, attesting to professionalism and discipline – CFMEU's administrator also provided statement authorising application to the Commission – Commission considered permit qualification matters under s.513(1) – Commission considered official had completed appropriate permit holder training and understood responsibilities, evidenced by a trainer's report and demonstrated compliance exercising entry powers for several years – Commission noted lack of industrial law offences, and engagement in State industrial relations in his role – Commission noted official had committed criminal offences contemplated by s.513(1)(c), being serious matters weighing against granting of entry permit – Commission noted official's actions had not incurred industrial law pecuniary penalties and permit previously issued to him under State industrial law not subject to adverse action – Commission considered other relevant

matters under s.513(1)(g) including those that relate to official's personal characteristics pertinent to discharge of functions and exercise of rights that attach to holding a federal permit [*CEPU – Re Mooney*] – Commission also noted police order contraventions, driving during licence suspension and speeding offences in 2014 weighed against application – Commission also noted the other relevant matters supporting permit grant were official's commitment to being a 'productive citizen', complying with the law and permit holder obligations, his exercise of entry rights in State system for several years without incident, and commitment to continuing to be a different person from the man he was in 2014 – Commission concluded official is a fit and proper person to hold federal entry permit – entry permit granted under s.512.

RE2025/235 [2025] FWC 1486
Colman DP Melbourne 30 May 2025

Panwar v Portier Pacific P/L

CONDITIONS OF EMPLOYMENT – unfair deactivation – ss.536LD, 536LU Fair Work Act 2009 – on 28 October 2023, applicant commenced work as a delivery driver using respondent's digital labour platform, Uber Delivery App (App) – applicant's account on App deactivated on 23 April 2025 – applicant lodged application for unfair deactivation remedy under s.536LU – considered whether applicant a person protected from unfair deactivation per s.536LD – respondent argued applicant did not perform work on a regular basis for a period of at least six months per s.536LD(c) – Commission observed use of the word 'period' suggests single period of work, not multiple periods of work that cumulatively add up to at least six months, and focuses on period of work immediately preceding deactivation and not an earlier period [*Jibril*] – acknowledged work performed prior to 26 August 2024, the date the unfair deactivation provisions commenced, could not be taken to contribute to six month period – applicant submitted he performed work in excess of 60 hours per month from 4 June 2024 until his deactivation on 23 April 2025, fulfilling definition of performing work on 'regular basis' per s.18(2) of *Fair Work (Digital Labour Deactivation Code) Instrument 2024* (Code) – observed applicant's evidence of hours worked was derived from total time spent logged onto App, including idle time between deliveries – respondent submitted evidence demonstrated that drivers are only paid for time spent performing deliveries – found this amounts to time spent 'performing work', therefore, applicant's figures inflated – accepted evidence submitted by applicant demonstrated he regularly performed work between 26 August 2024 until 17 October 2024 and from 25 December 2024 until 23 April 2025 – noted, while Code allows for regulated workers who perform work on a regular basis to elect not to perform work in some weeks, cessation of work for 9 week period between 17 October 2024 and 25 December 2024 meant applicant had not performed work on a regular basis for six months before being deactivated – found applicant not a person protected from unfair deactivation under s.536LD – additionally, rejected respondent's contention that Commission should consider whether applicant had a reasonable expectation of continuing work on a regular basis – noted 'reasonable expectation' principle drawn from unfair dismissal provisions for casual employees per s.384(2) irrelevant to unfair deactivation matters – application for unfair deactivation remedy dismissed.

UDE2025/54 [2025] FWC 1578
Saunders DP Newcastle 6 June 2025

Zhang v Orientile P/L

TERMINATION OF EMPLOYMENT – remedy – compensation – ss.381, 394, Fair Work Act 2009 – Commission previously found applicant unfairly dismissed by respondent – ordered respondent pay $31,652.93 compensation – payment to be made within 21 days of decision – respondent sought to pay compensation in monthly instalments over 12 month period – respondent claimed it is a small business and would face financial strain if required to pay immediate lump sum payment – claimed 12 month instalment plan was a fair balance between compliance with Commission's order and

business sustainability – provided limited evidence of its financial situation – three documents issued by respondent bank provided a snapshot of respondent's monthly revenue – Commission found no assessment could be made of sustainability of respondent's business based on evidence – applicant opposed instalment application as he had not worked since he was unfairly dismissed – Commission noted FW Act does not indicate what matters should be taken into account when making an instalment order – Commission's discretion exercised in accordance with objects of FW Act – for unfair dismissal matters this includes deciding on and working out remedies that ensure a 'fair go all round' (s.381(2)) – when considering business time period for instalment payments to be made, respondent's needs must be weighed against applicant's need to access compensation [*McCarron*] – Commission noted various courts have considered applications for orders for compensation payments in instalments – matters considered included whether respondent has the means to pay debt immediately; whether respondent likely to comply with instalment order; whether instalment order will result in payment of compensation in reasonable period of time; and need to balance applicant's right to compensation against respondent's capacity to pay on reasonable terms – question of whether an instalment order is appropriate required close attention to facts – Commission previously found respondent is a small business employer that employed 9 employees before applicant was retrenched – respondent's principal had previously informed Commission maximum compensation that could be awarded (6 months' pay or $50,000) would involve a substantial cost to business but not impact its viability – found applicant entitled to compensation to be paid in timely manner – respondent had means to pay – accepted requirement to pay $31,652.93 would be a significant impost on business based on monthly revenue figures – justified as a matter of fairness, payment by instalments – considered respondent did not need 12 months to make payment – ordered respondent to pay two instalments of $15,826.47 over two month period.

U2025/3076 [2025] FWC 1526
Slevin DP Sydney 4 June 2025

Applications by Mining and Energy Union re Maules Creek Coal P/L

CONDITIONS OF EMPLOYMENT – regulated labour hire arrangement – s.306E Fair Work Act 2009 – applicant filed three applications for regulated labour hire arrangement (RLHA) orders in October 2024 – one application discontinued – remaining orders would apply to two labour hire employers (WorkPac Mining P/L and Skilled Workforce Solutions (NSW) P/L) (respondents) engaged in mining work at Maules Creek Open Cut Mine – host employment instrument *Maules Creek Mine Enterprise Agreement 2023* (Agreement) – respondents opposed applications on basis it would not be fair and reasonable within meaning of s.306E(2) – submitted RLHA orders would 'disturb and distort' existing arrangements, increase leave liabilities and costs, destabilise commercial operations and affect whole workforce – applicant argued regulated employees paid less than comparable employees under the host agreement – submitted would be fair and reasonable for RLHA order to be made – Commission considered matters set out in s.306E(8), including whether pay arrangements applied to regulated employees, history of industrial arrangements, relationship between regulated host and employer, performance of work and terms and nature of working arrangement – also considered meaning of 'fair and reasonable' within s.306E(2) – observed a broad value judgement is required, balancing various interest affected by the order, and having regard to the matters in subsection (8) – Commission found proper application of s.306E established in previous Full Bench decisions [*Batchfire*; *Rix's Creek*; *Bengalla*] – for purposes of s.306E(1A), having regard to matters in subsection (7A), found performance of work by employees supplied by respondents at Mine is not and will not be for provision of service – satisfied each of the respondents supplies labour – observed disturbance of industrial arrangements relevant but would not make RHLA orders unfair or unreasonable – noted respondents will make commercial decisions that respond to or take into account any changes in pay rates or labour hire charge-out rates – considered leave liabilities – noted reasoning in [*Bengalla*], however should not be given 'significant weight' – considered all matters in s.306E(8), Commission satisfied

making RLHA order not unfair or unreasonable – respondents further opposed application on basis RLHA orders would result in unjust acquisition of property – respondents contended labour hire arrangement with host entered into in specific commercial context – respondents submitted RLHA order would hold them to a loss-making arrangement at least until the expiry of the arrangement in December 2025, and would amount to an unconstitutional acquisition of property and breach s.39 – Commission rejected constitutional argument – applied reasoning in [*Bengalla*] that s.39 did not affect Commission's jurisdiction in matter – RLHA orders granted.

LH2024/20 and Ors		[2025] FWC 1499
Butler DP	Brisbane	6 June 2025

Lim v Circles Australia P/L

TERMINATION OF EMPLOYMENT – genuine redundancy – ss.389, 394 Fair Work Act 2009 – applicant employed as Victoria State Manager with respondent since March 2021 – respondent a mobile virtual network operator business – on 20 January 2025, respondent informed its employees of sale of its business and that employees would be made redundant – applicant terminated on 28 February 2025, since position was made redundant following sale of respondent business – applicant claimed he was unfairly dismissed – respondent raised jurisdictional objection that dismissal was a genuine redundancy – Commission satisfied respondent no longer required applicant's job to be performed by anyone else, due to changes in operational requirements of respondent – Commission not satisfied applicant engaged in any of classifications in clause 15 of *Telecommunications Services Award 2020* (Award) – found Award did not apply to employment of applicant, hence respondent had no consultation obligation to applicant regarding redundancy – Commission noted if wrong on conclusion regarding award coverage, respondent nevertheless complied with clause 28 of Award in relation to consultation about 'major workplace change' – found respondent's discussions with employees took place as soon as practicable after Foreign Investment Review Board approved sale of business, relevant information provided to employees in writing, and promptly considered any matters raised by applicant – redeployment not raised by applicant due to sale of respondent business – Commission held applicant's dismissal was a case of genuine redundancy per s.389(1) – application dismissed.

U2025/3412		[2025] FWC 1527
Farouque DP	Melbourne	4 June 2025

Zheng v Citic Pacific Mining Management P/L

TERMINATION OF EMPLOYMENT – Misconduct – s.394 Fair Work Act 2009 – on 16 September 2024, applicant had verbal and physical altercation with member of public on his way to work – incident captured on CCTV footage – altercation occurred in elevator of building where respondent's office located – applicant forcefully pushed a stranger in the back and swore at her because she brushed past him whilst he was standing directly in front of elevator door, after not moving at her request – applicant terminated on 24 September 2024 – Commission considered whether dismissal was harsh, unjust or unreasonable – applicant argued his actions were in self-defence and not connected to work, since incident occurred outside work hours and outside workplace – Commission found elevator where incident occurred is either part of respondent's workplace or sufficiently linked to workplace due to extremely close geographical and practical connection – acknowledged incident occurred 15 minutes before applicant due to commence work, at a time when other employees were attending work – incident was witnessed by another employee who easily identified applicant due to lanyard – found nature of incident was disproportionate and an aggressive reaction that would not be acceptable if took place in respondent's office space – found applicant's understanding of respondent's Code of Conduct immaterial, noting a reasonable person does not need a formal piece of paper to say, absent extenuating circumstances, that an individual should not intentionally shove and swear at people in places or circumstances connected to work – found applicant given

fair opportunity to respond to allegations during investigation – observed applicant displayed complete lack of remorse for his actions – held applicant's conduct valid reason for dismissal per s.387(a) – Commission considered other relevant matters per s.387(h) – applicant argued difficulty in finding future employment due to injury, age (55 years old), and niche career experience – Commission not persuaded by applicant's arguments nor his contentions that respondent 'biased against men', witness motivated by revenge, and real reason for dismissal was due to him being a financial burden to respondent – Commission satisfied valid reason for dismissal – dismissal not unfair – application dismissed.

U2024/12281 [2025] FWC 1471
Lim C Perth 28 May 2025

Pargeter v Melbourne Archdiocese Catholic Schools Ltd t/a MACS

TERMINATION OF EMPLOYMENT – extension of time – representative error – s.394 Fair Work Act 2009 – applicant engaged by respondent as a human resources manager – applicant dismissed for alleged misconduct – respondent raised jurisdictional objection that application was filed two days out of time – applicant submitted delay was caused solely by representative error – Commission considered whether representative error warranted an extension of time [*Ringwood*] – Commission found applicant's representative miscalculated due date – applicant previously filed a dispute application pursuant to s.739 – applicant instructed representative to file an application for an unfair dismissal remedy if s.739 matter did not resolve at conciliation – applicant reminded his representative to file unfair dismissal application several times – applicant's representative miscalculated deadline for lodgement since he used date of 2025 Federal Election as 'mind memo' for that date, and thought 21 day period fell on a weekend and would be extended until next business day – Commission found applicant provided representative with clear instructions to lodge unfair dismissal application and his representative failed to carry out those instructions – Commission noted applicant did not become aware of dismissal until after it had taken effect – Commission found factor to be neutral – respondent submitted applicant focused his time on dispute (s.739) application and that this should weigh against a finding of exceptional circumstances in matter – Commission found applicant's conduct should have left respondent in no doubt dismissal was in active dispute – Commission considered whether delay caused prejudice to respondent – found factor to be neutral – Commission found a 'significant divergence of fact' present in relation to merits of application – found factor to be neutral – Commission considered whether extension of time would result in fairness between applicant and other persons in a similar position – found applicant did not simply 'sit on his hands' [*Vinaina*] – found allowing additional time would not result in unfairness [*Lyn*] – Commission satisfied exceptional circumstances justified extension of time – extension of time granted.

U2025/5563 [2025] FWC 1498
Redford C Melbourne 2 June 2025

Application by Warner

ANTI-BULLYING – worker – person conducting a business or undertaking – s.789FC Fair Work Act 2009 – applicant is a longstanding member of ANU Sailing Club, affiliated with Australian National University Sport and Recreation Association Incorporated (ANU Sport) – applicant undertook voluntary activities and served on Sailing Club Committee – from late 2022, applicant involved in conflict with other members of Sailing Club Committee – dispute remained unresolved and resulted in applicant's membership being suspended in November 2024 until 1 January 2026 – applicant made a stop bullying order application to Commission under s.789FC – applicant alleged he was bullied at work by 11 individuals – respondent denied bullying occurred – respondent raised jurisdictional objections that applicant was not a 'worker' and was not 'at work' during the alleged bullying – 'worker' in s.789FC has same meaning as definition of 'worker' in s.7(1) of *Work Health and Safety Act 2011*

(Cth) (WH&S Act) – contains two primary elements: the person must carry out work; and the work must be carried out for a person conducting a business or undertaking (PCBU) – s.4 of WH&S Act defines a volunteer as meaning 'a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses)' – parties agreed that ANU Sport was a person conducting a business or undertaking – agreed that 'volunteer' would be the only category that would apply to applicant per ss.4 and 7 of WH&S Act – respondent submitted that the Sailing Club is a volunteer association and does not conduct a business or undertaking, therefore work performed in connection cannot be work for a PCBU – respondent claimed applicant was engaged in 'informal volunteering' and the fact ANU Sport exercises governance oversight of the Sailing Club does not mean that any volunteer work performed for the club is work for ANU Sport – respondent submitted the only activity which may be viewed as work was mowing the lawns, which was a 'charitable act' by applicant – applicant submitted there is no distinction between ANU Sport and its affiliated clubs – applicant relied on WorkSafe ACT determining ANU Sport and the Sailing Club to be a single PCBU and that all ANU Sport members are volunteers – applicant submitted they comprise a 'consolidated entity with a common goal' – Commission considered whether ANU Sport and the Sailing Club are regarded as a 'consolidated entity' and therefore a single PCBU – Commission found each entity has its own Australian Business Number – Sailing Club has its own Constitution – Commission satisfied Sailing Club's Constitution reflective of it being an entity in its own right – found Affiliation Agreement between ANU Sport and the Sailing Club highlights the degree of control ANU Sport has and exercises over the Sailing Club – respondent submitted to be a 'consolidated entity' there would need to be a process of amalgamation pursuant to *Associations Incorporation Act 1991* (ACT) and this had not occurred – applicant relied on an improvement notice issued by WorkSafe ACT referring to ANU Sport and the Sailing Club – applicant submitted it would be inappropriate to contradict WorkSafe ACT, being the experts in determining a PCBU – Commission found WorkSafe ACT did not determine the two entities as being consolidated into a single entity, but they regarded the activities of the Sailing Club as forming part of the business or undertaking conducted by ANU Sport – improvement notice did not support the members of the Sailing Club being 'workers' – Commission found the Sailing Club and ANU Sport to be separate entities and not to be regarded as a consolidated entity – Commission satisfied Sailing Club is a volunteer association and cannot be a PCBU – not necessary to consider whether the applicant's volunteer duties comprised of 'work' – Commission found applicant could not have been 'bullied at work' – participation as a member in a club's activities, with nothing more, cannot be regarded as carrying out work for the club of which a person is a member – found applicant not a 'worker' and was not 'at work' at time of alleged bullying for purposes of Act – application dismissed.

AB2024/915 [2025] FWC 1533
Sloan C Sydney 5 June 2025

Henderson v Woolworths

TERMINATION OF EMPLOYMENT – extension of time – s.394 Fair Work Act 2009 – applicant dismissed on 5 March 2025, following long period of absence relating to an injury – two applications filed by applicant – first application filed prematurely on 7 February 2025 and was discontinued – second application filed on 10 April 2025 – second application was filed 15 days outside of statutory timeframe – Commission considered whether there were exceptional circumstances – applicant claimed reason for delay was initial unawareness of time limit and poor health – Commission observed that on its own, ignorance of timeframe was insufficient – applicant's evidence confirmed she was aware of time limit during her discussion with Commission staff in connection with discontinuance of first application – applicant's uncontested evidence indicated she had been suffering from daily episodes of debilitating pain that caused her to be bedridden and incontinent from date of termination to date of filing application – applicant also required medication for anxiety and depression – no evidence provided that applicant's anxiety and depression affected her ability to file application [*Mamo*] – Commission not satisfied

applicant's mental capacity provided a credible and reasonable explanation for delay – Commission held that combination of other matters such as applicant's physical pain and restriction in activity associated with her medical condition were at least unusual and out of the ordinary course – Commission found applicant was aware of dismissal before it took effect – this factor weighed against existence of exceptional circumstances – found applicant took action to dispute her dismissal by filing first application prematurely – applicant discontinued first application without being informed of Commission's powers to deal with the irregularity – Commission found this factor weighed in favour of an extension of time – respondent argued it would suffer prejudice if an extension was granted due to availability of witnesses – Commission acknowledged issue of prejudice was a neutral factor – Commission found there was substantial factual contest with merits of matter – Commission gave weight to confluence of circumstances relating to applicant's health issues and her prior dealings with Commission in respect to first application – Commission satisfied exceptional circumstances present – extension of time granted – directions to be issued for further hearing and determination of matter.

U2025/4453 [2025] FWC 1529
Clarke C Melbourne 4 June 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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