FWC Bulletin

4 September 2025 Volume 9/25 with selected Decision Summaries for the month ending Sunday, 31 August 2025.

Content

MyFWC portal launched

18 August 2025

We have launched our new MyFWC portal. The launch of MyFWC is the second step in a multi-year project. It follows the changes to how we send correspondence and documents that were introduced in June 2025.

MyFWC replaces our Online Lodgment System (OLS) for unfair dismissal and general protections involving dismissals applications.

The OLS remains available for other case types and to finalise draft applications to help ease the transition to the new portal.

You can use MyFWC to:

- submit unfair dismissal and general protections dismissal applications online
- save draft applications to submit later
- pay the filing fee (or attach a fee waiver form)
- submit or lodge a completed application
- update contact details for prefilling into application forms
- view previous applications
- see documents for your application once it is lodged
- see scheduled conciliations.

The MyFWC portal continues our commitment to improving the way you access our services. Our aim is to move other forms to MyFWC over time.

We encourage you to use the MyFWC portal to apply in unfair dismissal and general protections involving dismissal cases. MyFWC is our preferred method of lodgment.

This launch follows the changes we made to sending correspondence in June. After lodgment, both applicants and respondents will receive an email with a link to the relevant documents for the case. Only the people who receive the email can access the link. If representatives or others need to access case documents, we need to be informed so we can update the case file first.

New rules for small businesses from 26 August

26 August 2025

On 26 August 2025, new laws came into effect for small businesses and their employees. These changes relate to the right to disconnect and the 'employee choice' pathway for casual employees.

There may be times a small business employer and their employee have a dispute about these new laws. They should always try and resolve these disputes in their workplace first. If they can't, we may be able to help resolve the dispute.

Right to disconnect

On 26 August 2025, the right to disconnect commenced for small businesses and their employees. This means that employees can refuse to monitor, read or respond to contact or attempted contact outside their working hours, unless their refusal is unreasonable.

The right to disconnect

Watch our animation about understanding the right to disconnect.

We can help small business employers and their employees resolve disputes about the right to disconnect that can't be resolved in the workplace. See Right to disconnect disputes for more information.

'Employee choice' pathway for casuals

As of 26 August 2025, eligible casuals in small businesses can notify their employer in writing of their intention to change to full-time or part-time employment. This is called the 'employee choice' pathway. A casual employee can also choose to remain casual.

The employer must respond to any requests they receive. They may also refuse the request in some circumstances.

We can help small business employers and their employees resolve disputes about the 'employee choice' pathway that can't be resolved in the workplace.

See Casual to full-time or part-time employment for more information.

Read our New rules for small business factsheet (pdf)

Our Corporate Plan 2025–26 published

29 August 2025

We support harmonious and cooperative workplace relations, help resolve workplace disputes, set minimum working conditions and encourage cultures of good governance and accountability within registered organisations.

The Commission's Corporate Plan covers the periods of 2025–26 to 2028–29 and has been prepared in accordance with the requirements of paragraph 35(1)(b) of the Public Governance, Performance and Accountability Act 2013.

This year our focus is on refining and evolving our approach to delivering our services, following a significant expansion of functions over the last 3 years. We will enhance the way the community accesses our services by streamlining our processes and improving access for all parties, support education and outreach programs and build on our suite of established resources.

You can read our Corporate Plan 2025–26 (pdf) or go to Corporate plans for previous plans.

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 Sunday, 31 August 2025.

1 TERMINATION OF EMPLOYMENT – jurisdiction – dismissal – extension of time – ss.394, 400, 604 Fair Work Act 2009 – permission to appeal – appeal – Full Bench – on 2 April 2025, appellant lodged appeal against first instance decision of Commission of 27 February 2025 – first instance decision dealt with jurisdictional objections raised by respondent in relation to appellant's unfair dismissal application – respondent raised two jurisdictional objections: (1) not dismissed, as disciplinary outcome was made in accordance with Agreement; and (2) application lodged out of time – Commission dismissed application on basis it was lodged outside 21 day statutory time limit and was not satisfied there were exceptional circumstances to grant extension of time under s.394(3) of FW Act – appellant employed by respondent or its predecessor agency since December 2001 as prison officer, and in 2017 as prison supervisor at HM Prison Langi Kal Kal (LKK Prison) – in September 2023, respondent conducted misconduct investigation into appellant under *Victorian Public Service Enterprise Agreement 2020* (Agreement) in relation to allegation appellant had made 'discriminatory and/or disrespectful' comments about transgender prisoners – appellant alleged to have made first comment around 26 October 2022 and second comment between January and April 2023 – appellant responded to allegations in writing and made partial admission in respect of second comment – on 8 February 2024, respondent notified appellant that allegation had been substantiated in relation to second comment – respondent's proposed sanction involved demotion and transfer of appellant – on 25 February 2024, appellant appeared to have provided a response to proposed disciplinary sanction, however response was not in evidence before Commission – on 26 February 2024, the Community and Public Sector Union (CPSU), on behalf of appellant, responded that demotion was repudiation of contract and could be taken as termination of employment – on 26 April 2024, appellant was provided with final disciplinary outcome letter which detailed transfer – in May 2024, CPSU notified respondent of dispute under Agreement – on 17 September 2024, respondent stated it would continue with disciplinary outcome – on 3 October 2024, appellant lodged unfair dismissal application and identified '17 September 2024' as date dismissal took effect – appellant lodged appeal of first instance decision 13 days out of time – under rule 128(2) of *Fair Work Commission Rules 2024*, notice of appeal under s.604 must be lodged within 21 days after date of decision subject of appeal, or within further time as may be allowed on application by appellant – appellant made three grounds of appeal: (1) discretion exercised by Commission not to extend period of time for appellant miscarried, since Commission failed to consider whether there was a dismissal; (2) Commission erred in finding dismissal took effect on 26 April 2024; and (3) Commission had no evidence to support finding appellant was aware on 26 April 2024 that his employment contract had been terminated – Full Bench considered extension of time to appeal – found reason for

delay was due to representative error – junior solicitor failed to lodge appeal in accordance with instructions given by appellant, due to being involved in jury trial in County Court of Victoria for unrelated matter – acknowledged appellant acted promptly in providing instructions to his lawyers well within 21 day timeframe – observed fact appellant did not take further steps to enquire with lawyers about appeal should not weigh against him and satisfied appellant was not neglectful – Full Bench considered first and second grounds of appeal had reasonable prospects of success – respondent did not contend it would be prejudiced if time was extended – Full Bench satisfied extension of time allowed for appellant to lodge appeal – Full Bench considered appellant's grounds of appeal – in relation to ground (1): Commission erred in failing to determine whether or not there was in fact a dismissal – observed first ground raised central focus on ss.386, 394 and 396 of FW Act – found in relation to s.386, 'dismissed' has split definition: (1)(a) provides a person is dismissed if person's employment was terminated on employer's initiative; and (1)(b) provides person dismissed if person has resigned from their employment, but was forced to do so because of conduct or course of conduct engaged by employer – Full Bench observed under s.394, 'a person who has been dismissed' has similar wording to s.365(a) – acknowledged Full Federal Court considered proper construction of criterion of 'a person has been dismissed' under s.365 in *Coles Supply Chain P/L v Milford* – Full Federal Court acknowledged criterion expressed in objective terms and fulfilled if there has been a dismissal in fact, and not merely because applicant asserts they have been dismissed – Full Bench found s.394 bears same meaning as criterion in s.365(a), and would be fulfilled if there has been a dismissal in fact and would not be fulfilled merely because applicant asserted they were dismissed – Full Bench observed criterion of s.394(2)(a) in relation to primary time limit of 21 days to make application as being measured from 'after the dismissal took effect', is expressed in objective terms as matter of fact – noted time limit commences after dismissal took effect and not from time after an applicant alleges dismissal took effect, or after an alleged dismissal took effect – acknowledged s.394(2) worded in relatively identical terms to s.366(1) – Full Bench acknowledged it adopted construction of s.366(1)(a) as set out in *Coles Supply Chain P/L v Milford*, being the time to lodge application runs from 'date the dismissal takes effect in fact' – Full Bench observed s.396 sets out four initial matters to be decided by Commission before considering merits of application – observed each of four initial matters in s.396 presupposes fact of a dismissal [*Milford*] – Full Bench found requirement in s.396 to consider matters in (a) to (d) is conditioned by existence of an application by 'a person who has been dismissed' – Full Bench found exercise of power to extend time under s.394(2)(b) and (3) contingent on there being a dismissal in fact – Full Bench concluded it was necessary for Commission to have determined as a matter of fact, rather than to have assumed, whether there was a dismissal; determined whether application was filed out of time from 21 day time limit; and considered any application for extension of time having regard to considerations in s.394(3) – acknowledged Commission's failure to do so was an error of jurisdiction – Full Bench observed *Coles Supply Chain P/L v Milford*, where Full Federal Court made observations about whether there were cases where Commission could avoid drawing a conclusion as to whether or not a dismissal had occurred and still proceed to determine an application for extension of time on assumption there was a dismissal – Full Federal Court's observations subject

to qualification expressed in paragraph [86] of 'in an appropriate case' – Full Bench considered 'an appropriate case' to proceed on basis of an assumed dismissal in determining an application for extension of time, includes one where an employee has resigned, including dispute as to whether or not resignation was 'forced' under s.386(1)(b), but there is no dispute as to date employment came to an end – found issues in appellant's case do not fall within this limited category – satisfied Commission involved in error of jurisdiction – Full Bench upheld ground (1) – not necessary to deal with grounds (2) and (3) – Full Bench held appropriate to grant appeal, since it is in public interest under s.400, since appeal raises issue of proper approach of Commission to deal with dual or multiple jurisdictional objections including that there was no dismissal and unfair dismissal application not within time – noted these dual jurisdictional objections are not uncommon – permission to appeal granted – appeal upheld – Commission's decision of 27 February 2025 quashed – parties to file and serve further material they intend to rely on by 12 August 2025 in relation to alleged dismissal – matter listed for further hearing before Full Bench on 15 August 2025.

Appeal by Taylor against decision of Millhouse DP of 27 February 2025 [[2025] FWC 608] Re: Department of Justice and Community Safety

C2025/2493 [2025] FWCFB 173
Asbury VP Brisbane 7 August 2025
Clancy DP
Farouque DP

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2 TERMINATION OF EMPLOYMENT – extension of time – evidence of delay – ss.394, 400, 604 Fair Work Act 2009 – appeal – Full Bench – at first instance, appellant filed s.394 application 14 days beyond 21-day period under FW Act – Commission was not satisfied of exceptional circumstances justifying extension of time – application was dismissed – appellant challenged first instance decision – Full Bench outlined appellant's reasons for delay put at first instance – 14-day delay attributed to appellant's severe depression and anxiety; mistakenly filing application in wrong forum; was homeless at time of filing and hearing; was living in storage facility; had no access to toilet, bathroom and other facilities – Commission was not satisfied those reasons, taken together, were sufficient to explain 14-day delay in filing application – Full Bench observed Commission limited its first instance consideration of mental health issues and homelessness to period of delay between dismissal and date application filed – appellant advanced 7 grounds of appeal – one of appeal grounds (ground 2) was Commission incorrectly limited consideration of impact of appellant's mental health and homelessness to period between dismissal and lodgment rather than considering whether those challenges, as existed prior to dismissal, impacted ability to file within required time – appellant pointed to email from Commissioner's chambers which stated medical evidence prior to dismissal was not relevant to extension of time consideration – regarding mental health, appellant submitted Commission erroneously disregarded evidence of ongoing mental health conditions – regarding homelessness, appellant submitted she had been living in storage yard, alternating between sleeping in car, a tent on the roof and a caravan parked on site – appellant needed to be awake at around 4:30am to leave yard so as to not be seen by truck drivers starting work – significantly impacted appellant's sleep – appellant participated in hearings by renting an Airbnb for

access to electricity and internet – appellant submitted these circumstances were exceptional – Full Bench required to consider permission to appeal and s.400 – if s.400 applies, permission to appeal only granted if FWC convinced in public interest to do so – also if appeal concerns question of fact, can only be made on ground decision involved significant error of fact – s.400 test described as 'stringent' [*Coal & Allied*] – significant error of fact must be one that vitiates ultimate exercise of discretion [*Gelagotis*] – permission to appeal granted – Full Bench determined appeal raised important question involving approach to considering events and circumstances prior to dismissal and within 21-day period – merits of appeal considered – Full Bench outlined approach to dealing with applications for extension of time under s.394(3) – power to extend time can only be exercised if satisfied there are 'exceptional circumstances' – exceptional circumstances are those out of ordinary course, unusual, special or uncommon [*Nulty*] – s.394(3)(a) requires Commission take into account reason for delay – well-established no decision rule to effect that entire period of delay must be explained in order for an extension of time to be granted – approach where entire period of delay must be explained erroneously imposes arbitrary limitation not expressed in FW Act [*Stogiannides*] – Full Bench considered ground 2 and ground 6, noting both related to appellant's mental health issues and homelessness impacting her capacity to file within time and/or those challenges not being considered exceptional circumstances – Full Bench noted an applicant is not required to provide credible explanation for entire period of delay – observed an applicant asserting mental or physical incapacity not required to provide contemporaneous medical evidence covering entire period of delay – medical records may otherwise establish to required standard that the mental or physical incapacity provides credible explanation for some or all of delay – incapacity may of itself, or in combination with other matters, constitute exceptional circumstances – Full Bench stated email from Commissioner's chambers indicated erroneous approach to considering events and circumstances regarding delay – found restriction in email indicated Commission erroneously limited its consideration of appellant's medical evidence – Full Bench stated what is required is consideration of whether relevant nexus between events or circumstances relied upon to explain delay and the delay itself – appellant's evidence of reason for delay considered – found evidence sufficient to establish appellant's mental health issues serious and ongoing – further found if appellant's mental health issues resulted in her homelessness, more probable than not they incapacitated her from making application within time – further found appellant's homelessness, and fact she had been for 7 months prior to lodging application, was of itself an exceptional circumstance – Full Bench upheld grounds 2 and 6 – held Commission's approach to relevance of evidence concerning events and circumstances outside delay period was erroneous and discretion whether to extend time under s.394(3) was miscarried – remaining grounds of appeal rejected – Full Bench exercised discretion to vary first instance decision to redetermine question whether exceptional circumstances existed – first instance decision varied to find appellant's circumstances prior to dismissal and up to date of filing provided reasonable explanation for delay – satisfied discretion to extend time for filing triggered and discretion to grant extension should be granted – extension of time for filing application granted – application remitted for conciliation to another Member of Commission.

3 CONDITIONS OF EMPLOYMENT – unfair deactivation – date of deactivation – extension of time – ss.536LG, 536LU Fair Work Act 2009 – Full Bench – applicant worked for respondent as delivery person from March 2023 until deactivation in April or May 2025 – applicant completed almost 22,000 deliveries for respondent – on 4 May 2025, applicant filed application for unfair deactivation remedy – respondent contended application was filed out of time – under ss.582 and 615 of FW Act, President directed matter be dealt with by Full Bench – 'Amazon Flex App' (App) used by applicant to find out about delivery work available for acceptance – on 4 April 2025, applicant arrived at residential property to deliver an envelope on behalf of respondent – applicant claimed front door of premises was wide open, so he stood at door and called out 'Amazon delivery', a male voice replied 'yeah, drop it inside' – applicant took two or three steps towards a table inside premises, a man smiled at him and applicant placed envelope on table, took a photo of it and left premises – applicant then uploaded photo to App – respondent later received complaint from customer to whom applicant delivered envelope – customer alleged applicant entered his house to deliver envelope – respondent reviewed photo taken by applicant of envelope he had delivered to customer – respondent determined applicant breached his obligations under 'Amazon Flex Terms of Service Agreement' by entering customer's house – on 7 April 2025, applicant received email from respondent which indicated he committed a 'serious violation' of Amazon Flex Terms of Service Agreement – email contained hyperlink to Amazon website which provided link in relation to eligibility to file an unfair deactivation claim with Commission – applicant's access to App was suspended – on 8 April 2025, applicant received final deactivation notice – applicant remained unable to access App – on 7 and 8 April 2025, applicant contacted respondent to ask that they reconsider his situation and activate his account – respondent reviewed matter again and determined deactivation warranted – applicant's physical and mental health deteriorated significantly from 9 April 2025 and he continued to experience illness until mid-May 2025 – applicant was physically ill and had medical test undertaken, and also had suicidal ideation which was reported to respondent by applicant and his wife – applicant's wife was suffering from lupus which made her fatigued at the time – applicant was also required to feed and care for their newborn baby – on 19 April 2025, applicant lodged application in Victorian Small Business Commission (VSBC) – on 21 May 2025, VSBC informed applicant in writing that he would need to submit an application to the Fair Work Commission within 21 days after deactivation – Full Bench dealt with following questions: (1) when did applicant's deactivation take effect; and (2) if Full Bench determined deactivation took effect on 8 April 2025, as contended by respondent, Full Bench to determine whether an extension of time should be granted to applicant – Full Bench considered question (1) when deactivation took effect – found emails from respondent on 7, 8 and 9 April 2025 were confusing and ambiguous –

acknowledged in period between 7 and 9 April 2025 it was undisputed that applicant lost access to App on 7 April 2025, and was unable to perform delivery work from that date – satisfied applicant performed digital platform work through or by means of digital labour platform via App under s.536LG(a), having completed nearly 22,000 deliveries for respondent via App prior to 8 April 2025 – considered a reasonable person in applicant's position would have understood from email sent to applicant on 7 April 2025, together with fact his Amazon account was disabled that same day, that 7 April 2025 was date in which applicant's access to App was suspended – found requirements of s.536LG(b) and (c) satisfied on 7 April 2025, being point at which applicant's first deactivation took effect – Full Bench also considered applicant was deactivated for second time on 9 April 2025 in relation to termination of his access to App – noted respondent sent applicant notice that day that he remained ineligible to deliver with Amazon Flex, would be unable to sign into App, and no longer able to perform his delivery work – found s.536LG(b) and (c) satisfied on 9 April 2025 in relation to termination of applicant's access to App – Full Bench satisfied applicant's deactivation took effect on 9 April 2025 – Full Bench considered question (2) whether extension of time should be granted – s.536LU(3) indicates application for unfair deactivation must be made within 21 days after deactivation took effect – applicant filed application four days outside of statutory time limit – Full Bench considered whether there were exceptional circumstances under s.536LU(4) – considered whether applicant had reason for delay under s.536LU(4)(a) – observed delay required to be considered is period after prescribed 21 day period for lodging application, and does not include period from date deactivation took effect to end of 21 day period [*Long*], however circumstances from time of deactivation to be considered when assessing whether there is acceptable reason for delay, or any part of delay, beyond 21 day period [*Shaw*] – Full Bench satisfied applicant had reasonable explanation for four day delay – accepted unchallenged evidence from applicant that in period from mid-April 2025 he suffered from significant mental health difficulties including suicidal ideation, need to care for his ill wife and newborn child – noted significant mental health difficulties suffered by applicant following deactivation 'exceed feelings of stress, anger, shock, distress, humiliation or other analogous hurt' commonly experienced by terminated workers – found existence of reasonable explanation for delay weighed in favour of exceptional circumstances – in relation to s.536LU(4)(b), found applicant became aware of his deactivation on day it took effect – found to be neutral consideration – in relation to s.536LU(4)(c), found applicant took action to dispute deactivation by contacting the VSBC on 19 April 2025 and by sending respondent at least 25 emails in period between 8 April and 2 May 2025 appealing its decision or otherwise seeking leniency – found weighed in favour of exceptional circumstances – in relation to s.536LU(4)(d), could not identify significant prejudice that would accrue to respondent if extension of time was granted – in relation to s.536LU(4)(e) considered merits of application – found there were a number of genuine factual and legal disputes concerning a range of matters that would need to be addressed at final hearing in matter, including whether applicant breached Amazon's Flex Terms of Service Agreement by entering customer's house, whether any requirement not to enter customer's house (even if invited to do so) was reasonable, whether respondent complied with processes in *Fair Work (Digital Labour Platform Deactivation Code) Instrument 2024* (Code), and applicant's work history with

respondent – in relation to s.536LU(4)(f) fairness as between person and other regulated workers in similar position, noted cases of this kind turn on their own facts and considered this factor a neutral consideration – in relation to s.536LU(4)(g) processes specified in Code, found there are genuine disputes between the parties concerning compliance with Code, including applicant's submission that respondent failed to comply with processes in Code including failure to give deactivation warning under s.9 of Code – Full Bench satisfied there were exceptional circumstances in case – considered it appropriate to grant extension of time for applicant to file unfair deactivation application.

Bandameeda v Amazon Commercial Services P/L

UDE2025/62 [2025] FWCFB 182
Saunders DP Newcastle 15 August 2025
Farouque DP
Allison C

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4 CONDITIONS OF EMPLOYMENT – intractable bargaining workplace determination – s.269 Fair Work Act 2009 – Full Bench – Qube and Australian Workers' Union (AWU) had been bargaining for an enterprise agreement to cover employees performing work on offshore natural gas facility named 'the Prelude' operated by Shell – employees engaged in roles of either Store Person (SP) or Material Controller (MC), with MC role more senior and including supervision of SPs – employees currently on individual contracts and covered by *Hydrocarbons Industry (Upstream) Award 2020* (Award), but not covered by any enterprise agreement in relation to their employment with Qube – after employees voted against proposed agreement, Qube applied for intractable bargaining declaration, supported by AWU – Commission issued an intractable bargaining declaration in relation to proposed agreement on 8 April 2025 – no post-declaration negotiation period sought by parties nor specified in decision – Commission noted outstanding matters between parties included rates of pay, sign on bonus and income protection – Commission obliged to make intractable bargaining determination as quickly as possible after declaration under s.269 – hearings were listed in Sydney over four days in July – Full Bench set out statutory provisions and legal authorities, noted determination must include 'agreed terms' under s.270(2) and factors Commission must take into account when deciding terms of determination – parties provided draft determination setting out agreed terms, Full Bench satisfied draft met statutory requirements for core and mandatory terms – Full Bench considered outstanding matters, beginning with rates of pay – Full Bench summarised industrial history of employees who would be covered by determination: stores and logistics work on the Prelude performed by direct employees of Shell until 2021, when Qube was contracted to provide employees – despite differing views amongst parties on nature of work and similarity to work performed pre-2021, Full Bench found significant overlap between work performed by Qube employees and work performed by Shell employees pre-2021 – Full Bench observed Qube employees paid less than Shell employees for work, which would have been key driver in decision to outsource – AWU sought to secure equivalent rates of pay to contracted Qube employees, strongly resisted by Qube – Full Bench discussed initial rates of pay to apply in determination – as employees had not received wage increase since commencing with Qube, Qube proposed an

initial 7% increase, 3 x 5% per annum increase in pay, which Full bench noted likely higher than increases sought by AWU (the greater of 3 x 3% per annum or Wage Price Index increase in pay), explained by fact AWU sought substantially higher initial base rates of pay ($84.62 for SP level 1 compared to Qube's $65.11, inclusive of offshore allowance) to match Shell employee pay – Full Bench noted unusual positions arising from discrepancies in base rate sought, such as Qube seeking a higher offshore allowance rate, higher penalty rates for over cycle and overtime work – Full Bench considered backpay a matter at issue (previously used interchangeable with 'sign-on bonus' by AWU), with no evidence AWU ever conceded employees should not receive sign-on bonus/backpay – Full Bench held it had jurisdiction to include backpay in determination – Full Bench considered initial rates of pay for determination and whether operative date warrants backpay – Full bench discussed economic indicators, being Consumer Price Index (CPI), Living Cost Index (LCI) and Wage Price Index (WPI), noting employees have faced increased cost of living expenses in recent years, with no wage increases to assist cost of living – Full Bench considered economic indicators to weigh in favour of setting significantly higher initial rates of pay in determination, and to weigh in favour of providing backpay to 7 June 2024 due to lack of recent wage increases – Full Bench considered comparable rates of pay in industry – evidence given that employees performing similar work for different companies received anywhere from $200,000 to 300,000 per annum – this evidence was highly scrutinised in cross examination and Full bench observed difficulty in comparing rates of pay between different employees with different roster patterns and remuneration arrangements [*Transgrid*] – despite difficulties, Full Bench accepted Qube's rates of pay to be at lower end of industry, though not so low that Qube cannot attract qualified workers – Full Bench considered industry comparisons to weigh in favour of including significantly higher initial rates of pay in determination, though rejected AWU's argument that rates of pay must achieve parity with industry rates or reflect rates paid to Shell employees pre-2021 – Full Bench considered financial position of Qube as directly relevant to initial rates of pay, but after reviewing evidence, did not consider financial position to weigh in favour of setting lower initial rates for determination – Full Bench considered conditions in Award to have some relevance despite AWU's assertion that employees in offshore industry generally receive well above Award rates – Full Bench held AWU did not identify any productivity improvements for Qube in terms of determination to weigh in favour of setting lower initial rates – considering factors in s.275, Full Bench decided initial rates of pay should be current rates with increase of 7%, with effect from commencement of bargaining on 7 June 2024 – following this, rates of pay to increase by 5% once determination commences operation – Full Bench also determined offshore allowance should be paid when overtime worked, and only one SP classification be included in determination, albeit with determination containing a term clarifying SP classification captures employees performing that role regardless of level of experience – Full Bench observed it common for Commission to include backpay in determinations where employees have not received wage increase for lengthy period amidst high inflation – Full Bench considered future wage increases, noted positions of parties must be considered with reference to Full Bench not adopting either party's position on initial rates of pay – noted Reserve Bank forecast of lower upcoming inflation, notwithstanding uptick following end of cost-of-living measures in late 2025 – taking into account various

factors in s.275, Full Bench decided on 4% wage increases effective 12, 24 and 36 months after determination commences operation – wage increases appropriate having regard to merits of case, interests of Qube, employees and absence of productivity improvements – Full Bench satisfied wage increases will provide incentive for parties to bargain at later time, and noted an enterprise agreement made in future will immediately prevail over determination, even if determination yet to expire – Full Bench considered AWU's claim that determination include term requiring Qube to pay for income protection insurance covering employees, which Qube stated was not a permitted matter – Full Bench rejected argument that proposed income protection clause not a permitted matter, but was not satisfied income protection clause should be included in determination, as AWU had not led sufficient evidence to establish merit of inclusion – Full Bench ultimately confirmed intractable bargaining determination in accordance with s.269 – satisfied draft determination provided by parties met requirements of FW Act and should be used as basis for final form – parties directed to confer and provide final form of determination for publication within 14 days, and may seek urgent conciliation conference if required.

Qube Offshore Services P/L v Australian Workers' Union

B2025/535 [2025] FWCFB 139
Cross DP Sydney 7 August 2025
Crawford C
Sloan C

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5 TERMINATION OF EMPLOYMENT – contractor or employee – national system employer – reinstatement – ss.15AA, 394 Fair Work Act 2009 – applicant alleged she was unfairly dismissed – respondent claimed applicant was engaged as an independent contractor and not an employee – respondent contended it is not a national system employer because its company is registered in USA – respondent develops computer games in USA and sells the games internationally – applicant engaged under a contract, which described her as an independent contractor and stated she was responsible for all expenses incurred while performing services – applicant responsible for her own taxes – applicant signed a US tax form that stated she was a non-US resident for tax purposes – applicant worked as a tester and described her work as project based – applicant worked flexible hours and days – not allowed to subcontract her work – applicant did not issue invoices and wages were paid directly into her personal PayPal account – in January 2025, applicant was not allocated any work – on 31 January 2025, applicant was sent a termination letter which indicated her termination effective 14 February 2025 – termination was based on applicant receiving negative feedback about her work, even though applicant was not made aware of any concerns about her performance – Commission considered statutory test for determining the ordinary meanings of employee and employer under s.15AA – Commission required to ascertain the real substance, practical reality and true nature of the relationship between the parties [*Hollis*] – Commission required to consider whether applicant carries on a trade or business of her own or is working in business of another; nature of work performed and manner of its performance; and terms of contract [*Jiang Shen*] – Commission also required to consider various indicia in assessing nature of relationship between parties, including right to exercise control over employees [*Jiang Shen*; *Brodribb*] – observed various

indicia may be considered in assessing nature of relationship between parties, including actual exercise or right to exercise control over putative employee whether worker performs work for others, whether they provide tools and equipment for their own work, whether work can be delegated, whether worker is paid periodic wages or salary or by reference to completion of tasks, and whether worker is presented to world at large as emanation of putative employer's business [*Jiang Shen*] – noted no exhaustive list of factors to be considered and exercise requires an evaluative judgment [*Jiang Shen*] – Commission observed applicant described as an independent contractor in contract – applicant not eligible for employee benefits – applicant indemnified respondent against liability – these factors indicated relationship of independent contractor – Commission acknowledged practical reality is respondent exercised control over work performed by applicant – respondent motivated by data security which required applicant to use its software platform – not allowed to subcontract her work without written permission from respondent – applicant required to submit weekly reports, communicate with a supervisor and assist others when needed – noted these factors indicated level of control over how work was permitted and align with employment relationship – Commission observed applicant worked from home using her own computer and internet connection – respondent provided software platform for her work, however applicant responsible for covering cost of all other expenses including travel, meals and personnel costs – noted these factors indicated an independent contractor relationship – Commission acknowledged applicant worked as one of a number of testers for respondent – applicant reported to a supervisor and worked in a team environment – Commission found upon assessment of totality of relationship, applicant was an employee and not an independent contractor – held applicant was an employee – Commission considered whether respondent is a national system employer – s.14(1) defines a national system employer as a constitutional corporation – Commission cited paragraph 51(xx) of Constitution for definition of constitutional corporation – Constitution defines a constitutional corporation as 'foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth' – Commission found respondent did engage in business in Australia as it did sell its computer games in Australia via a third party platform ('Steam') – satisfied respondent was a foreign corporation and met definition of a national system employer – applicant claimed dismissal was unfair – Commission considered criteria for harshness under s.387 – in relation to valid reason, found applicant was not given a reason for dismissal under s.387(a) – respondent's claim of applicant's poor performance or misconduct was not supported by evidence – noted respondent did not understand it had any obligations to act fairly in its dismissal of applicant – found applicant was not given opportunity to respond to any reason under s.387(b), nor given an opportunity to respond under s.387(c) – in relation to other factors under s.387(h), respondent acknowledged if Commission found that applicant was an employee and it was a national system employer, it was likely it had unfairly dismissed applicant – Commission held dismissal was harsh, unjust and unreasonable – held applicant unfairly dismissed – Commission considered remedy – applicant sought compensation – respondent only employed two testers per year and stated employing a tester would be difficult – applicant expressed concern she would be mistreated by respondent if reinstated – respondent flagged concern about reinstatement of applicant as there were currently no positions available –

Commission ordered reinstatement – found reinstatement was a minimal inconvenience for respondent – did not anticipate applicant would be mistreated by respondent, because respondent did not act with malice and applied US practices which did not provide means to scrutinise dismissals in manner provided for by FW Act – Commission ordered applicant be reinstated to her position – ordered continuity of service and backpay – ordered applicant be paid $9,450 (USD) equivalent of 6 months' pay.

Dickerson v Kagura Games LLC

U2025/2317 [2025] FWC 2219
Slevin DP Sydney 1 August 2025

Other Fair Work Commission decisions of note

Nasir v Oracle Corporation Australia P/L

CASE PROCEDURES – confidentiality – s.594 Fair Work Act 2009 – on 5 August 2025, applicant lodged Form F1 application which sought: (1) orders be determined on the papers, with no plan to pursue further proceedings; (2) immediate removal of published order or judgement from internet in appeal matter; (3) suppression of applicant's identity and non-publication order concerning appeal matter; and (4) withdrawal of recusal application lodged in appeal matter and notification of orders to be made to Australian High Court (High Court) registry – appeal matter concerned appeal by applicant of purported decision in first instance matter not to issue him a certificate under s.386(3)(a) in his general protections application – applicant claimed decision was made when Commission refused to issue a certificate after staff conciliation conference in May 2023, which did not result in settlement of matter – on 14 February 2024, decision in appeal matter was issued (appeal decision) – Full Bench determined applicant had discontinued his application in first instance matter on 10 May 2023, and there was no decision to not provide a certificate under s.368(3)(a) – Full Bench determined jurisdictional prerequisites under s.604 not satisfied; did not grant extension of time to applicant to file appeal more than seven months after purported decision; and refused permission to appeal – in November 2024, applicant initiated proceedings in High Court against number of persons, including presiding member of appeal matter in Commission – applicant sought in High Court: (1) writ of mandamus directing presiding member to 'consider and determine' his recusal application of presiding member of appeal matter dated 2 February and 10 December 2024; (2) writ of certiorari to quash 'FWC case manager decision' of 18 April 2023 to hold conciliation conference without first making determination on jurisdiction in first instance matter; (3) writ of certiorari to quash appeal decision of 14 February 2024 without first considering his recusal application; and (4) order quashing Apprehended Violence Protection Order (AVPO) issued by NSW Police Commissioner on application by presiding member of appeal matter – on 6 August 2025, High Court (Steward J) delivered judgement – High Court dismissed applicant's application and other applications he filed in High Court as an 'abuse of process' – High Court could not identify that applicant had ever made an application for recusal of presiding member in appeal matter and noted it was too late to make recusal application now – High Court found applicant voluntarily discontinued first instance matter on 10 May 2024 – in relation to order (4) sought in High Court, observed applicant sought to quash AVPO which referred to provisional AVO made on 4 June 2024 which restrained him from certain behaviour in connection with presiding member of appeal matter, pending application for final AVO for period of two years – observed exhibited AVO application disclosed provisional AVO made on grounds applicant made threat to burn down Commission building with presiding member inside, and that application for final AVO was listed in Parramatta Local Court on 11 June 2024 – High Court found in applicant's affidavit it was not clear what became of AVO application and applicant had failed to advance any basis for High Court to quash any AVO made against him – High Court observed allegations in AVO 'very serious' and matter of consideration by Parramatta Local Court at first instance – applicant

submitted three grounds to his application before Commission: (1) orders were issued in their absence and without determination of application for recusal in appeal matter of 2 February 2024; (2) judgement was published without any decision determination and without notification; and (3) AVO application affected applicant's ability to participate and communicate regarding application – Commission interpreted applicant's first order as meaning applicant wanted application determined on basis of matters stated in application only and without any further proceedings being conducted – Commission to determine application on that basis – acknowledged second and third orders sought related in nature regarding removal of appeal decision from Commission's website and suppression and non-publication of applicant's identity – observed Commission has broad power under s.594(1) of FW Act to prohibit or restrict publication of decisions, evidence given to Commission, or identity of person making submissions to Commission in relation to matter – power to be exercised if Commission satisfied it is desirable to do so, because of confidential nature of evidence or for any other reason – indicated power usually exercised to protect matters of commercial or personal sensitivity or for personal safety reasons – noted applicant's application does not identify concerns of this nature – Commission found that grounds (1) and (2) of application allege denial of procedural fairness in making of appeal decision, however no basis for contention disclosed – Commission observed appeal decision explained to parties that pursuant to s.607(1)(b) of FW Act, the question of permission to appeal should be determined without a hearing, with consequence that appeal was determined on basis of applicant's notice of appeal and written submissions filed in accordance with directions – Commission found on 19 January 2024, applicant filed detailed submission at outset and in response to direction made by Commission, and stated that he consented for matter to be determined on the papers – observed applicant's submission and grounds of appeal were subject of express consideration of appeal decision – Commission not satisfied applicant denied procedural fairness – acknowledged second and third orders sought do not bear any logical relationship to alleged denial of procedural fairness – observed non-publication or suppression order is not remedy for denial of procedural fairness – Commission indicated it was unsure what applicant meant by ground (3) in relation to AVO proceedings – Commission did not consider AVO matter, which post-dates appeal decision provided any support for second and third orders sought – found appeal decision published on Commission's website around 18 months ago and has remained there ever since – noted appeal decision and applicant's identity as 'appellant', is now referenced in published decision of High Court – acknowledged it is unclear what would be achieved by removal of appeal decision from Commission's website and suppressing reference to applicant's identity now – observed appeal decision does not refer to any matters of personal sensitivity and applicant does not contend otherwise – Commission not satisfied to make second and third orders sought – considered fourth order to withdraw recusal application in appeal matter – observed ground (1) dates alleged recusal application as having been made on 2 February 2024 – noted High Court could not identify that a recusal application was ever made – Commission analysed file and could not identify that applicant made recusal application – no communication received from applicant on 2 February 2024 – acknowledged applicant's email to presiding member's chambers on 10 February 2024 stated he did not want to receive any further email from the Commission, since he already requested a change of case to 'somewhere else' – found no record of alleged prior request made to Commission and do not consider applicant's email and subsequent emails of 10 February 2024 constituted recusal application – Commission not satisfied a recusal application was made in relation to appeal matter and therefore, no recusal application capable of being withdrawn – observed any issue of recusal irrelevant since Full Bench discharged its functions upon issuing appeal decision – application dismissed.

ADM2025/8 [2025] FWC 2470
Hatcher J Sydney 21 August 2025

Kumar v Portier Pacific P/L

CONDITIONS OF EMPLOYMENT – unfair deactivation – ss.536LF, 536LU Fair Work Act

2009 – applicant performed work as a food delivery driver through respondent's digital labour platform (Uber App) since May 2023 – in February 2025, applicant received a notification from respondent about his low satisfaction rating on Uber App – from March 2025, applicant received deactivation warnings from respondent in relation to his low satisfaction rating – on 3 April 2025, applicant replied in relation to deactivation notices and requested any restrictions be removed from his account – on 17 April 2025, applicant was deactivated from Uber App due to failure to meet minimum satisfactory rating of 85% set by respondent as a performance requirement – at time of deactivation, applicant had customer satisfaction rating of 81%; had an average post-deactivation warning rating of 75%; and following second deactivation warning, received 10 customer satisfaction ratings with average rating of 70% – on 2 May 2025, applicant requested respondent review his deactivation – on 3 May 2025, respondent notified applicant of its decision to uphold his deactivation, due to no new information being provided, and it considered deactivation was valid due to his low satisfaction ratings – Commission considered whether deactivation compliant with *Fair Work (Digital Labour Platform Deactivation Code) Instrument 2024* (Code) under s.536LW(c) – Code provides procedures for digital labour platform operators to follow when deactivating employee-like (regulated) workers – Commission found respondent compliant with Code processes – respondent provided applicant with deactivation warning preceding preliminary deactivation notice – a human representative considered applicant's response to notice under s.13(7) of Code before finalising decision to terminate access – Commission considered decision to terminate access under s.14(4) of Code – observed construction of s.14(4)(a) requires a 'valid reason' to terminate access and s.14(4)(b) requires operator to consider on reasonable grounds that reason has been established – noted this requires Commission to assess whether operator's belief is supported by 'reasonable grounds' – noted in unfair dismissal provisions (s.387) it is insufficient for employer to merely hold a reasonable belief, since Commission must find on balance of probabilities that conduct occurred [*Freshmore*] – observed Code does not require Commission to make factual finding about whether or not alleged conduct occurred, but rather to assess whether operator's belief is supported by reasonable grounds – found minimum satisfactory rating of 85% a reasonable requirement imposed by respondent – found at time of deactivation applicant had satisfaction rating of 81% – services contract between parties stipulated applicant must comply with guidelines – respondent's guidelines set out performance expectations, including minimum satisfactory rating, noting failure to achieve target may result in deactivation – found this satisfied indicative criteria of what may constitute a 'valid reason' for deactivation in relation to failure to meet platform obligations under s.19(2) of Code – respondent submitted evidence which outlined how its rating system operates and how it assessed applicant against performance measures – found this meant respondent had, on reasonable grounds, established reason justifying deactivation – satisfied respondent compliant with Code – held applicant not unfairly deactivated under s.536LF(c) – application dismissed.

UDE2025/68 [2025] FWC 2275
Saunders DP Newcastle 5 August 2025

Bakar v Rasier Pacific P/L

CONDITIONS OF EMPLOYMENT – unfair deactivation – revocation of earlier decision – ss.536LU, 603 Fair Work Act 2009 – parties requested by consent that Commission revoke earlier decision ([2025] FWC 1874) of 2 July 2025, which concluded applicant had been at time of deactivation on 2 May 2025, performing work through or by means of Uber App, on a regular basis for period of six months – Commission concluded in earlier decision that applicant was protected from unfair deactivation on 2 May 2025 – Commission satisfied earlier decision should be revoked – observed earlier decision based on evidence given by applicant and unchallenged evidence given by Industrial Relations Lead at Uber, including that Uber App is only digital labour platform through which a person may perform work as an Uber Eats delivery driver, or as an Uber Driver Partner – accepted evidence of Uber that operator of Uber App is 'Uber Technologies Incorporated' (Uber Technologies), which is an entity registered in USA – acknowledged there is a suggestion respondent may be the digital

labour platform operator, not Uber Technologies, which is not a party to proceedings and has not been served with application or any material filed – observed if Uber Technologies is operator of Uber App in Australia, there are concerns about extent by which any remedy could be imposed on respondent – applicant and respondent reached agreement to settle proceedings and applicant filed notice of discontinuance – Commission found it appropriate to revoke earlier decision per s.603 – found it is open for determination in other proceedings, based on evidence adduced in those proceedings, as to whether an applicant who has performed some work as Uber Eats delivery driver and other work as Uber Driver Partner meets requirement of having performed work through or by means of digital labour platform, or under contract, or series of contracts, arranged or facilitated through or by means of digital labour platform, on regular basis for period of at least six months – order issued for revocation of earlier decision of 2 July 2025.

UDE2025/59 [2025] FWC 2278
Saunders DP Newcastle 5 August 2025

Application by Kyei

CONDITIONS OF EMPLOYMENT – unfair deactivation – extension of time – s.536LU Fair Work Act 2009 – applicant was a delivery driver for Uber Driver platform since approximately 2014 – applicant notified of deactivation on 19 March 2025 – applicant applied for unfair deactivation remedy on 8 June 2025 – application lodged outside statutory 21-day period under s.536LU(3)(a) – applicant claimed deactivation took effect on 19 April 2025 – respondent submitted deactivation took effect on 19 March 2025 – Commission observed on either version of events, application was made outside 21-day statutory time period – Commission considered date when deactivation took effect – Commission agreed with respondent's contention that deactivation took effect on 19 March 2025, since a final deactivation notice was issued and made clear applicant had been deactivated with immediate effect – accepted application lodged outside time period by 60 days – Commission considered whether exceptional circumstances existed to justify an extension of time under s.536LU(4) – in relation to reason for delay, applicant contended he sought advice on what he could do about deactivation but could not get an answer and had insufficient funds to obtain legal advice – applicant sought internal review of decision – Commission observed lack of knowledge on statutory limitation period insufficient and does not amount to an exceptional circumstance [*Miller*] – Commission found reasons for delay provided by applicant did not provide adequate explanation for delay – Commission satisfied applicant had been aware of deactivation on date it took effect and had full benefit of 21-day period for making an application – found applicant took action to dispute deactivation by challenging allegations by asking to be heard in relation to them shortly after being made aware of allegations, and asked for decision to be reviewed by respondent – in relation to merits of claim, Commission found it was arguable there were deficiencies in process adopted by respondent in following *Fair Work (Digital Labour Platform Deactivation Code) Instrument 2024* (Code) – observed decision to deactivate applicant was taken based on limited information and no substantive input from applicant in relation to most recent allegations – Commission held s.536LU(4) factors taken together amounted to exceptional circumstances which warranted extension of time – extension of time granted – matter to be relisted with directions.

UDE2025/105 [2025] FWC 2269
Roberts DP Sydney 5 August 2025

Deysel v Electra Lift Co.

GENERAL PROTECTIONS – extension of time – s.365 Fair Work Act 2009 – applicant resigned from employment on 19 October 2022 – applicant lodged application to deal with dismissal dispute 919 days outside statutory 21 day timeframe – respondent raised jurisdictional objection that application was lodged out of time – Commission considered criteria for exceptional circumstances under s.366(2) – Commission

considered reason for delay under s.366(2)(a) – applicant submitted delay caused due to lack of awareness of his workplace rights and his concern that respondent would take retribution against him – Commission found ignorance of statutory time limit not a reason for delay and applicant had no evidence to support retribution assertion – Commission found applicant did not take action to dispute dismissal prior to filing application almost two and a half years after his employment ended under s.366(2)(b) – Commission acknowledged prejudice caused to respondent being lengthy period of time since alleged dismissal, including lack of warning given to respondent that those events would be challenged under s.366(2)(c) – Commission considered merits of application under s.366(2)(d) – applicant submitted he relied on artificial intelligence large language model ChatGPT in preparing his s.365 application – Commission acknowledged deficiencies in Chat GPT which failed to address contraventions under Part 3-1 of FW Act – observed application included extract of advice by Chat GPT which indicated various employment and other statutory obligations had been contravened by respondent, and suggested applicant commence various legal actions against respondent including making s.365 application – Commission found no basis for advice from Chat GPT – found applicant failed to consult legal professional or union representative as further advised by Chat GPT – Commission noted obvious danger of relying on artificial intelligence for legal advice – Commission described applicant's proceedings as 'hopeless', 'unmeritorious' and a waste of resources of Commission and respondent – Commission noted exceptional circumstances existed regarding length of delay and use of and reliance on Chat GPT – Commission not satisfied exceptional circumstances supported granting an extension of time under s.366(2) – application dismissed.

C2025/3967 [2025] FWC 2289
Slevin DP Sydney 8 August 2025

Applicant v The Trustee for New Hopes Trust

TERMINATION OF EMPLOYMENT – contractor or employee – minimum employment period – ss.15AA, 383, 394 Fair Work Act 2009 – applicant alleged she was unfairly dismissed – applicant worked as a sex worker in a massage parlour, Sir's for Massage (Sirs) – respondent contended applicant was not an employee and was an independent contractor – applicant commenced work at Sirs on 19 October 2024 – applicant signed an application form prior to starting work – application form outlined Sirs' Policies and Procedures – procedures required bond of $200 would be taken from first two or three weekly payments – two weeks' notice required when leaving – all rostered shifts were to be worked before bond would be returned – maximum amount that could be charged for services was $200 – if applicant charged more, she would be terminated – applicant required to have her hair styled, be well groomed, makeup worn, lingerie and heels worn throughout bookings and when meeting clients, and outfits changed regularly – applicant required to arrive 10 minutes before each shift and rooms rented had to be properly maintained – respondent contended standard contract also explicitly stated applicant was operating as an independent contractor – arrangement was for rental of rooms and did not constitute an employment arrangement – applicant required to meet her own tax obligations – earnings applicant made was not considered respondent's revenue and respondent did 'not exercise control over…work methods, hours or clients' – either party could terminate arrangement at any time and without notice – termination did not give rise to any employment-related claims or entitlements – applicant denied ever seeing this page from contract which stated she was an independent contractor – respondent did not produce a signed page – no taxes were deducted from payments made to applicant – applicant was not paid superannuation – applicant declared to Australian Taxation Office that she was running a business, using an ABN and providing personal services – on 12 April 2025, applicant was overseas – applicant had text message exchange with Sir's receptionist – receptionist advised applicant would not be provided further shifts – respondent alleged a client had asked for a specific 'receptionist' who had sold him drugs – client identified 'receptionist' as having long black hair, which fit description of applicant and led respondent to believe it was her – respondent stated reasons for dismissal were because applicant sold cocaine on premises, was late for

shifts, left before end of shifts and charged clients $700 for extra services – applicant not informed of reasons prior to dismissal – Commission considered whether applicant was an employee or independent contractor – unfair dismissal remedy can only be made if a person has been dismissed from employment – observed in absence of relationship of employer and employee, there is no employment and person is not dismissed for purpose of s.394 – Commission considered ordinary meanings of employee and employer under s.15AA – observed s.15AA sets a statutory test for ascertaining the real substance, practical reality and true nature of relationship between the parties by considering totality of relationship – statutory test is multifactorial test that considers whether the person carries on a trade or business of his or her own or is working in the business of another, nature of work performed and manner of its performance, as well as contract terms [*Jiang Shen*] – observed right of control an indicator of an employment relationship [*Brodribb*] – indicated various indicia to be considered include actual exercise or right to exercise control over putative employee, whether worker performs work for others, whether they provide their own tools and equipment, whether worker is remunerated by periodic wages or salary or by reference to completion of tasks, and whether worker is presented to world at large as emanation of putative employer's business [*Jiang Shen*] – noted no exhaustive list of factors to be considered and exercise requires an evaluative judgment [*Jiang Shen*] – respondent claimed applicant was an independent contractor who provided personal services at her own discretion from rooms that she rented from business – respondent submitted by signing the agreement, applicant had acknowledged arrangement was for room rental and managed her income through negotiation with clients – Commission found applicant had not signed the fourth page of contract that stated applicant was 'an independent contractor' – considered respondent exercised significant control over work applicant performed – respondent controlled times applicant worked, penalties to be paid if applicant cancelled or was late for shifts, appearance standards, dress codes and other tasks – noted two week notice period was required for leaving business – Commission considered references to applicant paying rent was merely a means by which respondent determined how revenue gained from activities conducted in its business was split between workers and respondent – s.15AA requires true relationship between parties must be determined by totality of relationship – found in practice respondent exercised significant control over applicant's work – applicant could not delegate her work to others – respondent controlled when applicant would work and how much she would be paid – Commission found relationship was an employment relationship – held applicant was an employee who commenced working for respondent on 19 October 2024 and was terminated on 12 April 2025 – Commission considered whether applicant met minimum employment period under s.383 – satisfied respondent is not a small business employer – held applicant had not worked for minimum employment period of 6 months as required to be protected from unfair dismissal – concluded applicant was not protected from unfair dismissal – Commission noted had applicant worked a week longer she would have been protected from unfair dismissal and there would have been no hesitation in finding her dismissal was unfair – acknowledged there was no valid reason for dismissal and applicant was not provided with any procedural fairness – concluded applicant was an employee but was not protected from unfair dismissal, as she had not completed the required 6 month minimum employment period – application dismissed.

U2025/5515 [2025] FWC 2327
Slevin DP Sydney 11 August 2025

Parks v WorkPac P/L

TERMINATION OF EMPLOYMENT – Misconduct – compensation – s.394 Fair Work Act 2009 – applicant employed by respondent since May 2021 as Mobile Plant Operator at Boundary Hill Mine (Mine), operating rear dump trucks and dozers – respondent is labour hire provider providing services to Batchfire Resources P/L (Batchfire) – applicant terminated on 4 February 2025 for breach of drug Policy – Mine tested employees for drugs and alcohol randomly or 'for cause' under Mine's 'Fitness for Duty Drugs' procedure (Policy) – on evening of 25 January 2025, applicant consumed

small amount of cannabis – applicant rostered for work at 6.30am on 26 January 2025 – prior to attending workplace, applicant performed self-test using self-test unit provided by Batchfire, which showed negative result for presence of drugs – applicant attended work – at 8am applicant was asked to participate in 'for cause' drug test as another employee applicant shared accommodation with had returned a 'non-negative' result for THC (cannabis) that morning – applicant submitted to drug tests: first test produced non-negative result; second test produced negative result; third test (applicant unaware of result) – applicant was sent home without pay at 10am because of uncertainty of test results – this was contrary to Policy which allowed employee to return to work if second test was negative – applicant returned to work as instructed on 27 January 2025 – prior to attending work, applicant performed self-test which produced negative result – applicant required to perform drug test prior to commencing shift – this test produced negative result – Policy indicated that negative test should be disposed of, however this was not done – applicant was called back by respondent over 30 minutes later – applicant submitted according to manufacturer of the drug tests, the test results are only able to be read for up to 10 minutes after conclusion of test, after 10 minutes the results cannot be relied upon – Batchfire presented applicant with non-negative test result and applicant's signed confirmation form, which was altered and now read as 'non-negative' instead of 'negative' – applicant objected to paperwork being changed without his permission – applicant agreed to perform a second test – test returned non-negative result for THC – applicant submitted second test was already open before he arrived in testing room and apparent change in first test was well after manufacturer's 10-minute validity time limit – applicant requested to do another test – Batchfire initially refused – paramedics called to perform test – applicant permitted to do another test but decided to wait for paramedics – paramedics conducted b-sample saliva test which was sent to laboratory for results – test returned a positive result – applicant was terminated on 4 February 2025 – Commission considered criteria for harshness under s.387 – in relation to valid reason under s.387(a), Commission satisfied there was valid reason for dismissal due to applicant's breach of Policy and employment contract for having cannabis in his system at work two days in a row – found applicant was provided with notification of reason under s.387(b) – acknowledged applicant was provided opportunity to respond to allegations under s.387(d) – found applicant was not refused a support person – Commission considered other considerations under s.387(h) – Commission observed evidence pointed to a number of procedural failures in testing methodology used by Batchfire which worked to detriment of applicant – acknowledged first test on 26 January 2025 was non-negative and second test was negative, however applicant did not return to work duties in accordance with Policy, however was instead instructed to complete a further sample which was inconsistent with Policy – noted further test on 27 January 2025 involved a test which was unsealed and not conducted in conformity with Policy – observed laboratory test was more sensitive to other tests and amount detected was low – found respondent's investigation did not take into account all of the circumstances, including applicant's proactive step of self-testing before attending work (returning negative tests), deficiencies in how testing was undertaken, applicant's unblemished work history, personal circumstances and financial impact on him – held dismissal was harsh and unfair – held applicant unfairly dismissed – Commission considered remedy – acknowledged reinstatement inappropriate – applicant sought maximum remedy of six months' pay – Commission reduced amount by 50% for applicant's misconduct in presenting to work with cannabis in his system – not appropriate to otherwise reduce amount – order for compensation of $37,222.50 issued.

U2025/1247 [2025] FWC 2316
Simpson C Brisbane 8 August 2025

Malivoire v Medical Design Innovations P/L

TERMINATION OF EMPLOYMENT – extension of time – s.394 Fair Work Act 2009 – applicant terminated from employment on 19 May 2025 for 'gross and serious misconduct' for pushing junior employee, verbal abuse and defiance – applicant applied for unfair dismissal remedy on 17 June 2025 – respondent made jurisdictional

objection that application was lodged outside 21-day statutory timeframe – application lodged 8 days out of time – Commission considered criteria for exceptional circumstances under s.394(3) – applicant submitted reason for delay was due to 'mental breakdowns' which affected his ability to function between 10 and 17 June 2025 – applicant's doctor described his condition as 'depressed and possibly suicidal' – applicant saw psychologist on two occasions thereafter – applicant claimed respondent was aware of his personal challenges outside of workplace – following hearing, applicant provided Commission with invoices for medical appointments and an email from psychologist which referred him to psychiatrist – respondent provided with opportunity to respond to medical evidence – Commission satisfied applicant's submissions and medical evidence provided sufficient explanation for 8 day delay in lodging application – found applicant was aware of dismissal on date it took effect – satisfied extension of time would not cause respondent any significant prejudice – considered remaining factors neutral in consideration – Commission determined there were exceptional circumstances [*Nulty*] – out of time jurisdictional objection dismissed – extension of time granted – matter to be listed for further programming.

U2025/10143 [2025] FWC 2445
Simpson C Brisbane 19 August 2025

Mudiyanselage v Greenhill Education Group P/L t/a Royal Green Institute of Technology

TERMINATION OF EMPLOYMENT – Merit – compensation – s.394 Fair Work Act 2009 – applicant engaged by respondent in June 2023 as unpaid accounts intern – following internship, respondent offered applicant fixed part-time employment as receptionist for one year from September 2023 – prior to expiry of part time contract, applicant offered fixed full-time employment on one year contract – when respondent's campus manager resigned in July 2024 applicant took on additional duties – applicant alleged respondent consistently failed to pay wages in required time period, from when she started paid employment – applicant made numerous complaints to respondent regarding underpayment of wages – on 9 December 2024, applicant contacted Fair Work Ombudsman (FWO) for assistance – FWO found applicant was being paid less than Level 1 rate in *Educational Services (Post-Secondary Education) Award 2020* (Award) – respondent commenced paying correct Level 1 rate from Award from 6 January 2025 – however, respondent failed to rectify historical underpayment of wages – respondent also failed to pay superannuation to applicant – on 17 January 2025, applicant issued formal demand email to respondent to resolve all outstanding payments within 14 days – on 24 January 2025, applicant sent a follow up email to respondent reiterating her demand and made clear that she would resign if not paid by 31 January 2025 – applicant resigned on 31 January 2025 – applicant submitted she was forced to resign because of respondent's conduct – respondent raised jurisdictional objection of no dismissal – respondent argued applicant failed to follow internal grievance procedures – respondent claimed applicant was not in a position where she had no choice but to resign – applicant submitted she performed duties at higher level – Commission satisfied applicant undertook additional duties – Commission considered whether applicant had been dismissed – observed whether sufficient causal connection between conduct of respondent and resignation, such that resignation was forced [*Tao Yang*] – Commission found throughout employment applicant only paid on time on one occasion – applicant repeatedly emailed superiors and involved FWO – found applicant provided an opportunity for respondent to rectify issue before resignation – Commission found applicant took all steps possible to extract from respondent her lawful right to be paid – Commission satisfied respondent engaged in course of conduct that left applicant no choice but to resign – Commission held applicant had been dismissed – respondent's jurisdictional objection dismissed – Commission considered whether dismissal was harsh, unjust or unreasonable – found no evidence respondent had valid reason to dismiss applicant – satisfied complete absence of valid reason for dismissal in relation to applicant's capacity or conduct under s.387(a) – considered other matters under s.387(h) – found no reasonable excuse for respondent's failure to pay applicant – acknowledged continuous delayed salary meant applicant relied on husband to financially support her – applicant lost

financial independence – Commission held dismissal was harsh and unjust – held applicant was unfairly dismissed – remedy considered – respondent indicated willingness to reinstate applicant – applicant did not wish to return due to broken trust and emotional stress – Commission held reinstatement inappropriate – compensation remedy considered – found compensation appropriate in circumstances [*Sprigg*] – considered misclassification of applicant after taking on additional duties – found applicant would have been employed for a further year and entitled to pay at Level 3 of Award – applicant secured new employment – Commission considered remuneration earned by applicant in new employment – deduction made for earnings at new employment and contingencies – no deduction made for failure to mitigate loss or misconduct – order made for compensation of $27,424.88 gross, less taxation, plus superannuation of 11.5% in lieu of reinstatement.

U2025/2081 [2025] FWC 1570
Lee C Melbourne 24 June 2025

Haidar v Sydney Tools P/L

GENERAL PROTECTIONS – extension of time – representative error – s.365 Fair Work Act 2009 – applicant employed with respondent as sales representative since March 2025 – applicant notified of dismissal due to performance issues verbally and via termination letter on 5 May 2025 – applicant claimed he was provided one weeks' notice and that his dismissal took effect on 12 May 2025 – applicant lodged general protections application on 2 June 2025 – respondent raised jurisdictional objection that application was made out of time – application lodged 7 days outside 21 day statutory timeframe – applicant sought extension of time to lodge application – Commission found based on applicant's oral evidence and plain reading of email of 5 May 2025, it was apparent applicant was notified of his dismissal and paid in lieu of notice – applicant's representative incorrectly advised applicant that he was dismissed on 12 May 2025 – applicant did not raise issue of representative error in his application or written submissions – Commission noted it became clear during proceeding that application was filed late due to actions and advice of applicant's representative – Commission observed actions of employee are central consideration in deciding whether explanation of representative error is acceptable [*Clark*] – Commission considered s.366(2) to determine whether exceptional circumstances exist – considered reason for delay under s.366(2)(a) – Commission found reason for delay was result of applicant's representative providing wrong advice to applicant – observed it is reasonably expected that a paid agent who provides advice and representation on employment matters before Commission should make appropriate inquiries or investigations of client before providing advice – Commission found applicant's representative did not make 'appropriate investigations' and did not properly represent applicant's case – observed that if applicant's representative had made proper inquiries and sought right information it would have become clear that on 5 May 2025 applicant was verbally informed he was dismissed and not required to work out his notice period, and provided with an email which stated he was being paid in lieu of notice – considered actions of applicant's representative to have been beyond his control and 'somewhat out of the ordinary and unusual' – satisfied exceptional circumstances warrant extension of time – Commission considered whether applicant took action to dispute dismissal under s.366(2)(b) – satisfied applicant disputed dismissal and attempted to have decision of respondent overturned – in relation to s.366(2)(c), found no apparent prejudice to respondent if extension granted – in relation to merits of application under s.366(2)(d), found reason for termination in factual dispute between parties and merits of application a neutral factor – in relation to s.366(2)(e), acknowledged issue of fairness as between applicant and other persons in a similar position did not arise – Commission satisfied there were exceptional circumstances due to representative error which warranted the granting of extension of time – matter to proceed to conciliation conference.

C2025/5154 [2025] FWC 2292
Harper-Greenwell C Melbourne 6 August 2025

Borlandelli v Sydney Luxury Smash Repairs P/L

TERMINATION OF EMPLOYMENT – costs – ss.400A, 401, 402, 611 Fair Work Act 2009 – on 26 May 2025, Commission issued decision ([2025] FWC 1428) which found applicant was unfairly dismissed and ordered respondent pay compensation to applicant ($5,441.64 less taxation, plus $625.79 superannuation) – on 6 June 2025, applicant applied for costs against employer pursuant to ss.400A, 401 and 611 – on 3 July 2025, respondent applied for costs pursuant to ss.400A and 401 – Commission cited summary of authorities on operation of s.401 [*Alkan*] and relied on previous interpretations and applications of s.611 [*Hansen*; *Church*; *Chapman*; *Salva Resources*] – applicant contended respondent failed to articulate reasons for rejecting deed or counter-offer which was an unreasonable act – Commission found applicant had not established respondent acted unreasonably in rejecting settlement offers higher than relief ultimately achieved – applicant contended respondent's filing of four production order applications and failure to withdraw upon being questioned on their relevance was unreasonable – Commission found production order applications sought by respondent were misguided, were primarily directed to attempting to source evidence undermining applicant's workers' compensation claim filed after dismissal, was not relevant to unfair dismissal merits, and constituted respondent's first unreasonable act – Commission rejected contention applicant was unaware of production order applications and noted suggestion which arose from cross-examination was confusion and not a concession to the question – applicant contended respondent did not file materials in accordance with directions – Commission found it was unreasonable for respondent not to file evidence and submissions in accordance with directions, or apply for extension of time – found no basis for respondent's claim that it assumed it did not need to file material because order for production applications were undetermined – Commission found non-compliance with directions caused original hearing to be vacated and necessitated directions hearing – applicant submitted respondent acted unreasonably for not ensuring witness was available for hearing – found respondent's failure to ensure witness availability was unreasonable, given witness decided to travel despite awareness of hearing date – Commission not satisfied failure to ensure witness availability incurred costs for applicant and found a second day of hearing inevitably would have been required to hear all evidence – Commission satisfied respondent acted unreasonably on three separate occasions – Commission reviewed itemised invoice of applicant's lawyers in relation to conference calls, preparing evidence, preparing for hearings and attendance at hearings – Commission satisfied respondent's unreasonable actions caused applicant to incur costs of $4,995 plus GST of $499.50 – Commission acknowledged respondent and not its lawyers were accountable for unreasonable actions, noting respondent's hostile approach and lack of respect for Commission processes under s.401 – Commission not satisfied respondent's response to application was vexatious, without reasonable cause, or apparent that response had no reasonable prospect of success under s.611 – Commission noted respondent provided significant amount of evidence in support of its arguments that valid reason for dismissal was due to applicant's poor performance, and that applicant's workers' compensation payments should reduce compensation order quantum – Commission found costs order pursuant to s.611 could not be granted – Commission dismissed respondent's counter costs-application filed outside 14 day deadline under s.402, with no power to extend deadline, and therefore no jurisdiction to deal with respondent's costs application – Commission considered costs would not have been ordered against applicant or representative given applicant successfully obtained compensation remedy – Commission did not consider applicant or applicant's representative acted unreasonably in relation to settlement negotiations, or conduct of matter, and noted they complied with directions and listings – considered applicant's opposition to document production sought by respondent was justified given documents were primarily directed at contesting applicant's workers' compensation claim – observed applicant's separate underpayment proceedings in Federal Circuit and Family Court of Australia have no bearing on whether costs should be awarded in relation to unfair dismissal application – Commission satisfied respondent engaged in unreasonable acts that caused applicant to incur costs of $4,995 plus GST of $499.50 – costs awarded to applicant

under s.400A – deemed costs appropriate having regard to respondent's conduct in filing four order for production applications that were primarily directed at contesting applicant's workers' compensation claim and for failing to file material in accordance with Commission's directions – respondent's costs application against applicant dismissed.

U2024/13607 [2025] FWC 2323
Crawford C Sydney 8 August 2025

Azwar v Rasier Pacific P/L

CONDITIONS OF EMPLOYMENT – unfair deactivation – regular basis – ss.536LU, 536LD Fair Work Act 2009 – applicant made application for unfair deactivation remedy – applicant performed work for Uber Eats from October 2022 until September 2024 – on 12 September 2024, applicant signed up and created Uber Driver App account on digital labour platform (Uber Driver App) and entered into Driver Partner Services Agreement (Services Agreement) with respondent and Uber Technologies Inc. (entity registered in USA) by digitally accepting terms of Services Agreement – applicant first performed work obtained through Uber Driver App on 15 September 2024 – respondent suspended applicant's Uber Driver account on 4 April 2025 – respondent sent applicant final deactivation notice on 11 April 2025 – respondent raised jurisdictional objection that applicant had not worked on a regular basis for at least six months under s.536LD(c) – respondent submitted applicant had not completed work on a regular basis because he had not worked an average of 60 hours paid work each month per s.18(2) of *Fair Work (Digital Labour Platform Deactivation Code) Instrument 2024* – Commission considered dispute between the parties regarding hours of work performed by applicant – applicant submitted he had worked an average of approximately 70 online hours a month between October 2024 and March 2025 – respondent claimed applicant worked on average 34.6 hours of paid work per month from October 2024 to April 2025 – evidence filed by applicant included calculated average monthly working hours including stand by time – applicant submitted excluding stand by time would be misleading and would not reflect true nature of digital labour platform work – submitted time is analogous to on-call or stand by time in traditional employment – Commission considered analysis of trip logs – found applicant had worked an average of 4.33 days a week between October 2024 to April 2025 – Commission considered whether applicant performed work on a regular basis – observed Code is not an exhaustive list of circumstances in which work is taken to be performed by a platform worker on a regular basis under s.18(6) of Code – noted there is 'some life' in plain meaning of 'regular basis' in s.536LD(c) beyond circumstances provided in Code – Commission observed paid work as defined in s.12 of FW Act and s.18 of Code refers to time spent undertaking work for which platform worker is entitled to be paid – found regularity of work not taken to be broken if worker elects in some weeks not to perform any work through or by means of digital labour platform – Commission considered whether applicant worked on average 60 hours of paid work per month – found applicant's stand by argument that calculation should include all time he was logged onto Uber Driver App could not succeed – found calculation of hours of paid work is only during periods for which applicant is entitled to be paid – Commission accepted respondent's analysis that over entire period of applicant's activation he worked an average of 33.7 hours of paid work per month, and for period from October 2024 to April 2025 he worked an average of 34.6 hours of paid work per month – found applicant fell well short of average 60 hours of paid work per month as required by s.18(2) of Code – considered whether applicant completed on average paid work on 3 days a week – parties agreed trip logs established applicant performed on average, paid work on 3 days each week for September 2024 to April 2025 and October 2024 to April 2025 – Commission found applicant performed work through Uber Driver App on regular basis over period of at least 6 months, because he completed on average, paid work on 3 days each week by means of Uber Driver app as required under s.18(3) of Code – held applicant protected from unfair deactivation – jurisdictional objection dismissed – matter to proceed to case management hearing.

UDE2025/50 [2025] FWC 2370
Perica C Melbourne 13 August 2025

Kaur v Western Health

TERMINATION OF EMPLOYMENT – Misconduct – s.394 Fair Work Act 2009 – applicant employed as registered nurse for respondent at Sunshine Hospital Emergency Department since March 2021 – in June 2023, applicant began post-graduate program in Critical Care Nursing – on 5 July 2024, applicant accidentally defibrillated conscious patient who did not require it – applicant dismissed for serious misconduct on 31 October 2024 – applicant submitted dismissal unfair because it followed months of bullying, harassment and micromanagement – applicant submitted defibrillation incident was unintentional – respondent began investigation into defibrillation incident on 8 July 2024 – placed applicant on leave with full pay until investigation complete – investigation outcome on 19 July 2024 resulted in respondent's offer to redeploy applicant to another facility within Western Health – applicant challenged redeployment and engaged Australian Nursing and Midwifery Federation (ANMF) to notify respondent of dispute – respondent advised ANMF on 18 September 2024 that redeployment was no longer an option – respondent provided show cause letter to applicant on 24 September 2024 – applicant responded on 26 September 2024 seeking opportunity to discuss performance improvement plan – respondent dismissed applicant on 31 October 2024 for serious misconduct due to defibrillator incident and loss of trust – Commission considered defibrillator incident and witness evidence – noted applicant's conduct not intentional but actions were deliberate – satisfied applicant's conduct during incident was a valid reason for dismissal under s.387(a) – noted applicant did not perform equipment check and failed to take responsibility – satisfied applicant's lack of insight into incident was a valid reason – Commission considered applicant's ongoing performance issues and witness evidence – noted applicant had been under observation for months due to ongoing performance issues – satisfied applicant's documented ongoing performance concerns was a valid reason for dismissal – Commission considered applicant's failure to accept redeployment – noted applicant did not want redeployment to a facility where she could not complete her post-graduate studies and challenged lawfulness of redeployment – satisfied applicant's failure to accept redeployment was valid reason for dismissal – Commission satisfied respondent had valid reason to dismiss applicant in relation to her conduct in defibrillation incident, her lack of insight into incidents, ongoing performance concerns and her failure to accept respondent's decision to redeploy her – in relation to other matters under s.387(h), found applicant's claims of harassment, bullying and unfair treatment to be vague assertions not supported with compelling evidence – acknowledged harshness of dismissal for applicant personally and professionally – satisfied harshness did not outweigh valid reasons for dismissal – satisfied dismissal was not hash, unjust or unreasonable – Commission held applicant not unfairly dismissed.

U2024/13990 [2025] FWC 2191
Tran C Melbourne 5 August 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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