FWC Bulletin

28 August 2014 Volume 34/14 with the Decision Summaries for the week ending Friday, 22 August 2014—includes corrected summary from week ending Friday, 9 May 2014.

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2014 Workplace Relations Education Series

The next lecture in the 2014 Workplace Relations Education Series will be at the University of Melbourne on 23 September 2014.

The lecture will be delivered by Professor Andrew Stewart of the University of Adelaide and Doctor Meg Smith of the University of Western Sydney on the topic of pay equity.

For more information, and to register for the lecture, visit the Events page.
TERMINATION OF EMPLOYMENT – misconduct – remedy – ss.394, 604 Fair Work Act 2009 – appeal – Full Bench – employee dismissed following alleged threatening comments made to female supervisor – appeal against decision that dismissal harsh, unjust or unreasonable – applicant submitted Commissioner made multiple errors in reasoning and primary error of finding no valid reason for dismissal – permission to appeal only granted if public interest enlivened – applicant submitted possible public interest element based on contention decision manifested injustice and produced counterintuitive result – Commissioner formed view dismissal was result of mistaken identity – identity not confirmed by other witnesses – conclusion of mistaken identity in these circumstances not counterintuitive – Full Bench accepted Commissioner’s conclusion open to debate – some substance to applicant’s submissions that Commissioner overly dismissive of evidence of identification – no conclusion that result manifested injustice – given outcome of case, employer's investigation could have been more comprehensive and led to more reliable conclusion as to identity of perpetrator – employer was right to regard conduct as serious and warranted serious disciplinary action – employer’s defence only failed because it was not able to establish to Commissioner’s satisfaction that employee was perpetrator – not satisfied appeal attracts public interest – application for permission to appeal dismissed.

Monash Health v Agustin

C2014/3308  [2014] FWCFB 4580
Watson VP Melbourne 19 August 2014
Gooley DP
Roe C

AWARDS – modern awards – Sch. 6A, Item 6 Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 – s.30D Fair Work Act 2009 – Full Bench – State reference public sector transitional award modernisation – Greyhound Racing Victoria undertakes substantial trading activities and is a trading corporation – award cannot be modernised as Greyhound Racing Victoria is not a State reference public sector employer – pursuant to Item 3 of Schedule 5 of the Transitional Act the Commission intends to make an order terminating the award – submissions sought.
TERMINTATION OF EMPLOYMENT – genuine redundancy – ss.394, 604 Fair Work Act 2009 – appeal – Full Bench – appeal against decision to dismiss application for unfair dismissal remedy – Full Bench not satisfied that any substance in appellant’s grounds of appeal – no error in consideration of the facts in decision at first instance – even if persuaded there were errors, they were not significant errors – grounds of appeal not sufficient to attract public interest – no appealable error – appeal dismissed.

Hill v L E Stewart Investments P/L t/a Southern Highlands Taxis and Coaches and Ors

ENTERPRISE AGREEMENTS – dispute about matter arising under agreement – s.739 Fair Work Act 2009 – dispute over written warning issued to driver for discarding lit cigarette from truck whilst driving – smoking in vehicles breach of company instructions and policies – discarding of cigarette fire hazard and breach of law – applicant challenged warning on basis that alleged conduct did not occur – Commission not persuaded by applicant that employee did not perform alleged conduct – satisfied on basis of evidence conduct occurred as alleged – conclusion by respondent that conduct occurred sufficient to justify issue of warning letter – Commission not persuaded to interfere with respondent’s decision to issue warning – application dismissed.
6 TERMINATION OF EMPLOYMENT – valid reason – s.394 Fair Work Act 2009 – application for unfair dismissal remedy – applicant failed to report for duty as flight attendant for international flight following slip time – applicant failed to advise she would not be reporting for duty or was delayed – applicant returned positive blood alcohol content test at airport several hours after she was to report for duty – applicant found to be in breach of Cabin Crew Operations Manual – five previous instances since 2004 in which applicant was found to be intoxicated whilst on duty – formal warning in 2012 advised if she engaged in further unacceptable behaviour termination of employment may result – valid reason for termination found – applicant notified of reasons for termination – applicant afforded opportunity to respond – applicant had support person at all relevant meetings – previous warnings in relation to conduct had been issued – length of applicant’s employment, family and financial circumstances and employer policy in relation to supporting employees with problematic use of drug and alcohol considered – applicant had been given several opportunities to ensure misconduct relating to alcohol did not re-occur – found dismissal was not harsh, unjust or unreasonable – application dismissed.

Crowley v Qantas Airways Limited

U2014/344 [2014] FWC 5587
Boulton J Sydney 21 August 2014

7 TERMINATION OF EMPLOYMENT – misconduct – s.394 Fair Work Act 2009 – application for relief from unfair dismissal – applicant summarily dismissed for serious misconduct – termination of employment followed an investigation concerning alleged false recording of work attendance on time sheets – fraud policy – evidence clearly establishes that applicant did not accurately record the days on which she worked on numerous occasions – Commission found that inaccurate recording did not constitute fraudulent conduct or misconduct – although the applicant’s method of completing her time sheets and managing her working times were inconsistent with the respondent's processes and requirements, the applicant believed they were acceptable to the respondent – Commission not satisfied that the applicant’s conduct in relation to completion of time sheets and/or the management of her working hours, nor conduct in responding to the allegations during the Respondent’s investigation, constituted misconduct or provided a valid reason for dismissal – found termination of the applicant’s employment was harsh, unjust and unreasonable – applicant sought reinstatement however she has suffered a medical condition which has rendered her unfit for work – Moore Paragon considered – found reinstatement inappropriate – order for compensation appropriate – circumstances considered – compensation of $26,681.20 (26 weeks remuneration) ordered.
8 ENTERPRISE AGREEMENTS – approval – s.185 Fair Work Act 2009 – application for approval by Collinsville Coal Operations P/L for employees who would be covered by the Black Coal Mining Industry Award 2010 – CFMEU asserted it was a bargaining representative and opposed approval – the only employee who was a member of the CFMEU appointed himself as bargaining representative – Commission found that at no time did the CFMEU assume the status of being a default bargaining representative – statutory declaration filed by the CFMEU is not valid and should not be taken into account – agreement passes better off overall test – requirements of FW Act met – undertakings sought regarding dispute resolution procedure, annual leave, Personal/Carer’s leave – subject to receipt of undertakings, agreement will be approved.

Collinsville Coal Operations Enterprise Agreement 2014

AG2014/568
Harrison SDP
Sydney
18 August 2014

9 ENTERPRISE AGREEMENTS – dispute about matter arising under agreement – s.739 Fair Work Act 2009 – dispute previously listed before Commission by way of a different application, could not be resolved and was discontinued – dispute regarding obligation to consider voluntary redundancies under enterprise agreement – dispute concerned employee who expressed interest in taking redundancy which was not granted – Commission satisfied SGS had absolute discretion to decide what operational requirements are necessary to enable it to continue to operate as it prefers – employer does not have to accept a volunteer offer if, after considering relevant factors, accepting voluntary redundancy offer would result in it not meeting operational requirements – however SGS must make decision in context of operational requirements and criteria set out in agreement – an offer cannot be ignored because of the expense of paying their entitlements – if employee was not a proper candidate for voluntary redundancy based on criteria their application for redundancy does not have to be accepted – application to be listed for further mention and direction.

SGS Australia P/L v The Australian Workers’ Union

C2014/4507
Drake SDP
Sydney
18 August 2014

10 TERMINATION OF EMPLOYMENT – genuine redundancy – s.394 Fair Work Act 2009 – application for unfair dismissal remedy – respondent is a small business employer – respondent made a definite decision to re-structure their business operations – Commission considered the timing of the announcement of major change to the organisational structure of respondent was unfortunate and inconsiderate – Commission found respondent complied with the consultation obligations within the award – not
reasonable for the applicant to be redeployed – dismissal was
genuine redundancy – application dismissed.

Ho v Double Trading P/L t/a Windmill Toys

U2014/753  [2014] FWC 5713
Drake SDP          Sydney     21 August 2014

11 TERMINATION OF EMPLOYMENT – remedy – s.394 Fair Work Act
2009 – applicant lodged application within time limit – two
jurisdictional objections raised by respondent – respondent did
not appear – Commission relied upon evidence from applicant –
jurisdictional objections dismissed – applicant and respondent did
not attend substantive hearing – applicant granted leave to
submit material by statutory declaration, statement supplied
instead – statement provided to respondent, no response received
– Commission satisfied termination was harsh, unjust or
unreasonable – reinstatement inappropriate – nine weeks’
compensation ordered.

Hourigan v H. W. Carpentry Solutions P/L

U2014/5141  [2014] FWC 5781
Drake SDP          Sydney     22 August 2014

12 ENTERPRISE AGREEMENTS – dispute about matter arising under
agreement – s.739 Fair Work Act 2009 – application to deal with a
dispute – five employees made redundant – Union requested the
periods of earlier casual employment be considered in calculating
the amount of redundancy pay – 20% casual loading intended to
compensate for the benefits and entitlements otherwise available,
including redundancy – agreement clause wording unequivocal,
redundancy provisions only apply to permanent employees –
Union’s claim cannot succeed.

Australian Municipal, Administrative, Clerical and Services Union v Fairfax Regional
Media – Newcastle Newspapers (Herald)

C2013/1581  [2014] FWC 5631
Sams DP          Sydney     18 August 2014

13 ENTERPRISE AGREEMENTS – dispute about matter arising under
agreement – s.739 Fair Work Act 2009 – application to deal with a
dispute – alleged dispute concerning overtime payments –
applicant argues that the respondent is misapplying the
agreement – rates of pay are set out in levels, those levels are
also related to a rank within Victoria Police – Level 5 in the
agreement equates to the rank of Inspector – Inspectors are not
titled to overtime under the agreement and the applicant
argued that when a Senior Sergeant occupies a position in Level
5, that person should get overtime – respondent argued that the
Level 5 rate comprehends overtime therefore overtime should not
be added to that rate – Commission cannot accept that the work
value of Level 5 varies according to the rank held rather than the
work performed – found agreement can only apply one of two
ways: either the Level 5 rate is reduced by 16.4% if the role is
not occupied by an Officer or overtime is not paid to a person
being paid at that rate.
14 ENTERPRISE AGREEMENTS – dispute about matter arising under agreement – ss.595, 739 Fair Work Act 2009 – application to deal with dispute about issues including workload in accordance with dispute settlement procedure in agreement – jurisdictional objection by respondent about exercise of Commission power in relation to workload issues – agreement provides Commission arbitration related to workload management issues may only occur by agreement of all parties – respondent does not agree or consent to arbitration – interpretation of agreement – language to be understood in light of its industrial context and purpose [Amcor] – ordinary or well understood words to be accorded their ordinary or usual meaning [Kucks] – terms of contractual document determined by what reasonable person would have understood them to mean [Toll (FGCT)] – patently clear from wording that agreement does not provide for Commission to arbitrate in relation to dispute about workloads other than with consent of both parties – applicant’s submissions misconceived – s.595 FW Act provides that the Commission can deploy voluntary methods of dispute resolution with consent of parties but can only arbitrate if it has been specifically empowered to do so – enterprise agreement must contain procedure for settling disputes but terms of procedure defined by agreement [Woolworths] – s.739 FW Act empowers the Commission to act only in accordance with terms of procedure – respondent’s jurisdictional objection upheld – balance of dispute listed for arbitration.

Grabovsky v United Protestant Association of NSW Ltd t/a UPA

C2014/3313

15 REGISTERED ORGANISATIONS – change of name – s.158(1) Fair Work (Registered Organisations) Act 2009 – application for consent to change name of the Association to ‘Restaurant and Catering Industrial’ – application gazetted on 1 May 2014 and published on Commission website – no objections received – Commission satisfied there has been compliance with the requirements of the RO Act and the Regulations – name changed.

The Restaurant and Catering Association of Victoria

D2014/55
17 TERMINATION OF EMPLOYMENT – valid reason – s.394 Fair Work Act 2009 – applicant worked as a youth care worker – resident made allegation that applicant physically assaulted resident and made derogatory comments – respondent conducted investigation – investigation concluded that allegations on balance of probability were made out – applicant claimed collusion between 3 hostile witnesses – Commission found no evidence to reach a different conclusion to investigation conducted by respondent – Commission found valid reason for dismissal – no other relevant factors – application dismissed.

Cook v The Salvation Army Victoria Property Trust t/a The Salvation Army EastCare


18 TERMINATION OF EMPLOYMENT – extension of time – s.394 Fair Work Act 2009 – s.36 Acts Interpretation Act 1901 – application for unfair dismissal remedy – date of dismissal contentious – Commission found on balance of probabilities that termination occurred on 19 May 2014 – application should have been lodged by 9 June 2014, the Queen’s Birthday public holiday – local Commission office was closed, however the Perth Commission office was open and able to accept applications – according to s.36 Acts Interpretation Act, if a thing may be done at another office or place which is open, then it should be done there – in the circumstances the Commission found the application was required to be made on 9 June 2014 – application lodged one day late – Commission found representative error – applicant blameless for the delay and acted on advice of his representative – Commission allowed further period.

McDonald v Foamland


19 TERMINATION OF EMPLOYMENT – genuine redundancy – s.394 Fair Work Act 2009 – respondent objected to application on basis that termination was a genuine redundancy – applicant’s role was divided between 3 other employees – applicant offered redeployment but refused – Commission found termination was case of genuine redundancy – application dismissed.

Hilton v Ludowici Sealing Solutions

20 TERMINATION OF EMPLOYMENT – minimum employment period – s.394 Fair Work Act 2009 – applicant states that he commenced employment on 18 July 2013 as a casual store person with Davidson Recruitment – applicant stated that for the first six months of his employment he was outsourced by Davidson Recruitment – contract finished on 25 January 2014 – applicant was then employed by the respondent until date dismissal took effect on 18 March 2014 – respondent emphasised that Davidson Recruitment was not an associated corporate entity and no transfer of business occurred, therefore service with that employer was not included – Commission found that there was no connection between the entities except via the labour hire arrangement – applicants prior service with Davidson Recruitment not relevant – no transmission of business was evidenced, nor were the employers demonstrated to be associated entities – applicant has not completed the minimum employment period of employment – application therefore jurisdictionally barred.

Gausden v Silvan P/L t/a Silvan Australia

U2014/6170
Spencer C
Brisbane
18 August 2014

[2014] FWC 5337

21 ENTERPRISE AGREEMENTS – dispute about matter arising under agreement – s.739 Fair Work Act 2009 – dispute arose in circumstances following implementation of permanent irregular roster employees (PIRs) – PIRs entitled to 10 ‘scratch’ days per 16 week roster cycle under Agreement which entitled them to be absent on giving 24 hours notice – some PIRs were unable to take these 10 due to respondent refusing request – Commission satisfied respondent can refuse scratch days based on operational requirements – rejected interpretation of union – recommended parties try to reach agreement that 4 scratch days be changed to rostered days off to provide more certainty of the entitlement – parties unable to agree – Commission determined it would be appropriate for respondent to change the practice for determination of any refusal of scratch days so that the stipulated percentage measure of 20% of the total PIRs was established as the basis for any refusal to grant a scratch day.

Maritime Union of Australia, The v Patrick Stevedores Holdings P/L

C2013/6390
Cambridge C
Sydney
19 August 2014

[2014] FWC 5655

22 TERMINATION OF EMPLOYMENT – valid reason – s.394 Fair Work Act 2009 – applicant represented when he commenced employment that he was much closer to attaining trade qualification than he really was – made no effort to complete outstanding modules – when it became apparent applicant would not be able to attain qualifications within reasonable time he was dismissed – respondent had a valid reason based on loss of trust and confidence in applicant and incapacity to fulfil the inherent requirements of the position – respondent inaccurately described the reason for termination in letter as ‘redundancy’ and did not provide opportunity to respond – circumstances to be considered in totality – based on the manifest conduct and capacity issues upon which the dismissal was based the Commission concluded
dismissal not harsh, unjust, unreasonable – application dismissed.

Jaques v The McCarroll Motor Group t/a McCarroll  
U2014/4676  
Cambridge C  
Sydney  
[2014] FWC 5793  
22 August 2014

23 TERMINATION OF EMPLOYMENT – valid reason – s.394 Fair Work Act 2009 – applicant was dismissed following the applicant’s continual emailing of parties external to the employment relationship about workplace complaints – respondent had given written warning over the failure to follow the dispute resolution procedure – meeting held to discuss applicant’s complaints – applicant stormed out of meeting in rage – reason for dismissal sound, defensible and well founded – dismissal not unfair – application dismissed.

Wilson v Leighton Contractors P/L  
U2013/13665  
Cloghan C  
Perth  
[2014] FWC 5503  
20 August 2014

24 INDUSTRIAL ACTION – order against industrial action – s.418 Fair Work Act 2009 – respondent gave notice to applicant regarding proposed industrial action – applicant contended notice did not meet requirements in s.414 of FW Act – therefore unprotected – applicant alleged notice lacked necessary degree of specificity – unable to engage in contingency planning – Commission held applicant had sufficient opportunity to respond to proposed claim action – Commission not satisfied any unprotected industrial action happening or threatened, impending, probable or being organised – application dismissed.

Murray Goulburn Co-Operative Co. Limited v Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia  
C2014/5434  
Ryan C  
Melbourne  
[2014] FWC 5647  
20 August 2014

25 INDUSTRIAL ACTION – order against industrial action – s.418 Fair Work Act 2009 – union notified employer of proposed action one week after last bargaining meeting – employer contented notice invalid on ground industrial action in support of a claim about redundancy payments which was outside scope of proposed agreement – Commission satisfied union not pursuing a claim in relation to redundancy – employees were proposing to support or advance a claim in relation to agreement that were only about, or reasonably believed to be about, permitted matters – employer alleged union not genuinely trying to reach agreement – Commission satisfied that union has been and still is genuinely trying to reach agreement – employer also alleged that proposed action lacked a degree of specificity to enable it to respond appropriately – Commission considered the notice and was satisfied it adequately specified nature of the employee claim action proposed to be taken – Commission of view it is not obvious or clear that the union and employees are engaging in or threatening or organising industrial action which is not protected industrial action – application dismissed.
26 ENTERPRISE AGREEMENTS – fairly chosen – ss.185, 186 Fair Work Act 2009 – agreement proposed to cover two sites in metropolitan Melbourne and two in regional Victoria – substantially similar agreement approved covering two separate metropolitan sites – Commission questioned whether employees fairly chosen – no geographic connection why sites treated differently – applicant’s submissions did not explain how agreement was operationally distinct – consideration of all relevant circumstances whether group of employees ‘fairly chosen’ [Cimenco] – Commission not satisfied employees fairly chosen – application dismissed.

OneSteel Recycling P/L t/a OneSteel Recycling

AG2014/1562 [2014] FWC 5783
Ryan C Melbourne 21 August 2014

27 TERMINATION OF EMPLOYMENT – genuine redundancy – valid reason – s.394 Fair Work Act 2009 – to be genuine redundancy the reason for termination must be redundancy – Commission found that Applicant would have remained employed if it had not been for the alleged misconduct – termination not a genuine redundancy – considered whether termination was unfair, unjust or unreasonable – satisfied that failure to follow policy and procedure by recording the taking of a skirt was valid reason for termination – employer approached alleged misconduct in unreasonable, unfair and unjust way – applicant not given adequate opportunity to respond to all allegations – termination was harsh and disproportionate – although valid reason, termination was unfair in all circumstances – compensation awarded.

Mond v Seymour-Gross P/L t/a George Gross & Harry Who

U2014/4346 [2014] FWC 5547
Roe C Melbourne 18 August 2014

28 ENTERPRISE AGREEMENTS – dispute about matter arising under agreement – s.739 Fair Work Act 2009 – applicant sought to have an arbitration conducted in relation to a dispute arising pursuant to clauses 95 and 96 of the Agreement and s.739 of the FW Act – respondent’s proposal to change annualised payment system issue in dispute – satisfied dispute arising under clause 96 is a dispute as specified in s.738(b) of the FW Act – whether clause 95 empowers Commission to arbitrate any dispute in absence of agreement by parties – clause 95 uses terms ‘for resolution’ – whether this means arbitration – High Court Gordonstone decision considered – satisfied plain reading of clause 95 in context provides for disputes which fall within its scope to be arbitrated by the Commission without consent of both parties. – whether clause 96 limits what can be arbitrated under clause 95 – satisfied respondent’s proposal to change averaging system is a dispute arising under clause 27.1(d) – satisfied matter is analogous to
CEPU v Theiss P/L – a dispute about the exercise of discretion is properly regarded as a dispute arising under Agreement – satisfied outcomes which can be achieved by arbitration are limited – satisfied, within constraints identified, dispute can be dealt with by arbitration – directions issued.

Australian Municipal, Administrative, Clerical and' Services Union v Royal Automobile Club of Victoria (RACV) Ltd

B2013/1567 [2014] FWC 5652
Roe C Melbourne 19 August 2014

29 TERMINATION OF EMPLOYMENT – misconduct – s.394 Fair Work Act 2009 – application for unfair dismissal remedy – applicant was a delivery driver for the respondent – applicant urinated outside a Woolworths distribution centre while waiting for the gate to be opened – the incident was captured on CCTV – applicant banned from all Woolworths’ sites for three months, in accordance with Woolworths’ policy – applicant was dismissed by respondent – applicant’s conduct was in breach of the respondent’s policy – applicant suffered from diabetes and ‘urinary urgency’ – valid reason for termination existed – while considering the conduct serious, Woolworths considered it only warranted a three month ban from sites – decision to terminate employment was harsh – at no time was any allegation put to the applicant in writing – lack of procedural fairness – application granted.

Cowan v Sargeant Transport P/L

U2014/5703 [2014] FWC 5330
Bissett C Melbourne 18 August 2014

30 INDUSTRIAL ACTION – termination of protected industrial action – s.424 Fair Work Act 2009 – application to terminate protected industrial action being taken at Port Phillip Prison – proposed industrial action would result in lengthy lockdowns for prisoners – Commission satisfied protected industrial action would endanger life, personal safety or health, or welfare of part of the population – industrial action terminated – order issued.

G4S Custodial Services P/L v The Community and Public Sector Union

B2014/1216 [2014] FWC 5496
Bissett C Melbourne 18 August 2014

31 ENTERPRISE BARGAINING – protected action ballot – s.437 Fair Work Act 2009 – application by ASU for protected action ballot order – Lend Lease opposed on number of bases – held that ASU is genuinely trying to reach agreement – do not accept that failure by ASU to articulate a detailed response to Lend Lease’s proposal is indicative that it is not genuinely trying to reach agreement – nothing to suggest ASU not bargaining in good faith – the entirety of the bargaining process and conduct of the parties over that period must be considered – the placing of a slogan on a car may be considered to be industrial action – if it results in destruction or damage to property the action will not be protected – that does not mean it is not industrial action – whether damage occurs or not cannot be known now – necessary to determine if ASU has coverage under its rules of the employees of Lend Lease –
starting point is union’s eligibility rule – no need to have regard to
industry rule as no ambiguity – satisfied ASU has coverage of the
employees – order for protected action ballot in form of ASU draft
order issued.

Australian Municipal, Administrative, Clerical and Services Union v Lend Lease

B2014/989          [2014] FWC 5676
Bissett C          Melbourne          20 August 2014

32 TERMINATION OF EMPLOYMENT – extension of time – s.394 Fair
Work Act 2009 – applicant dismissed 15 June 2014 – application
lodged 11 July 2014 – application 4 days out of time – exceptional
circumstances for late lodgement – applicant underwent surgery
on 19 June 2014 – applicant released from hospital 21 June 2014
– principal reason for delay applicant highly medicated on pain
killers – medical certificate provided – Commission satisfied
exceptional circumstances exist – extension of time granted.

Rapmund v Go Karting Gold Coast P/L

U2014/10778          [2014] FWC 5363
Simpson C          Brisbane          18 August 2014

33 MODERN AWARDS – dispute about matter arising under award –
s.739 Fair Work Act 2009 – opinion issued by Commission
following conference – dispute regarding clauses related to annual
leave, personal/carers leave and compassionate leave under
Airline Operations Ground Staff Award 2010 – applicant proposing
to alter method of deducting leave – circumstances of case similar
to AWU v BP (Bulwer Island) – if case was tested likely to be
found that proposal by applicant is consistent with terms of Award
and NES – new method to be implemented on trial basis.

Aircraft Maintenance Services Australia P/L t/a AMSA v The Australian Licenced
Aircraft Engineers Association

C2014/5723          [2014] FWC 5776
Simpson C          Brisbane          22 August 2014

34 ENTERPRISE AGREEMENTS – notice of representational rights –
s.185 Fair Work Act 2009 – Sch. 2.1 Fair Work Regulations 2009 –
application for approval of enterprise agreement – Commission
identified concerns in relation to the Notice of employee
representational rights (Notice) and better off overall test (BOOT)
– application did not include Notice – applicant submitted letter
and generic information from FWO which was provided to
employees and submits information satisfied requirements –
Ostwald Bros and Shape Shopfitters considered – compliance an
essential consideration in determining genuine agreement –
Commission satisfied Notice not given – agreement cannot be
approved – not necessary to consider BOOT – application
dismissed.
ENTERPRISE AGREEMENTS – dispute about matter arising under agreement – s.739 Fair Work Act 2009 – dispute related to requirement to attend medical examinations to assess fitness for fitness to work and health and safety whilst at work – respondent suffered from asthma – respondent had previously arranged for the Asthma Foundation to attend the workplace and give a presentation and deliver training regarding the issues and triggers related to asthma in the workplace – despite the presentation and training, the respondent continued to suffer health issues as a result of triggers in the workplace – applicant asked respondent to obtain further information from her treating physician – respondent provided the requested information and was allowed to return to work – applicant and respondent agreed that respondent would advise the applicant of any hazards or potential hazards by formal incident reports – a number of hazard reports relating to perfume made by respondent – respondent’s union sought meeting with applicant to discuss hazards – further medical evidence from physician and respiratory specialist sought to complete investigations about available options for respondent – Schoeman and Grant cases considered in relation to direction to attend medical appointments – purpose of the examinations is to manage respondent’s health and safety at work – applicant undertaking to meet costs of assessments – applicant entitled to choose the medical professional in these circumstances – held that the applicant’s directions to the respondent to attend medical appointments are reasonable.

Electricity Retail Corporation t/a Synergy v Menegola
Websites of Interest

**AUSTRLLI** - [www.austlii.edu.au](http://www.austlii.edu.au) - a legal site including legislation, treaties and decisions of courts and tribunals.


**Fair Work Ombudsman** - [www.fairwork.gov.au](http://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.


Industrial Relations Commission of New South Wales -

- 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 -

Road Safety Remuneration Tribunal—www.rsrt.gov.au

South Australian Industrial Relations Court and Commission -


Western Australian Industrial Relations Commission -

Workplace Relations Act 2009 -
**Fair Work Commission Addresses**

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<th>Queensland</th>
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<td>2nd Floor, CML Building 17-21 University Avenue Canberra 2600 GPO Box 539 Canberra City 2601 Tel: (02) 6209 2400 Fax: (02) 6247 9774 Out of hrs emergency: 0419 318 011 Email: <a href="mailto:canberra@fwc.gov.au">canberra@fwc.gov.au</a></td>
<td><strong>Sydney</strong> Level 8, Terrace Tower 80 William Street East Sydney 2011 Tel: (02) 8374 6666 Fax: (02) 9380 6990 Out of hrs emergency: 0419 318 011 Email: <a href="mailto:sydney@fwc.gov.au">sydney@fwc.gov.au</a></td>
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<td><strong>Northern Territory</strong> 10th Floor, Northern Territory House 22 Mitchell Street Darwin 0800 GPO Box 969 Darwin 0801 Tel: (08) 8936 2800 Fax: (08) 8936 2820 Out of hrs emergency: 0418 563 601 Email: <a href="mailto:darwin@fwc.gov.au">darwin@fwc.gov.au</a></td>
<td><strong>Queensland</strong> Level 14, Central Plaza Two 66 Eagle Street Brisbane 4000 PO Box 5713 Central Plaza Brisbane 4001 Tel: (07) 3000 0399 Fax: (07) 3000 0388 Out of hrs emergency: 0419 335 202 Email: <a href="mailto:brisbane@fwc.gov.au">brisbane@fwc.gov.au</a></td>
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<td><strong>Tasmania</strong> 1st Floor, Commonwealth Law Courts 39-41 Davey Street Hobart 7000 GPO Box 1232M Hobart 7001 Tel: (03) 6214 0200 Fax: (03) 6214 0202 Out of hrs emergency: 0418 124 021 Email: <a href="mailto:hobart@fwc.gov.au">hobart@fwc.gov.au</a></td>
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<td><strong>Western Australia</strong> Floor 16, 111 St Georges Terrace Perth 6000 GPO Box X2206 Perth 6001 Tel: (08) 9464 5172 Fax: (08) 9464 5171 Out of hrs emergency: 0448 275 936 Email: <a href="mailto:perth@fwc.gov.au">perth@fwc.gov.au</a></td>
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The address of the Fair Work Commission home page is: www.fwc.gov.au/

The FWC Bulletin is a weekly publication that includes information on the following topics:

- information concerning notice of matters before the Fair Work Commission;
- Practice Directions concerning the practice and procedure of the Fair Work Commission;
- weekly decisions summaries;
- details of procedural changes and developments within the Fair Work Commission; and
- advice regarding the rights and obligations of organisations registered under the Fair Work (Registered Organisations) Act 2009.

For inquiries regarding publication of the FWC Bulletin please contact the Fair Work Commission by email: FWCsubscriptions@fwc.gov.au.

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