

FWC Bulletin

2 October 2025 Volume 10/25 with selected Decision Summaries for the month ending Tuesday, 30 September 2025.

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General Manager response to Treasurer and Minister for Finance

5 September 2025

Our General Manager Murray Furlong received correspondence from the Hon Jim Chalmers MP, Treasurer, and Senator the Hon Katy Gallagher, Minister for Finance on 4 July 2025. The correspondence sought his assistance in identifying regulatory reform opportunities within the Commission to bolster productivity growth.

In response to the request, our General Manager has identified opportunities that exist in his statutory roles under both the *Fair Work Act* and *Registered Organisations Act*. You can read the General Manager's response on the Department of Finance website:

[Regulatory reform to reduce red tape and ease burden on businesses | Department of Finance](#)

New translated video explaining our role

15 September 2025

We have collaborated with the Fair Work Ombudsman to develop a short video explaining our roles. This video has been professionally translated into 5 community languages:

- Arabic
- Hindi
- Spanish
- Chinese
- Japanese

The release of these [videos](#) continues our commitment to enhancing engagement with multicultural communities across Australia. It also expands on our existing community resources which are available on our [information in your language](#) webpage and our [YouTube channel](#).

You can read more about our commitment to ensuring that people from all backgrounds are provided with access to justice in our [Community engagement strategy 2025-27 \(pdf\)](#).

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 Tuesday, 30 September 2025.

- 1** ENTERPRISE AGREEMENTS – employee organisation coverage – ss.176, 185, 604 Fair Work Act 2009 – appeal – Full Bench – United Workers’ Union (appellant) sought permission to appeal Commission’s decision to approve the *Centacare Community Services Enterprise 2024 Agreement* (2024 Agreement) – respondent is employer covered by 2024 Agreement – appellant claimed it was a default bargaining representative for 2024 Agreement – appellant filed Form F18 declaration giving notice it was a bargaining representative, however was not advised of determinative conference in relation to approval of 2024 Agreement, and was not noted as being covered in approval Decision – appellant claimed this administrative oversight meant it was denied procedural fairness – contended Commission erroneously focused on fact appellant was not involved in bargaining negotiations and therefore was not covered by 2024 Agreement – appellant’s lead industrial officer (LIO) gave evidence in support of appellant’s claim – LIO claimed appellant’s members were covered by 2024 Agreement and were members at time 2024 Agreement was made – LIO became aware bargaining commenced for 2024 Agreement in November 2024 – LIO emailed respondent on 14 November 2024, indicating that appellant was one of the unions with which the previous enterprise agreement (2008 Agreement) had been made – LIO indicated appellant did not have capacity to bargain, but wanted to be a party to 2024 Agreement – respondent did not list appellant as a bargaining representative in Form F16 application with Commission – respondent submitted F16 application asked whether there were any employee organisations (unions) involved in the 2024 Agreement making process as a bargaining representative – respondent submitted appellant was not ‘involved’ in 2024 Agreement making process as bargaining representative, hence omitted appellant’s details in F16 – LIO filed F18 declaration on 11 December 2024 and requested appellant be covered by 2024 Agreement – on 20 December 2024, Commission’s chambers emailed parties (but did not copy appellant) asking respondent to confirm whether appellant was involved in bargaining and whether an amended F16 was necessary – respondent filed a letter that had been sent to the appellant on 1 December 2024 asking whether any of its members were covered by the 2008 Agreement – respondent had sent correspondence to the wrong individual and did not send it to LIO, hence appellant did not respond – during approval process appellant was not copied into email correspondence – appellant was not notified of determinative conference and did not attend conference – during conference, Commission asked respondent’s HR Manager about appellant’s involvement in bargaining – respondent advised it had contacted appellant about commencing bargaining – respondent advised appellant did not attend any bargaining sessions – respondent also indicated it was not aware of any of its employees being members of the appellant – respondent never heard any concerns from appellant about not being involved in bargaining process –

Commission approved 2024 Agreement on 23 January 2025 – Commission noted appellant had requested to be covered, appellant not involved in bargaining process, nor had appellant responded to email from chambers inviting appellant to make submissions – Commission concluded 2024 Agreement would not cover appellant – LIO returned from annual leave and was informed of approval of 2024 Agreement which did not cover appellant – LIO conducted searches of appellant’s inboxes to determine if any emails had been sent to appellant about Commission’s consideration of 2024 Agreement – LIO contacted the Australian Municipal, Administrative, Clerical and Services Union (ASU; another union covered by 2024 Agreement) – no email correspondence from respondent or Commission was found – appellant claimed it had members employed by respondent and was a bargaining representative under s. 176(1)(b) – appellant filed appeal on 28 February 2025 – LIO explained late lodgement of appeal outside the 21-day time limit was due to being on annual leave – respondent submitted if Full Bench found appellant was a bargaining representative of 2024 Agreement, approval decision of Commission should be varied – appellant claimed it was denied procedural fairness – appellant also claimed Commission erred by taking into account an irrelevant consideration, since it did not apply correct tests under s.176 to determine whether appellant was a bargaining representative, or whether appellant was entitled to be covered by 2024 Agreement – appellant acknowledged it received correspondence from respondent for notification about bargaining, but did not respond because the email was incorrectly addressed – appellant claimed any failure to respond was remedied by the LIO’s 14 November 2024 email to respondent that stated appellant wished to remain a party to new 2024 Agreement – appellant claimed it was denied procedural fairness because respondent failed to notify Commission of LIO’s email advising it wanted to be covered by 2024 Agreement – Full Bench observed administrative oversights can constitute a denial of procedural fairness [*Sodexo Australia*] – appellant claimed that at all relevant times, it had members covered by 2024 Agreement and it was entitled to represent their industrial interests – claimed Commission incorrectly decided not to include appellant as a bargaining representative because it did not attend bargaining meetings – respondent submitted question posed in F16 application was whether there were any employee organisations involved in the agreement making process, and concluded appellant was not involved – Full Bench considered whether to grant extension of time to appellant – Full Bench satisfied there was a satisfactory reason for delay – delay was short and no indication of prejudice to respondent – Full Bench approved extension of time – granted permission to appeal on basis Commission’s approval decision manifested an injustice – Full Bench accepted LIO’s evidence that appellant’s members were covered by 2024 Agreement during negotiations and at time 2024 Agreement was approved – observed respondent could have requested information from appellant about details of members covered by 2024 Agreement and cross referenced members’ names against its employee details to enable Commission to conduct review – Full Bench considered two possible explanations for error – (1) that Commission concluded appellant was not involved in bargaining for 2024 Agreement; and (2) that Commission concluded, contrary to Form F18 lodged by appellant, that appellant did not have any members and therefore could not be a bargaining representative, and was not entitled to be covered by the 2024 Agreement – Full Bench preferred second explanation as more probable explanation for Commission’s

refusal to note that 2024 Agreement covered appellant – found Commission considered appellant’s non-involvement as convenient shorthand for determining appellant had no members covered by 2024 Agreement which explained appellant’s non-involvement in negotiations – transcript indicated Commission sought to ascertain whether any of appellant’s members were covered by 2024 Agreement – respondent replied to Commission’s question that none of the appellant’s members were covered – found Commission’s acceptance of respondent’s answer led to error – found respondent placed incorrect emphasis on term ‘involved’ in question in F16 about whether any employee organisations (unions) were ‘involved in the agreement making process as a bargaining representative’ – Full Bench considered question asked was not limited to role of an employee organisation in negotiations or actual bargaining, since a union may be a bargaining representative without being involved in bargaining – found respondent should have known appellant was a bargaining representative, since appellant was previously covered by 2008 Agreement that 2024 Agreement replaced – acknowledged respondent knew or should have known about appellant’s 14 November 2024 email which indicated it wished to be covered – observed respondent’s materials provided to its employees before voting for Agreement did not advise of these changes – Full Bench noted respondent’s failure to inform Commission that appellant had notified respondent it wished to be covered by 2024 Agreement was ‘surprising’ – Full Bench critical of respondent’s failure to provide comprehensive answers to Commission’s questions – noted appellant was covered by 2008 Agreement and was one of three unions which respondent made that Agreement with – Full Bench upheld appeal and varied approval decision to include a note that 2024 Agreement covered appellant (s.201) – concluded appellant was a bargaining representative and deprived of entitlement to have a note in approval decision that it was covered by 2024 Agreement.

Appeal by United Workers’ Union against decision of Dobson DP of 23 January 2025
[[2025] FWCA 286] Re: The Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane t/a Centacare

C2025/1449
Asbury VP
Bell DP
O’Keeffe DP

Brisbane

[2025] FWCFB 203
9 September 2025

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- 2** CASE PROCEDURES – confidentiality – request for de-identification – ss.594, 604 Fair Work Act 2009 – Full Bench – appellant appealed first instance decision of Commission to dismiss his application for an order to stop bullying ([2025] FWC 1346) – on 4 July 2025, Full Bench issued decision granting permission for respondent to be legally represented ([2025] FWCFB 135) – on 5 August 2025, Full Bench issued decision granting permission to appeal, but dismissed appeal ([2025] FWCFB 168) – respondents in matter are National Disability Insurance Agency (NDIA) and two persons named (PN’s) as individual respondents, whose alleged conduct represented the bullying behaviour in application – on 18 August 2025, respondents’ solicitor requested that names of the two PN’s be redacted, or given pseudonyms in the published decisions of Full Bench – chambers of Vice President responded that Full Bench not minded to make proposed change, but indicated a formal application for a confidentiality order could be made and would be
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considered by Full Bench – on 26 August 2025, respondents made application for orders under s.594(1) of FW Act for de-identification of PN's from published decisions of Full Bench, and that any person provided with a copy of either of the decisions prior to PN's being de-identified destroy and not distribute any copy of either of the decisions – application indicated respondents' solicitor made an oral request in first instance proceedings that the PN's names not be used in the published decision – no transcript of first instance hearing available to Full Bench – no order sought by respondents or made by Commission at first instance to de-identify PN's names – on 27 August 2025, appellant also filed application for orders under s.594(1) of FW Act to effect that his name be de-identified in Full Bench decisions and that any person provided with a copy of the decisions prior to his name being de-identified destroy and not distribute any copy of either of the decisions – Full Bench considered application of respondents – respondents provided four reasons for orders sought – (1) by opting to provide the two PN's with pseudonyms in first instance decision, the Commission granted the respondents request not to be identified, and Full Bench gave no indication at appeal hearing, or otherwise, that effect of 'de-identification order' would not continue – Full Bench rejected submission and claimed it to be inaccurate – observed Commission made no order with respect to confidentiality or identification of the two PN's, no transcript available of first instance hearing of Commission – acknowledged no order had been 'nullified' by decision of Full Bench – noted respondent made no request or application to Full Bench that the two PN's not be identified in appeal decision – (2) identification of the two PN's in Full Bench decisions risk damage to their reputations, since PN's not given opportunity to present evidence to disprove allegations raised by appellant – Full Bench observed there are some matters before Commission, including in anti-bullying jurisdiction, where there will be good reason to make orders restricting or prohibiting publication of evidence or identification of persons involved, having regard to circumstances of case and nature of allegations – however, noted 'mere embarrassment or distress, or possible damage to reputation' is not generally regarded as sufficient to justify non-publication orders [*Mac*] – found fact that potentially embarrassing allegations raised in court or tribunal are untested is also not generally regarded sufficient to justify existence being shielded from public view [*Llewellyn; Rush; Ferguson; Vardy*] – observed it was necessary to describe allegations made by appellant in 'general terms' in Full Bench decision, noting Full Bench made no adverse findings in relation to the PN's – acknowledged reasonable reader of appeal decision would not infer anything other than PN's being involved in complaints by an employee of NDIA, which was disputed by NDIA – Full Bench noted it understood PN's may be upset about disclosure of their names, however, the fact is not sufficient to justify orders sought – (3) nothing about removing names of the two PN's from title of Full Bench decisions would cause public confidence in Commission to be impacted, in way envisioned in *United Nurses of Australia* – Full Bench indicated respondents' submission misunderstood principle of open justice – observed there are some proceedings before Commission where because of nature or circumstances, transparency will be of significance, however, public confidence in processes of courts and tribunals is maintained by those processes being public and open to scrutiny, unless good reason is shown to justify a different course being adopted – noted confidentiality or non-publication order cannot be justified simply by assertion that public confidence in Commission will not be

detrimentally impacted if such an order is made – (4) appeal decision purports to reproduce allegations of bullying as contained in first instance decision, but uses names of two PN’s rather than referring to pseudonyms – Full Bench found relevant passage of appeal decision reproduces summary of complaints made by appellant provided by Commission, but uses names of the two PN’s, given no application or request was made in relation to de-identification of PN’s names – in relation to request to destroy and not distribute copies of decision – Full Bench observed Commission is required to publish most of its decisions on its website, decisions also publicly available on Austlii and other legal databases – Full Bench considered it unnecessary to consider whether an order of type sought is within power of Commission and did not understand how such an order could practically be enforced or effective, and likely to be ‘futile’ – Full Bench indicated it is too late for respondents to now seek orders restraining publication of Full Bench decisions which have already been widely disseminated – Full Bench considered application by appellant – acknowledged appellant’s application was for fairness between himself and respondents, and wanted same steps to be taken with respect to him if names of PN’s de-identified – submitted identification of his name may cause damage to his reputation and removal of his name would not have any impact on public confidence in Commission – for same reasons given with respect to respondents’ application, Full Bench not satisfied with appellant’s submissions – noted appellant’s name also identified in first instance decision – observed futility in seeking to contain publication of decisions of Commission a considerable time after they have been published and made available on Commission’s website – applications by respondents and appellant both dismissed.

Appeal by Osure against decision of Millhouse DP of 14 May 2025 [[\[2025\] FWC 1346](#)]
Re: National Disability Insurance Agency and Ors

C2025/5169
Gibian VP
Hampton DP
Farouque DP

September

[\[2025\] FWCFB 193](#)
1 September 2025

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- 3** ENTERPRISE AGREEMENTS – approval – ss.185, 604 Fair Work Act 2009 – permission to appeal – appeal – Full Bench – Australian Municipal, Administrative, Clerical and Services Union (ASU) lodged appeal against decision of Commission to approve the *Warrnambool City Council Enterprise Agreement No 10 2025* (2025 Agreement) – ASU was bargaining representative for some employees covered by 2025 Agreement, however chose not to actively participate in bargaining – ASU contended it was denied procedural fairness in relation to decision to approve 2025 Agreement, by reason of failure of Council to serve its Form F16 application and Form F17B employer declaration on them per rules 21 and 26 of *Fair Work Commission Rules 2024* (FWC Rules) – ASU claimed it was denied opportunity to adduce evidence and make submissions in relation to approval of 2025 Agreement, and to give notice under s.183(1) of Act that it wanted 2025 Agreement to cover it – on 19 December 2024, Council wrote to its employees providing Notice of Employee Representational Rights (NERR) in which it proposed to commence bargaining for an enterprise agreement to replace existing 2022 Agreement – on 20 December 2024, Council emailed ASU which notified of commencement of bargaining for enterprise agreement – ASU and
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Australian Nursing and Midwifery Federation (ANMF) did not participate in bargaining – on 21 May 2025, ASU sent letter to Council identifying concerns regarding Council's bargaining conduct, including that ASU had not been informed that Council intended to seek approval from its employees for a single enterprise agreement, and ASU had not been provided with a draft of proposed 2025 Agreement – on 28 May 2025, Council wrote to ASU and stated it was Council's view that ASU was invited to participate in process of bargaining, but that ASU declined to participate – on 3 June 2025, ASU wrote to Council indicating that the NERR was sent to employees by post and ASU was unaware of employees who had not received the NERR – ASU said notices had not been issued validly and they had not been provided with a draft of proposed 2025 Agreement despite making written request – on 6 June 2025, Council commenced 7-day access period for proposed 2025 Agreement – voting commenced on 13 June 2025 – 65% of employees voted to approve proposed 2025 Agreement – Council made courtesy call to ASU Organiser and informed them of outcome of vote – on 27 June 2025, Council filed Form F16 application for approval of enterprise agreement and Form F17B declaration, however did not serve ASU or ANMF – Council said this was due to ASU's decision not to participate in preparation of 2025 Agreement – on 10 July 2025, Legal Administration Officer of ASU emailed Commission and stated it wished to file a Form F18 Union declaration in relation to application – on 18 July 2025, the Commission's Agreements Team responded to ASU and indicated that the 2025 Agreement had been approved on 10 July 2025 and provided link to Decision – on 25 July 2025, ASU requested copy of Commission's file – on 31 July 2025, ASU filed its notice of appeal – Full Bench considered permission to appeal – satisfied in public interest to grant permission to appeal – acknowledged it appropriate for permission to be granted to permit Full Bench to consider consequences that should flow from Council's failure to comply with FWC Rules – noted ASU had been disadvantaged as a result of failure to serve application and declaration, and denied opportunity to give notice to Commission that it wanted to be covered by 2025 Agreement, and potentially to put forward evidence and submissions in relation to whether 2025 Agreement should be approved – Full Bench found it was wrong for Council to understand requirement to serve application and declaration as depending on practical involvement of a bargaining representative in bargaining – found an employee organisation which is a bargaining representative may be involved in bargaining to a greater or lesser degree depending on circumstances – disagreed with Council's submission that failure to serve application and declaration was 'technical deficiency' – observed requirement to serve application and declaration is not a mere technicality – the capacity of an employee organisation to give notice that it wants to be covered by an enterprise agreement is an important right conferred by FW Act [*Energy Australia Yallourn*] – observed being covered by enterprise agreement permits employee organisation to directly enforce Agreement under s.539(2)(item 4) and to participate in dispute resolution provisions incorporated in Agreement under s.186(6) – Full Bench did not consider it sufficient that Council informed ASU organiser about outcome of vote – not sufficient to avoid practical injustice to ASU by reason of failure to serve – found it reasonable for ASU to expect it would be served with application when it was made, having heard nothing, ASU made enquiries with Commission three days after application required to be filed – did not accept submission that ASU acted unreasonably or 'sat on its hands' [*Southern Cross*

Care (WA)] – rejected Council’s submission that compliance with FWC Rules should be waived per rule 7(1), since it relied on assertion that non-compliance was a technicality – observed waiving Council’s non-compliance with FWC Rules would serve no purpose, because it would not cure practical consequence of non-compliance, being that Commission approved 2025 Agreement without hearing from ASU – Full Bench held ASU denied procedural fairness as a result of failure of Council to serve application and declaration, noting Commission not at fault – appeal allowed – approval decision quashed and remitted to Commission Member.

Appeal by Australian Municipal, Administrative, Clerical and Services Union against decision of Redford C of 10 July 2025 [[\[2025\] FWCA 2248](#)] Re: Warrnambool City Council

C2025/7235
Gibian VP
Colman DP
Grayson DP

Sydney

[\[2025\] FWCFB 204](#)
10 September 2025

- 4** GENERAL PROTECTIONS – dismissal dispute – not dismissed – ss.365, 386, 604 Fair Work Act 2009 – permission to appeal – appeal – Full Bench – on 18 September 2025, appellant lodged appeal against first instance decision of Commission of 14 March 2025 – first instance decision dealt with jurisdictional objection raised by respondent in relation to appellant’s general protections application – respondent raised ‘not dismissed’ jurisdictional objection – Commission dismissed application on basis there was no termination at initiative of respondent – respondent has since 1997 staged a well-known annual exhibition of public sculpture along walking track between Bondi and Tamarama (‘Sculpture by the Sea’) – appellant employed by respondent since 2005 installing and de-installing sculptures and art works associated with exhibitions – on 3 September 2024, appellant was informed he would not be required for 2024 Bondi exhibition – on 15 January 2024, appellant was injured in a workplace accident and suffered severe facial lacerations – on 19 January 2024, appellant was given new contract to address workers compensation insurance concern – appellant performed work for respondent on various occasions between January and July of 2024 on new contract – on 25 March 2024, appellant responded to an email from respondent outlining concerns – at first instance, Commission found emails observed respondent’s genuine attempts to address issues raised with appellant – noted controversy around whether appellant was ‘removed’ from working on Bondi exhibition – Commission found no binding contract for appellant to perform work on Bondi exhibition – Commission found it reasonable that respondent put a pause on relationship and that respondent regarded employment relationship as continuing throughout 2024 – Commission found no termination of employment at initiative of respondent – appellant lodged appeal of first instance decision on four grounds: (1) Commission failed to consider whether there had been a termination at respondent’s initiative, because decision not to engage appellant for Bondi exhibition of 2024 had ‘consequence’ of bringing employment relationship to an end; (2) Commission made error of law by requiring appellant to establish there was a ‘binding contract’ or ‘enforceable contract’ for him to perform work on 2024 Bondi exhibition for there to have been a termination at employer’s initiative; (3) Commission took into
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account irrelevant considerations when considered reasonableness of respondent's decision to not offer appellant work, the content of the 25 March 2024 email, the tone of appellant's communications, and asserted failure to meet with respondent; (4) Commission made error of fact by accepting respondent's evidence that work performed by appellant after 25 March 2024 had been accepted prior to that date and that there was no further work to offer appellant after 3 September 2024 – Full Bench determined not to admit further evidence from appellant, hence ground (4) fell away – Commission considered whether appellant was dismissed in email dated 3 September 2024 – Full Bench considered nature of appellant's engagement as casual employee and circumstances where employment of employee terminated at respondent's initiative for purposes of s.386 – acknowledged Full Federal Court noted distinction between contract of employment and employment relationship in *Alouani-Roby v National Rugby League Ltd* – Full Court considered, in obiter dicta; that (1) distinctions between employment relationships and employment contracts are artificial; (2) termination of an employment relationship and the termination of an employment contract are the same thing; and (3) a person's employment can only be understood as a reference to the person's contract of employment being brought to an end [*Alouani-Roby*] – Full Bench noted termination of employment relationship and contract of employment will coincide and that no employment exists without a contract of employment – Full Bench considered appellant remained employed by respondent from January 2024 until contract terminated – Full Bench found contract had provisions that created ongoing employment relationship, albeit of casual nature – Full Bench found definition of 'employed' in contract refers to actual performance of work, rather than existence of employment relationship – contract viewed in totality provided for ongoing employment of casual nature – Full Bench determined whether reasonable person in appellant's position would have understood the email of 3 September 2024 to have terminated appellant's employment – Full Bench found language consistent with being understood by reasonable person in position as conveying intention to terminate employment – Full Bench considered significant circumstances – found reasonable person would understand that respondent did not wish to engage appellant further, for time being – Full Bench noted fact employer indicated it might be open to recommencing employment relationship in future did not remove possibility that employment terminated – whether appellant is engaged again proposed as possibility – Full Bench found pause on employment to be consistent with casual nature of employment – Full Bench found fact appellant asked to work on Bondi exhibition in 2024, and respondent agreed to do so, was relevant to inferences a reasonable person would draw from the pause to relationship – observed it does not depend on determination of whether there was a 'binding' or 'enforceable' contract to undertake that work – Full Bench found appellant was dismissed – found Commission affected by error of type identified in grounds (2) and (3), and conclusion that appellant was not dismissed was incorrect – permission to appeal granted with respect to grounds (1) to (3) – appeal allowed – first instance decision quashed – decision remitted to Member.

Appeal by Humeniuk against decision of Sloan C of 14 March 2025 [[\[2025\] FWC 742](#)]
Re: Sculpture by the Sea Incorporated

- 5** CONDITIONS OF EMPLOYMENT – unfair deactivation – remedy – reactivation and lost pay – ss.536LH, 536LQ, 536LU Fair Work Act 2009 – Full Bench – applicant worked for respondent (Uber) as Uber driver from 18 November 2020 until his deactivation by Uber on 8 April 2025 – on 24 March 2025, around 11pm applicant picked up rider and two of their guests – Uber received reports via digital labour platform (Uber driver platform) from applicant and rider with respect to alleged physical altercation (alleged safety incident) – applicant asked rider and guests to stop using drugs in vehicle and asked them to leave – rider complained applicant threatened them with baseball bat – rider and guests allegedly assaulted applicant from behind and exited vehicle – applicant denied possession of weapon or threatening rider and guests – applicant called triple zero and reported alleged safety incident to Police – on 27 March 2025, applicant provided Uber with further details regarding alleged safety incident – on 29 March 2025, Uber issued applicant preliminary deactivation notice under s.11 of *Fair Work (Digital Labour Platform Deactivation Code) Instrument 2024* (Code) regarding alleged safety incident – applicant responded in writing that same day – on 8 April 2025, Uber issued final deactivation notice to applicant from Uber driver platform – on 9 April 2025, applicant applied to Commission for unfair deactivation remedy and commenced proceedings – on 24 April 2025, applicant, via representative (Transport Workers' Union), commenced new proceedings for unfair deactivation remedy in Commission (current matter) – on 28 April 2025, applicant discontinued initial application – on 5 May 2025, Commission served application in current matter on Uber – on 19 May 2025, Uber reactivated applicant's access to Uber driver platform and applicant recommenced performing work as Driver Partner at Uber – since reactivation, applicant completed over 150 trips – Uber submitted that applicant's unfair deactivation application should be dismissed on basis it has reactivated applicant's account on Uber driver platform and no further remedy is available to applicant – applicant denied Uber's contentions and submitted orders should be made for reactivation and restoration of lost pay under s.536LQ(1) and (3) – Full Bench considered jurisdiction and meaning of 'deactivated' – observed valid application for unfair deactivation remedy requires: (1) application to Commission from a person 'who has been deactivated' for order under s.536LU(1); (2) applicant's earnings were less than contractor high income threshold under s.536LU(2); (3) application made within 21 days after deactivation took effect, or within such further period as Commission may allow under s.536LU(3)-(4); and (4) application accompanied by requisite fee, or fee is waived under s.536LV – acknowledged criteria met in relation to applicant, noting deactivation took place on 8 April 2025 – Full Bench disagreed with Uber's submission that jurisdiction to deal with application disappeared when it acted voluntarily to reactivate applicant's access to Uber driver platform on 19 May 2025 – considered meaning of 'deactivated' [*Bandameeda*] – noted definition of 'deactivated' under s.536LG involves the digital labour platform operator modifying, suspending or terminating a worker's access to the platform, resulting in worker no longer being able to perform work under existing or prospective services contract, or worker's ability to perform such work is significantly altered that in effect worker can
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no longer perform such work – acknowledged use of past tense in ss.536LG and 536LU ('has been' and 'took effect') which denotes action that has already commenced and is ongoing – also recognised use of present tense ('is') in ss.536LG(c) and 536LH(3) and (4), used descriptively or used to signify contemporaneity – recognised s.536LF indicates a person has been 'unfairly deactivated' if the person has been deactivated, deactivation was unfair and deactivation was not consistent with Code – Full Bench observed these provisions suggest determination of whether person has been deactivated involves evaluation of past state of affairs – observed s.536LD details when a person is protected from unfair deactivation by imposing a 'point in time inquiry', focused on point worker was deactivated – found these provisions suggest deactivation occurs at specific point in time, rather than Uber's contention that deactivation represents an ongoing state of affairs that must persist at time remedial orders are made – observed use of present tense ('is') in s.536LG(c) understood in light of provision's dual temporal focus and covered both situations where person is currently unable to perform work under existing services contract and where person is unable to perform work under a prospective contract – distinction relevant in context of digital labour platforms where some workers may be engaged, like casual employees, under discrete contracts for each task, while others, such as Uber drivers operate under single overarching services contract covering all work performed via platform – Uber claimed worker is no longer 'deactivated' once they have been reactivated and are able to perform work under a services contract – Full Bench found this interpretation would lead to conclusion that person whose access to a digital labour platform was suspended for a short period (i.e. 5 business days), and later reinstated, was no longer 'deactivated' for purposes of FW Act, and consequence would be that Commission lacks jurisdiction to determine unfair deactivation applications in such cases – observed if Uber was correct, s.536LH(3) would be rendered redundant and would be contrary to basic principles of statutory construction [*Baume; Beckwith*] – Full Bench acknowledged concept of deactivation must be assessed by reference to a 'past event', rather than an ongoing state of affairs – Uber submitted Commission's jurisdiction to grant remedy ceases if digital labour platform operator restores access to worker prior to determination of application – Full Bench observed submission sits uneasily with statutory object, since such an interpretation would 'undermine the remedial purpose of the provision and risk incentivising tactical reinstatements to avoid scrutiny or accountability' – noted workers may also suffer financial loss due to interruption in access – observed under Uber's interpretation, platform operator could voluntarily reactivate worker at any time prior to Commission's decision, hence extinguishing Commission's jurisdiction and depriving worker of entitlement to remedy – Full Bench indicated Uber's interpretation should be rejected, since such a result would frustrate statutory purpose and deny meaningful redress for unfair deactivation – Full Bench observed no clear and unmistakable legislative intent to extinguish Commission's jurisdiction merely because digital labour platform operator subsequently reactivates an employee-like worker – statutory scheme supports continued exercise of jurisdiction to ensure appropriate remedies are available for unfair deactivation within limits imposed by ss.536LP and 536LQ – Full Bench considered compliance with Code – observed if deactivation of employee-like worker was consistent with Code, worker would not have been unfairly deactivated – Full Bench satisfied on evidence that applicant's deactivation from

Uber driver platform was not consistent with Code – Full Bench satisfied applicant protected from unfair deactivation at time he filed application with Commission – Full Bench considered merits of unfair deactivation application – acknowledged language in relation to valid reason in s.536LH(1)(a) same as s.387(a) in relation to valid reason in unfair dismissal jurisdiction – noted same principles apply in determining whether there was a valid reason: (1) in relation to alleged conduct, Commission must make finding on evidence provided whether, on balance of probabilities, conduct occurred [*Freshmore*]; (2) not enough for digital labour platform operator to establish it had a reasonable belief that worker engaged in particular conduct; (3) digital labour platform operator bears evidentiary onus of proving that conduct on which it relies took place; (4) in cases where allegations of serious misconduct are made, *Briginshaw* standard applies, so that findings that a worker engaged in alleged misconduct are not made lightly; (5) necessary to consider whether digital labour platform operator had valid reason for deactivation of employee-like worker, although it need not be reason given to worker at time of deactivation [*Shepherd*]; (6) valid reason for deactivation is one that is ‘sound, defensible or well founded’ and not ‘capricious, fanciful, spiteful or prejudiced’ [*Selvachandran*], involves more than a minor failing or trivial misdemeanour and must be of sufficient gravity or seriousness to justify deactivation [*Ash*] – acknowledged applicant gave direct evidence denying conduct alleged against him, evidence not challenged in cross-examination and no reason to doubt its reliability – Full Bench accepted applicant’s evidence and satisfied no valid reason for deactivation related to his capacity or conduct, and his deactivation did not occur because of any serious misconduct on his part under s.536LH(1)(a) and (2) – Full Bench satisfied relevant processes specified in Code were not followed under s.536LH(1)(b), noting Uber accepted it did not comply with its obligation under s.13(5) of Code to make representative available for discussion with worker within reasonable time if worker requests such a discussion – considered other relevant matters under s.536LH(1)(c) – considered length and quality of applicant’s work with Uber weighed in support of argument he was unfairly deactivated – acknowledged applicant worked for Uber for 4.5 years before deactivation, driving around 40 to 60 hours per week, applicant had no disciplinary action taken against him prior to deactivation, held ‘Diamond status’ with Uber, had rating of 4.99 out of 5 from his more than 6,000 trips – observed applicant felt extremely stressed, anxious and unsupported following deactivation and suffered significant loss of income and financial hardship between deactivation and reactivation – held applicant’s deactivation on 8 April 2025 was ‘plainly unfair’, Uber failed to comply with processes specified in Code, and evidence before Commission did not support serious allegations made against applicant – Full Bench considered remedy – observed no definition of ‘reactivation’ in FW Act, however noted clearly intended to reverse effect of deactivation and restore person to position they would have been in but for deactivation under s.536LQ(1) – Full Bench considered it appropriate to exercise discretion to order applicant’s reactivation – despite fact Uber ‘voluntarily’ restored applicant’s access to its driver platform on 19 May 2025, acknowledged formal order would require Uber to reinstate applicant’s access to its driver platform – found making of formal order would serve clear and practical purpose, provide certainty for parties and ensure enforceability – noted if non-compliance occurs, s.536MG applies, which prohibits contravention of an order made under Part 3A-3 of FW Act and is a civil remedy

provision, where a breach can attract a maximum penalty of 60 penalty units – Full Bench did not accept Uber’s submission that Driver Partner Services Agreement (Services Agreement) entered into between Uber and applicant in August 2024 remained in existence and continues to govern applicant’s work through Uber driver app – Full Bench found Uber’s communications to applicant on 8 and 9 April 2025 indicated intention to no longer be bound by Services Agreement, amounting to repudiation – Full Bench satisfied applicant accepted Uber’s repudiation by filing his unfair deactivation application with Commission, which indicated that Services Agreement had come to an end – Full Bench observed it had no power to make order under s.536LQ(1) that Uber remove negative reviews arising from incident on 24 March 2025, since provision does not extend to reversing consequences of events that occurred prior to deactivation, even if those events informed Uber’s decision to deactivate applicant – Full Bench held applicant unfairly deactivated from Uber’s driver platform – order for reactivation granted to reinstate applicant’s access to Uber driver platform on basis that: (a) for purpose of s.536LD(c), applicant is deemed to have performed work through or by means of Uber’s driver platform on regular basis during period from 24 March 2025 (date of suspension) to 19 May 2025 (date of reactivation); and (b) Uber offers to applicant that he be engaged on same terms and conditions as those on which he was engaged by Uber immediately prior to his deactivation on 8 April 2025 – order to restore lost pay under s.536LQ(3) to be made after parties confer in relation to quantum of order.

Hotak v Rasier Pacific P/L

UDE2025/53
Saunders DP
Farouque DP
Thornton C

Sydney

[\[2025\] FWCFB 214](#)
23 September 2025

Other Fair Work Commission decisions of note

Applicant v Woolworths Group Ltd

TERMINATION OF EMPLOYMENT – extension of time – s.394 Fair Work Act 2009 – applicant dismissed on 29 May 2025 – applied for unfair dismissal on 8 July 2025 – respondent is a national supermarket chain – respondent made jurisdictional objection that application was lodged outside 21-day statutory time limit – application was filed 19 days late – applicant claimed she was sexually harassed at work by her supervisor from June 2024 until March 2025 – applicant also claimed she was sexually assaulted by her supervisor on 18 March 2025 – applicant reported sexual harassment to store manager in early April 2025 – supervisor was dismissed following investigation – applicant made report to Police – applicant did her weekly grocery shopping at respondent’s store on 13 April 2025 – failed to scan and pay for packet of toilet paper – applicant was asked to attend meeting with store manager on 19 May 2025 – applicant informed that she was accused of stealing toilet paper and presented with footage from 13 April 2025 – applicant immediately apologised and offered to repay cost of toilet paper – applicant given a show cause letter a few days later – applicant responded to show cause letter – subsequently dismissed on 29 May 2025 – applicant was in deep shock, distress and was not motivated to do anything following dismissal – applicant’s father wrote to respondent requesting review of decision to dismiss her – applicant’s father arranged appointment for applicant with a lawyer on 4 July 2025 – applicant claimed her mental health condition intensified over weekend of 5 and 6 July 2025, which included suicidal ideation – applicant given medical assistance at the time – respondent wrote to applicant’s father and advised applicant’s dismissal had been overturned – respondent offered to reinstate applicant

- applicant instructed lawyer to proceed with making unfair dismissal application - applicant's father gave evidence applicant was not in a frame of mind to do anything about her situation - confirmed no medical assistance or treatment was sought by applicant prior to 5-6 July 2025 - Commission noted FW Act allows for extensions of time where there are exceptional circumstances (s.394(3)) - observed exceptional circumstances are circumstances that are out of ordinary course, unusual, special or uncommon, but circumstances themselves do not need to be unique nor unprecedented, nor even very rare [*Nulty*] - observed absence of any explanation for any part of delay will usually weigh against applicant, and any credible explanation for entirety of delay will weigh in favour of applicant [*Stogiannidis*] - noted events or circumstances occurring within 21 days after dismissal, or before dismissal may have an effect that continues into the period of the delay [*Thejo Australia*] - found applicant was not incapacitated to such an extent application could not have been filed in time - found it was unclear why applicant's father could not have assisted her with making application - gave careful consideration about impact of applicant's sexual assault on her ability to make application in time - found applicant was able to perform work and engage in normal activities following sexual assault - considered if applicant had been unable to work and perform normal tasks, Commission would have formed a different view regarding delay - not satisfied applicant explained entirety of delay which was a factor weighing against exceptional circumstances - found applicant was aware of her dismissal which was a factor weighing against exceptional circumstances - found applicant had disputed her dismissal as father had sent correspondence to respondent which was factor in applicant's favour - found it was not possible to form a concluded view about merits of application which was a neutral consideration - on balance, Commission was not satisfied there were exceptional circumstances - Commission declined to grant an extension of time - application dismissed.

U2025/11339

Dean DP

Canberra

[\[2025\] FWC 2610](#)

4 September 2025

Tamati vs MQT P/L

TERMINATION OF EMPLOYMENT - Misconduct - compensation - ss.387, 394 Fair Work Act 2009 - applicant worked for respondent as a manager since September 2021 - applicant attended work lunch with colleagues on 10 April 2025 at licenced premises where alcohol was consumed - applicant submitted she consumed a single alcoholic beverage - applicant's colleague was disruptive on return to office - respondent requested colleague undergo drug and alcohol test (test) in compliance with workplace drug and alcohol policy (Policy) - colleague refused, announcing on the spot resignation - respondent held impromptu meeting with applicant to discuss colleague's conduct before requesting applicant undergo same test - applicant refused - requested respondent provide a copy of the Policy and confirm basis on which test was required - respondent provided several different reasons and did not provide a copy of the Policy - respondent advised applicant an investigation would occur, followed by a further meeting which may lead to dismissal - respondent later arranged a meeting to be held on 14 April 2025 to discuss incident - applicant was summarily dismissed at meeting on basis of serious misconduct - Commission considered whether respondent had a valid reason for dismissal under s.387(a) - respondent contended applicant's refusal to undergo test breached Policy amounting to serious misconduct - further, applicant failed to follow a lawful and reasonable direction, causing a contractual breach justifying summary dismissal - Commission found deficiencies in respondent's communication and processes - respondent did not provide clear reason for basis of test - cited, variously, that it was 'random', 'post-incident', 'for cause', 'on suspicion', or due to respondent's 'duty of care' - found Policy did not contain provision consistent with respondent's decision to summarily dismiss applicant for refusing test - additionally, respondent did not warn applicant that failure to take test might result in summary dismissal and did not consider alternative course of action at meeting of 14 April 2025 - Commission observed direction to take test was not a reasonable direction and did not believe decision to dismiss applicant was sound, defensible or well-founded [*Selvachandran*] - noted a

valid reason is not made out by simply asserting a right to terminate an employment relationship under a contract, rather the facts of the matter must provide a reason justifying the exercise of that right [*Miller*] – found no valid reason for dismissal under s.387(a) – considered other relevant factors under s.387(h) – found workplace context, including impromptu meeting on 10 April 2025 which evolved from a discussion about applicant’s colleague to a request that applicant undergo test without clear procedures being followed, weighed against respondent – further, workplace lunches at licensed premises were tolerated workplace practice and applicant did not show signs of intoxication as set out in Policy – no sanction less than dismissal considered and applicant’s service and past performance not accounted for – found circumstances did not warrant summary dismissal – held dismissal harsh, unjust and unreasonable under s.385(b) – compensation remedy considered [*Sprigg*] – applicant found employment at lower salary following dismissal – estimated loss of salary exceeded earnings made in 6 months prior to dismissal – compensation cap applied – compensation order of \$63,500 issued.

U2025/5069

Slevin DP

Sydney

[\[2025\] FWC 2607](#)

4 September 2025

Stoddard v Crushing Services International P/L

TERMINATION OF EMPLOYMENT – Misconduct – compensation – s.394 Fair Work Act 2009 – applicant dismissed following investigation of incidents on 13 May 2024 – respondent alleged applicant (1) used his mobile phone within operational areas; (2) had his mobile phone turned on and on his person while operating a vehicle; and (3) completed re-torques on a company vehicle, despite requirement for task to be performed by qualified HD fitter – applicant submitted he injured his back while driving truck TK5216 due to faulty seat and reported fault and injury on 11 May 2024 – respondent replaced seat in truck TK5216 – applicant submitted on 13 May 2024 he drove truck TK5212, saw TK5216 parked at same site, inspected new seat, took photos of condition of cabin with new seat using his mobile phone, hit ‘record’ on smartwatch to record discussion with supervisor regarding TK5216 cabin condition, returned to TK5212, assisted HD fitter to complete re-torque, returned to administration building, showed photos of TK5216 to supervisor and reported condition of TK5212, returned to TK5212, started truck and stopped recording on smartwatch – on 18 July 2024, applicant signed HSE notification issued on 4 July 2024 regarding use of mobile phones and smartwatches – applicant sent 13 May 2024 incident recording to respondent on 20 August 2024 – applicant stood down due to investigation on 30 August 2024 – applicant dismissed for serious misconduct on 11 October 2024 relating to 13 May 2024 incident – Commission considered allegations (1) and (2) – Commission held HSE notification not issued as of 13 May 2024, so respondent could not rely on policy to support case – noted inconsistency between policy and practice – noted drivers were allowed to have mobile phones with them for safety reasons and for authorised use while working – noted applicant did not use mobile phone while operating equipment – noted applicant’s supervisor did not express concern about using mobile phone to show photos of TK5216 – satisfied applicant had genuine safety concerns when taking photos of TK5216’s cabin with mobile phone – concerned respondent’s investigation did not consider all circumstances in proper context, including: applicant’s legitimate safety concern, no phone use while operating vehicle, phone use only to take photos and show them to supervisor – Commission accepted applicant’s secret recording of colleagues was misconduct, but circumstances not serious enough to warrant dismissal as respondent could have done more to respond to applicant’s safety concerns – not satisfied allegations related to mobile phone use provided valid reason for dismissal – Commission considered allegation (3) – found evidence did not establish applicant did not comply with respondent’s re-torque policy – found there was no dispute that re-torques were done with a HD fitter – not satisfied allegation provided valid reason for dismissal – Commission concluded dismissal was harsh, unjust and unreasonable – remedy considered – Commission ordered compensation to applicant of \$30,722.50 gross plus superannuation.

Cao v iMile Delivery & Logistic P/L

TERMINATION OF EMPLOYMENT – Merit – compensation – s.394 Fair Work Act 2009 – applicant originally employed in China by iMile Hangzhou since January 2023 for three year contract – in October 2023, applicant commenced work in Australia as Supply and Distribution Manager for iMile Australia – in November 2024, applicant was demoted from role of NSW Regional Operations Manager to Warehouse Operator – on 26 November 2024, applicant was directed to return to China quickly to assist iMile Group with audit issue and undertake procurement role on temporary basis – on 30 December 2024, applicant resumed work in China – on 31 January 2025, respondent paid out applicant’s accrued leave entitlements and brought end to employment relationship with iMile Australia – on 14 February 2025, applicant was detained by Chinese police for around 30 hours in connection with allegations of criminal activity made against her by iMile Group – Chinese police issued applicant with 12-month overseas travel ban, which prevented her from returning to Australia – on 4 March 2025, applicant dismissed by iMile Hangzhou – on 9 April 2025, applicant applied to labour arbitration Commission in Hangzhou for resolution of a dispute about her dismissal on 4 March 2025 (two days before she filed unfair dismissal application with Commission) – on 20 June 2025, Commission issued jurisdictional decision ([\[2025\] FWC 1746](#)) and found applicant was dismissed by respondent in November 2024, when she was unilaterally demoted, and dismissed on 31 January 2025 – extension of time to file unfair dismissal application was granted to applicant – Commission considered whether dismissal was unfair in subsequent decision – iMile Group alleged applicant deliberately failed to follow their procurement processes in circumstances that were unlawful and for improper purposes – considered criteria for harshness under s.387 – considered whether valid reason for dismissal in relation to iMile Group’s 7 allegations under s.387(a) – (1) applicant engaged a supplier (VIBOT) to provide services at greater cost than would be charged by iMile Group’s globally approved supplier – Commission found no evidence provided to establish date iMile Group’s globally approved supplier was notified to applicant as approved supplier in Australian market – found applicant made enquiries of her Chinese counterparts about option of a Chinese supplier, but did not hear back – allegation not established – (2) engaged VIBOT to assist its director, with whom applicant had personal relationship, to obtain a ‘188 Business Innovation and Investment Visa’ – Commission found allegation a mere assertion – applicant denied any personal relationship with Director and any knowledge of Director’s motivations in establishing business of VIBOT or contracting iMile Australia as an intermediary – satisfied no evidence to contradict applicant – (3) engaged VIBOT despite knowing it provided no services of value for iMile Group – found contrary to iMile Australia’s assertions, its arrangement with VIBOT was valuable to business, since VIBOT acted as guarantor on behalf of iMile Australia in contracting with Cevol Industries – VIBOT agreed to advance payments to Cevol Industries on behalf of iMile Australia to assist with business continuity, in circumstances where in early days of its presence in Australian market, its own ability to pay on time was less reliable – (4) engaged VIBOT under a ‘Request for Quote’ (RFQ) process, which was inappropriate having regard to nature and volume of purchases – iMile Australia submitted applicant was not entitled to use RFQ process for transactions of a combined monetary value that exceeded its policy cap – observed applicant did not always follow iMile Group’s procurement processes and procedures in early days of her work to establish business in Australia – found applicant sought quotes from local market, but ultimately formed view transacting with VIBOT was reasonable choice as matter of practicality and business continuity – noted there were internal checks in which other people in business had ability to reject an application or ask for further details – observed applicant sent to work in Australia despite limited tenure in business, limited knowledge of logistics and limited access to resources – rejected assertion applicant deliberately failed to follow company processes because of improper motives – (5) deliberately split payments to VIBOT so as to fall short of internal cap of \$20,000 (USD), avoiding need for legal and financial review of arrangements – found no evidence to support allegation –

acknowledged applicant submitted two RFQ's each for amounts more than cap and later processed payments on those RFQ's in 6 separate transactions – found applicant did not act alone in relation to transactions and worked in consultation with approval of her General Manager – (6) performed work for VIBOT at times she was being paid to perform work for iMile Australia – rejected submission, since applicant's actions were in implementation of collective decision made by applicant and her superiors regarding what was necessary in interests of building iMile Australia's business – (7) corresponded with VIBOT and its supplier using her personal Gmail rather than company email to conceal arrangement from iMile Group – found applicant explained reasons for using her Gmail rather than work email when interacting with Cevol Industries under VIBOT umbrella – found no intention from applicant to conceal arrangements between VIBOT and/or Cevol Industries from iMile Australia – satisfied no valid reason for applicant's dismissal – reasons for dismissal not notified to applicant prior to dismissal under s.387(b) – found applicant not provided opportunity to respond to any capacity or conduct related reason under s.387(c) – considered other matters under s.387(h) – found iMile Group's failure to put its allegations to applicant before she was dismissed was serious in light of nature of allegations ('embezzlement and fraud', 'corruption' and 'collusion') – observed applicant motivated to act in interests of business and in accordance with instructions given to her – no evidence of any financial or other personal gain to applicant for alleged serious misconduct – observed the making of such serious allegations against an employee without proper foundation was 'disgraceful' – considered applicant's length of service with iMile Australia (15 months) and iMile Group (just over 3 years) – acknowledged applicant experienced high levels of anxiety, powerlessness in response to subsequent criminal process initiated by iMile Group, which led to one year travel ban and inability to work since February 2025 – observed another employee of iMile Group who worked with applicant dismissed in similar circumstances, although neutral consideration, due to lack of information in relation to that case – Commission held dismissal was unreasonable and unjust – satisfied applicant unfairly dismissed – considered remedy – reinstatement not appropriate, due to breakdown of mutual trust and confidence between parties being beyond repair – considered compensation as remedy [*Sprigg*] – applicant awarded 6 months' compensation, since would have likely been employed with iMile Australia for another 6 months – deducted income earned from iMile Hangzhou from 1 February 2025 to 4 March 2025 – applicant awarded \$50,750 compensation, less taxation.

U2025/4514

McKinnon C

Sydney

[\[2025\] FWC 2631](#)

8 September 2025

Webber v Stanwell Corporation Ltd

TERMINATION OF EMPLOYMENT – extension of time – representative error – s.394 Fair Work Act 2009 – applicant's employment was terminated on 3 June 2025 – unfair dismissal application lodged with Commission on 18 July 2025 – application lodged 24 days outside of statutory timeframe – applicant submitted jurisdictional complexities arose due to respondent being a Government Owned Corporation, resulting in application being filed in the Queensland Industrial Relations Commission (QIRC) – applicant cited representative error as reason why application was filed outside statutory timeframe – on 5 June 2025, two days after her employment was terminated, applicant sought legal advice from her representative regarding filing unfair dismissal application – on 23 June 2025, applicant's representative filed unfair dismissal application with QIRC – on 7 and 8 July 2025, QIRC informed applicant's representative that application had been filed in wrong jurisdiction – applicant immediately advised her representative to file application in Commission without delay – on 18 July 2025, applicant's representative filed application with Commission – Commission considered whether exceptional circumstances existed in order to justify extension of time in filing application [*Nulty*] – Commission found applicant's representative erred in initially advising applicant to lodge application with QIRC – Commission indicated it was entirely reasonable for applicant to presume representative's advice was accurate – Commission considered it would not have been an onerous task for applicant's representative to have undertaken legal analysis

regarding jurisdictional issue – Commission indicated applicant’s representative should have been able to file application with Commission within a couple of hours – Commission considered whether representative error provided an acceptable explanation for delay and whether such error should not be blamed upon party concerned [*Office Works*] – Commission found it reasonable for applicant to have viewed representative as being sufficiently skilled to provide sound advice regarding application – Commission satisfied applicant acted promptly, relied on representative’s expertise and was without fault in late filing – Commission held representative’s errors provided an acceptable explanation for delay – Commission held applicant’s representative took an unreasonable amount of time to file application with Commission – Commission found exceptional circumstances existed – extension of time granted.

U2025/11901
Durham C

Brisbane

[\[2025\] FWC 2670](#)
8 September 2025

Smith v Qube Ports P/L

TERMINATION OF EMPLOYMENT – Misconduct – reinstatement – ss.387, 394 Fair Work Act 2009 – applicant had worked as a stevedore with respondent since 2009 – applicant dismissed for allegedly engaging in misconduct inconsistent with respondent’s workplace behaviour policies – specific allegations put to applicant on 18 December 2024, following alleged misconduct in September and November 2024 – applicant terminated on January 2025, and paid 4 weeks’ pay in lieu of notice period – respondent submitted applicant provided procedural fairness and there were valid reasons for dismissal including serious misconduct – Commission required to consider whether applicant was protected from unfair dismissal at time of dismissal and whether applicant had been unfairly dismissed – Commission established background to dismissal, noting work on waterfront established to be ‘robust’ and a place where otherwise inappropriate language is used – in February 2024, applicant issued a formal warning for breaching drug and alcohol policy (Policy) following positive THC test result – in March 2024, applicant involved in incident where he showed photos of female work colleagues in bikinis to male co-workers; subsequently required to attend HR meeting and issued first and final warning – respondent then directed rostering team to avoid rostering applicant with certain female colleagues – respondent’s HR manager sent a letter to applicant in May 2024, advising of investigation for victimising another employee – applicant then alleged he was being victimised, discredited and labelled a sexual predator and stalker – further incidents noted in October and November 2024 – one of the female colleagues was rostered with applicant in December 2024, left work visibly upset and later wrote to HR, advising applicant was a ‘known bully’ and alleged various misconduct on part of applicant – HR advised this employee they were conducting a confidential investigation into applicant’s conduct – applicant subsequently stood down during investigation, following reports he may have engaged in unacceptable workplace behaviour – applicant received further letter setting allegations of misconduct and invited him to show cause meeting – in January 2025, applicant advised allegations against him substantiated and was terminated with immediate effect – applicant contended dismissal was unfair, that he did not engage in all of conduct alleged and respondent did not provide valid reason for termination – applicant also argued he was denied procedural fairness, noted his good employment history over 15 years made dismissal harsh in circumstances where he was 62 years old with limited prospects of re-employment – Commission noted observations on applicant’s evidence: that while he failed to appreciate gravity of conduct in relation to sharing photos of female colleagues, Commission not satisfied applicant was a bully or engaged in conduct justifying termination – respondent submitted applicant terminated with cause for gross misconduct, was provided with procedural fairness and due process, and that fair and thorough investigation into applicant’s misconduct was conducted – respondent opposed applicant’s reinstatement and provision of any compensation – Commission considered whether dismissal was harsh, unjust or unreasonable, firstly whether there was valid reason for dismissal – Commission cited respondent’s contentions that applicant dismissed for: showing photos of female work

colleagues to co-workers, victimising, targeting and swearing at junior employee, swearing at and intimidating another co-worker, lying to HR in responses to investigations and engaging in misconduct by bullying colleagues in workplace – Commission observed it must be satisfied that applicant more probably than not engaged in misconduct – Commission considered photo incident and noted significantly different versions of events presented in evidence – Commission concluded evidence of a male colleague that was shown photos by applicant to have been selectively presented, and while more persuaded by applicant’s evidence of event, Commission satisfied applicant engaged in misconduct providing sound and defensible reason for decision to terminate employment – Commission accepted applicant was sorry for showing colleagues the photos, however not satisfied applicant fully understood why it was offensive or inappropriate – Commission recounted evidence of ‘hatch incident’ where applicant swore at and intimidated same male colleague – Commission not satisfied there was evidence before it to conclude it reasonable to believe applicant engaged in alleged conduct, due to inconsistencies in respondent and male colleague’s positions and acceptance of applicant’s evidence that he was not investigated or provided additional information about incident after receiving letter about it from HR – Commission considered evidence given around ‘toilet car incident’, where applicant alleged to have sworn at male colleague for not being able to complete task as directed by applicant – on evidence before it, Commission did not find that applicant engaged in alleged conduct providing valid reason for dismissal – Commission accepted that applicant and male colleague swore at each other in incident, but noted history they share contributing to heightened degree of sensitivity between them and that it was not uncontroversial for stevedores to engage with one another in robust or explicit language – Commission therefore unable to accept that incident was example of targeted victimisation, nor that incident further justified decision to terminate employment – Commission considered ‘subway sandwich incident,’ where applicant alleged to have made vulgar comment about a colleague’s lunch – HR employee had written complaint about incident, but employee subsequently made it clear that he did not want to make a formal complaint – under cross examination, Commission found HR employee to have association with family member of one of the female colleague’s in bikini photo shared by applicant – Commission found HR employee’s evidence to be unreliable, and that she clearly held pre-determined view about applicant; photo incident coloured all subsequent interactions with him – as this HR employee’s evidence was the only direct evidence presented on sandwich incident, Commission not satisfied on balance that applicant engaged in alleged conduct – Commission considered whether applicant honest during responses during investigations and proceedings, with respondent submitting his dishonesty provided further valid reason for dismissal – Commission’s assessment of applicant’s evidence was that it was genuinely provided to best of his ability and recollection, despite some anomalies in evidence – Commission further found evidence insufficient to establish applicant was a bully or engaged in victimisation of male colleague – none of the alleged victims provided examinable evidence to Commission, nor did respondent present any direct allegation or complaint of applicant bullying a co-worker – Commission ultimately satisfied applicant’s conduct in March 2024 (photo incident) a valid reason for dismissal, but not satisfied respondent presented any other sound, defensible or valid reasons for dismissal, as Commission not satisfied on balance that applicant actually engaged in other alleged incidents – Commission considered s.387(b) regarding whether applicant notified of valid reason for dismissal – allegation letter of December 2024 and termination letter of January 2025 made no reference to valid reason, referring only to other incidents – Commission therefore concluded this to weigh in favour of dismissal being harsh and unjust – Commission considered whether applicant given opportunity to respond to valid reason under s.387(c), noting it not in dispute that applicant provided opportunity to respond to other incidents – Commission found applicant not notified of valid reason, therefore not afforded proper opportunity to respond to it; HR had put to applicant that he was ‘viewed as a known bully’ but did not rely on specific matters – Commission considered any other relevant matters under s.387(h), including proportionality of dismissal to conduct alleged and prevalence of profane language at worksite – in relation to proportionality of dismissal, Commission satisfied applicant’s conduct in photo incident was entirely inappropriate and justified dismissal, however dismissal was not effected at time, instead respondent conducted

investigation and resolved to give applicant final warning – regarding prevalence of swearing at worksites in industry, Commission found evidence applicant treated differently, supporting finding dismissal harsh and unjust – Commission also considered: previous finding of denial of procedural fairness, length of service and age of applicant to weigh in favour of applicant’s dismissal being harsh and unjust – Commission considered impact of hostile enterprise bargaining, employment history and previous warnings and impact on future workers to not substantially weigh against a finding applicant’s termination harsh and unjust – weighing all factors, Commission found dismissal harsh and unjust, and on balance, applicant unfairly dismissed – Commission considered remedy, noting applicant had sought reinstatement due to 15-year working history, limited prospects of re-employment as 62 year old, expressed regret for actions, and no breakdown of trust and confidence in employment relationship – respondent strongly opposed reinstatement; submitting it would send wrong message to all involved and create issues for male colleague – Commission cited existing principles on impact of loss of trust and confidence on whether reinstatement is inappropriate, noted rationality of parties should be considered when assessing whether level of trust and confidence can be restored to make ‘viable and productive working relationship’ [Nguyen] – Commission found evidence to conclude respondent’s loss of trust and confidence in applicant not soundly or rationally based, noting no evidence from male colleague suggesting issues working with applicant – Commission accepted applicant likely engaged in behaviour not befitting his age, but found evidence made clear he was not only stevedore at port to behave this way – aside from HR employee whose evidence Commission discounted, no evidence of co-workers being opposed to or concerned with applicant’s reinstatement – Commission satisfied reinstatement not inappropriate – in relation to continuity, Commission held it appropriate to maintain applicant’s continuity of service due to age and length of service – Commission considered misconduct a factor in reducing lost pay awarded, less the notice paid on termination and any income earned during this period, by 50% – Commission stated parties to confer on amount to be paid, amount to be determined by Commission if no agreement reached – orders for reinstatement and lost pay issued.

U2025/1254

Connolly C

Melbourne

[\[2025\] FWC 2632](#)

5 September 2025

Miegel v Tronox Mining Australia Ltd

GENERAL PROTECTIONS – extension of time – ss.365, 366 Fair Work Act 2009 – applicant alleged she was forced to resign on 6 February 2025, ending her employment on 18 February 2025 – applicant lodged general protections application on 9 May 2025 – applicant submitted (1) principal reason for delay was due to psychological stress, emotional exhaustion, sleep disruption, insomnia, depression, anxiety, fatigue, and cognitive overload; (2) FIFO work patterns affected her ability to function; and (3) applicant has a fragile-X permutation, further impacting her functional and cognitive capacity – applicant provided medical certificate for insomnia and various mental health challenges – applicant provided research contending these factors significantly limited her ability to function – applicant first made unfair dismissal application on 28 April 2025 and a subsequent general protections application, before receiving advice to file current application on 9 May 2025 – respondent submitted (1) application was made out of time; (2) applicant voluntarily resigned from job; (3) no medical evidence had been provided to support submissions; (4) no ‘exceptional circumstances’ identified; (5) application without merit; (6) applicant demonstrated capacity to work and seek re-employment with respondent, demonstrating capacity to file application on time; and (7) applicant was aware of lodgement requirements, having previously intended to make an application with Commission in October 2024 – Commission considered criteria under s.366(2) – Commission noted both of applicant’s applications were lodged outside 21-day period – Commission satisfied applicant suffered from identified mental health conditions during period of delay – Commission accepted applicant’s evidence identified mental health conditions and affected her capacity to file application on time – Commission found FIFO work patterns impacted applicant’s functional capacity – Commission

satisfied applicant's ability to competently perform new work did not overrule impact of FIFO roster patterns – Commission satisfied combination of circumstances constituted exceptional circumstances, weighing in favour of an extension of time – Commission found applicant did not attempt to dispute dismissal within 21-day period, weighing against extension of time – Commission found there was no identifiable prejudice to employer to extend time, being a neutral consideration – Commission also considered merits of application as a neutral factor – Commission satisfied level of fairness weighed in favour of granting extension to applicant, due to exceptional circumstances identified – Commission satisfied of exceptional circumstances – extension of time granted.

C2025/3821

Connolly C

Melbourne

[\[2025\] FWC 2653](#)

8 September 2025

Waheed v Rasier Pacific P/L

CONDITIONS OF EMPLOYMENT – unfair deactivation – date deactivation took effect – s.536LU Fair Work Act 2009 – multiple applications initially filed by applicant in relation to deactivation of applicant, including unfair dismissal application – TWU filed an application for unfair deactivation remedy on applicant's behalf on 8 July 2025 – applicant subsequently filed his own unfair deactivation application which was allocated to this matter – Commission's administrative staff incorrectly accepted application on 8 July 2025 as unfair termination application, which was corrected on 15 July 2025 – Commission found unfair deactivation remedy application was made on 8 July 2025 – Commission considered whether application made within time – dispute over date deactivation took effect – applicant submitted he was deactivated by respondent on 17 June 2025 – respondent contended applicant was deactivated on 16 June 2025 – Commission observed reasoning in case law in unfair dismissal jurisdiction can apply to deactivation jurisdiction, due to similarities in language chosen by legislature in drafting these provisions – observed language used in s.536LU(3) about when an application must be made is in same terms as s.394(2) – noted dismissal does not take effect until an employee is aware, or had reasonable opportunity to become aware that they have been dismissed, or had a reasonable opportunity to become aware [Foyster] – observed where emails are used to advise of dismissal, it is presumed that employee would have had reasonable opportunity to become aware of dismissal if it is received in their inbox at their usual email address [Ayub] – applicant provided evidence of final deactivation notice email dated 17 June 2025 – respondent provided evidence that deactivation notice took effect on earlier date, but was not date stamped – Commission preferred applicant's evidence due to date stamp and concluded deactivation took effect on 17 June 2025 – Commission held application made within time – Commission considered alternative situation if application was out of time – Commission would have granted an extension on basis that applicant did not become aware of deactivation until 17 June 2025 – matter to proceed to case management conference.

UDE2025/160

Tran C

Melbourne

[\[2025\] FWC 2787](#)

18 September 2025

Mutton v Artisan Pools P/L t/a Northern Rivers Pools

TERMINATION OF EMPLOYMENT – Small Business Fair Dismissal Code – compensation – s.394 Fair Work Act 2009 – applicant employed with respondent as full-time Construction Manager since July 2023 – applicant summarily dismissed on 24 February 2025 on basis of alleged serious misconduct – respondent first raised concerns with applicant verbally in early February 2025 – applicant stated during conversation that he knew three pools 'that are going to fail' – respondent found this to be an 'extremely intimidating statement' – respondent requested applicant attend meeting on 6 February 2025 – applicant remained on site and did not attend meeting – respondent sent email to applicant with letters of warning regarding his conduct and a formal request for information – applicant responded to formal warning via WhatsApp on 10 February 2025 – applicant provided stress leave certificate on 11

February 2025 to 24 February 2025 inclusive – respondent requested applicant attend meeting on same day – applicant did not attend – on 20 February 2025, a customer raised complaint regarding a pool applicant had worked on, where bottom step was completely hollow – respondent connected complaint to applicant’s verbal statement of three failing pools – applicant notified of dismissal via termination letter on 24 February 2025 – termination letter contained three reasons for dismissal – (1) allegation regarding failed pools and refusal to provide information – (2) refusal to attend meeting on 6 February 2025 – (3) deliberate sabotage of work – Commission considered s.396 factors – acknowledged respondent a small business – Commission found dismissal was not consistent with the Small Business Fair Dismissal Code (Code) – Commission not satisfied there were reasonable grounds to believe applicant had engaged in conduct that justified immediate dismissal – Commission considered whether dismissal was harsh, unjust or unreasonable under s.385 and criteria for harshness under s.387 – in relation to s.387(a), found no valid reason for dismissal – considered other relevant matters in relation to s.387(h) included lack of procedural fairness, applicant not provided opportunity to defend himself against customer complaint, unreasonable and inappropriate for respondent to request meeting on 11 February 2025 when applicant provided medical certificate – Commission satisfied dismissal was harsh, unjust and unreasonable – Commission found compensation appropriate remedy [*Sprigg*] -ordered compensation of \$15,384.64 plus 12% superannuation.

U2025/3120

Sloan C

Sydney

[\[2025\] FWC 2686](#)

11 September 2025

Moiler v Cowra Meat Processors P/L

TERMINATION OF EMPLOYMENT – Merit – reinstatement – s.394 Fair Work Act 2009 – applicant employed by respondent as a production worker since April 2017 – respondent operates abattoir in Cowra NSW – applicant provided with 24-hour suspension notice on 18 March 2025, advised to attend meeting on 19 March 2025 with a support person – applicant terminated on 19 March 2025 for serious misconduct, including unauthorised unapproved leave, failing to communicate absence to respondent, leaving shift early, and engaging in multiple outbursts towards supervisor and other employees on 17 March 2025 – respondent submitted additional reasons for dismissal not outlined in dismissal letter, being applicant allegedly made racist comments towards other staff, engaged in bullying behaviour, refused to follow instructions, displayed hostile attitude towards staff, and distribution of illegal drugs – Commission considered whether dismissal was harsh, unjust or unreasonable – Commission considered if reasons for dismissal were valid under s.387(a) – Commission found applicant did notify respondent of absence for week commencing 3 March 2025 via his daughter who advised respondent that applicant was out-of-town, experienced car difficulties, did not have mobile reception and expected to return to work on week commencing 10 March 2025 – Commission satisfied applicant’s absence was communicated to respondent and was not a valid reason for dismissal – Commission noted high degree of informality and lack of any specific policy or procedure outlining how applicant was to advise of his absence – Commission noted applicant’s contract of employment, modern award or applicable industrial instrument did not include a term for abandonment of employment, and that there was a lack of clarity as to meaning of abandonment of employment – however, Commission found applicant failed to notify his absence from week commencing 10 March 2025, noting that despite difficulties regarding not being allowed to make outgoing calls or lack of access to Wi-Fi or mobile reception, applicant could have advised his daughter or a coworker to communicate his absence with the respondent – Commission accepted applicant’s failure to notify of absence for week commencing 10 March 2025 constituted a valid reason for dismissal – Commission did not accept failure to contact his supervisor of his absence as a valid reason for dismissal, as applicant was not made aware that he was required to – Commission accepted applicant left site before completion of his shift and without obtaining permission from his supervisor, which was a valid reason for dismissal – in relation to applicant’s conduct of 17 March 2025, Commission made findings of fact

that applicant was speaking 'loudly', 'swearing', and 'stood in close proximity' with other employees, and told 'other staff members to hurry up' – however, Commission not satisfied applicant abused the unidentified employees and no evidence was provided by any such employee – noted production workers on 'kill floor' frequently and commonly swear, or at least did at time of applicant's dismissal – not satisfied this conduct was a valid reason for dismissal – Commission not satisfied of other allegations mentioned outside of dismissal letter, including racist comments towards staff members, allegations of bullying, refusal to follow instructions, hostile attitude and distribution of illegal drugs – Commission not satisfied applicant engaged in such conduct, nor if respondent put the allegations to applicant by way of warning – Commission noted allegations were incredibly serious and if an employee engaged in racist comments or distributed illegal drugs at work, they should be disciplined and would be unlikely to persuade Commission that their dismissal was unfair – respondent submitted applicant was allegedly verbally warned about allegations – however, Commission found applicant was only verbally warned about his language – Commission noted verbal warnings regarding serious misconduct allegations were insufficient and respondent's workplace behaviour and conduct was managed with a high degree of informality, and that standards of acceptable behaviour and conduct do not appear to have been rigorously applied and enforced – Commission not satisfied applicant engaged in such misconduct and that allegations did not amount to valid reason for dismissal – Commission overall satisfied there was a valid reason for dismissal related to applicant's conduct in relation to failing to notify his absence from 10 March to 17 March 2025, and leaving shift early and without first seeking permission of his supervisor on 17 March 2025 – Commission found applicant was not notified of reasons for dismissal relating to his conduct, nor provided with an opportunity to respond to allegations under ss.387(b) and (c) – Commission satisfied that meeting scheduled for 19 March 2025 was not an opportunity to put allegations to applicant or provide an opportunity to respond to reasons – Commission satisfied that neither the applicant's suspension notice nor the meeting on 19 March 2025 advised the applicant of the respondent's concerns of his conduct, nor provided the applicant with an opportunity to respond to reasons prior to any decision being made regarding his dismissal, which weighed in favour of dismissal being harsh, unjust or unreasonable [*Crozier*] – Commission considered other relevant matters under s.387(h), including whether dismissal was proportionate to gravity of applicant's misconduct – Commission found applicant's poor communication in failing to notify his absence from 10 March to 17 March 2025 constituted misconduct, noting workplace behaviour and conduct at time was managed with a high degree of informality and lack of policy specifying how employees were required to notify of their absence – Commission confirmed applicant's misconduct in leaving shift before its end and without permission on 17 March 2025 – Commission also considered applicant's disciplinary history, as applicant did not have any prior written warnings for performance or conduct concerns, and had only been spoken to about his conduct at work, in respect to his language, but did not amount to a verbal warning – Commission determined dismissal was disproportionate to gravity of misconduct – Commission held dismissal was harsh, unjust or unreasonable due to failure to notify applicant of reason for dismissal, not given opportunity to respond to any reason related to his conduct, and dismissal being disproportionate to gravity of applicant's misconduct – held applicant unfairly dismissed – Commission considered reinstatement appropriate remedy, noting Commission did not make findings of misconduct in respect to allegations of conduct with other staff, and found no evidence reinstatement would have any impact on morale at abattoir – Commission granted order for reinstatement and continuity of employment under s.391 – Commission considered order to restore lost pay appropriate, with further directions to issue.

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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.fcftca.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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