

FWC Bulletin

6 November 2025 Volume 11/25 with selected Decision Summaries for the month ending Friday, 31 October 2025.

Contents

Preparing for a hearing at the Commission	2
First Net Zero Economy Authority application.....	3
Annual Report 2024–25 published.....	4
Decisions of the Fair Work Commission.....	5
Other Fair Work Commission decisions of note	16
Subscription Options.....	23
Websites of Interest	23
Fair Work Commission Addresses	25

Preparing for a hearing at the Commission

3 October 2025

We are pleased to announce the release of our new 'Preparing for a hearing' module in our [Online Learning Portal](#).

This module is for employees and employers planning to represent themselves at a Commission hearing. It is also a valuable training resource for new practitioners appearing before us.

The module covers:

- the hearing process
- procedural fairness
- preparing evidence, witness statements and submissions
- the role of the Commission Member and others at the hearing
- dress code and appropriate behaviour
- presenting evidence, questioning witnesses, and making clear submissions
- what to expect after a hearing.

The module is free to access and contains video case studies, animations, learning checks, templates and a downloadable Guide. Users who log in can also obtain a completion certificate.

The module is the second in our 'Preparing for' series, following the popular 'Preparing for an unfair dismissal conciliation' module released in 2023.

Please feel free to share this information with your colleagues. To keep up to date on when new resources are launched, you can subscribe to our [Learning, tools and resources](#) updates.

Feedback or suggestions? Let us know at onlinelearning@fwc.gov.au.

First Net Zero Economy Authority application

17 October 2025

The Chief Executive Officer of the Net Zero Economy Authority has applied under section 56(1) of the *Net Zero Economy Authority Act 2024* for us to make a community of interest determination. The application relates to the **Torrens Island Power Station B**, scheduled to commence closing in June 2026 through to 30 June 2028.

We will publish information about the application on the new [Torrens Island Power Station B NZEA application \(NZ2025/1\)](#) page on our website.

A community of interest determination, if made, would formally establish an Energy Industry Jobs Plan for the closure of a gas-fired or coal-fired power station. Employers included in a community of interest determination would have certain obligations under the Energy Industry Jobs Plan to support employees to prepare for new jobs.

We have published:

- application
- correspondence
- notice of listing

Subscribe to the [Torrens Island Power Station B NZEA application \(NZ2025/1\) case](#) to receive updates when new information on this case is published.

Annual Report 2024–25 published

31 October 2025

We published our annual report for the 2024–25 financial year following its tabling in the Australian Parliament.

The report is now available from the [Annual Reports](#) page on our website.

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 Friday, 31 October 2025.

- 1** TERMINATION OF EMPLOYMENT – genuine redundancy – s.394, 400, 604 Fair Work Act 2009 – permission to appeal – appeal – Full Bench – appellant commenced employment with respondent in March 2021 as Managing Coordinator of Operations – during 2024, appellant became aware of financial issues affecting operations of respondent, which was behind in making superannuation contributions and taxation payments – voluntary administrator appointed for respondent – voluntary administrator made decision that respondent was not in position to maintain appellant’s employment – appellant issued with termination letter on 23 April 2025 – on 25 April 2025, appellant applied for unfair dismissal remedy – on 6 May 2025, respondent filed response and indicated objection to application that dismissal was a case of genuine redundancy – on 4 August 2025, Commission held hearing in relation to respondent’s genuine redundancy objection – at first instance, Commission issued ex tempore decision at conclusion of hearing with reasons recorded on transcript – Commission found respondent, or administrator, no longer required appellant’s job to be performed by anyone because of changes in operational requirements of enterprise, having regard to its financial position and decisions that had to be made at the relevant time – Commission indicated it was not apparent that appellant was covered by modern award or enterprise agreement, and hence no requirement for respondent to engage in consultations about redundancy under s.389(1)(b) – Commission observed even if modern award did apply to appellant, consultation would not have produced different result – Commission concluded there was no basis upon which to find it would have been reasonable in all circumstances to redeploy appellant – Commission concluded appellant’s dismissal met definition of genuine redundancy – appellant made four grounds of appeal: (1) Commission erred in finding that no modern award applied to her employment; (2) and (3) Commission failed to correctly apply s.389(1)(b) in circumstances in which consultation obligations in the *Social Community, Home Care and Disability Services Industry Award 2010* (SCHADS Award) were not met in stating that, even if consultation had occurred, it may not have changed outcome; (4) Commission denied appellant procedural fairness by failing to acknowledge she was covered by SCHADS Award and respondent had consultation obligations under Award – Full Bench satisfied in public interest for appellant to be granted permission to appeal, since Commission erred in application of s.389(1)(b) and was wrong to find appellant’s dismissal was a case of genuine redundancy – Full Bench considered case of genuine redundancy – Full Bench observed Commission described question of whether appellant’s dismissal was case of genuine redundancy as a ‘jurisdictional objection’, however Full Bench authority has previously made clear, the contention of a respondent to an unfair dismissal application that a dismissal was a case of genuine redundancy is not a matter which goes to jurisdiction of Commission to hear and determine application, it is
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simply a matter Commission must be satisfied in order for person to have been unfairly dismissed [*McKerlie*] – noted fact s.396(d) provides Commission must decide whether dismissal was case of genuine redundancy before considering merits does not mean requirement is jurisdictional and does not require separate hearing be conducted in relation to that matter – Full Bench considered modern award coverage – appellant indicated range of documents that were used before Commission at first instance expressly recorded that parties conducted relationship on basis that SCHADS Award applied to her employment (termination letter, pay slip, Form F3 Employer response, witness statement of administrator and minutes of meeting of creditors) – observed administrator confirmed at appeal hearing there was no dispute between parties that SCHADS Award applied to appellant – modern award applies to an employer and employee if it covers employer and employee, it is in operation and no provision of Act provides, or has effect, that it does not apply – Full Bench satisfied appellant’s role as Managing Coordinator of Operations falls within social and community services employee level 8 classification in SCHADS Award as per her payslips – found Commission was wrong to find there was no requirement for respondent to engage in consultation about redundancy – Full Bench considered whether consultation would have produced a different outcome – observed evidence clear that respondent did not give notice to appellant of decision to restructure its operations, or engage in any discussions in relation to effect of changes on appellant, or provide relevant information to appellant or any representative – found respondent did not comply with clause 8 of SCHADS Award and did not consult at all – Full Bench observed Commission’s conclusions that consultation would not have resulted in different outcome was misunderstanding of s.389(1)(b) – observed s.389(1) is definitional and unless requirements of subsection are met, dismissal is not a case of genuine redundancy – observed requirements in s.389(1) are cumulative – person’s dismissal is genuine redundancy only if person’s employer no longer required person’s job to be performed by anyone because of changes in operational requirements of employer’s enterprise, and employer has complied with any obligation in modern award or enterprise agreement that applied to employment to consult about redundancy – noted if employer has not complied with obligation in modern award or enterprise agreement to consult about redundancy under s.389(1)(b), then dismissal is not a case of genuine redundancy even if s.389(1)(a) is satisfied – Commission’s suggestion that appellant’s position was redundant despite failure to consult, or that failure to comply with consultation obligations in modern award does not weigh against finding that her position was redundant, was misconceived – observed an employer must comply with consultation obligations imposed by modern award or enterprise agreement, if it does not, dismissal is not a case of genuine redundancy – acknowledged Commission’s first instance decision concerned only preliminary question of whether appellant’s dismissal was a case of genuine redundancy and not whether her dismissal was harsh, unjust or unreasonable under s.387 – Full Bench satisfied appellant’s dismissal was not a case of genuine redundancy – Full Bench satisfied appeal should be allowed on bases set out in grounds (1) to (3) and found it unnecessary to address ground (4) in relation to denial of procedural fairness – not necessary to consider whether Commission should have accepted administrator’s claim that redundancy was required for financial reasons, or whether reasonable for appellant to be redeployed, and that dismissal was

unfair because appellant was dismissed whilst on leave as a result of workplace injury, since submissions not directed to any ground in notice of appeal, and the issues raised may be relevant to whether appellant's dismissal was harsh, unjust or unreasonable – Full Bench concluded respondent did not comply with obligations under SCHADS Award to consult about appellant's redundancy for purposes of s.389(1)(b) – appeal allowed – first instance decision quashed – genuine redundancy objection rejected – application remitted to be determined by another Member of Commission.

Appeal by Zaicos against decision in transcript and order of Boyce DP of 4 August 2025 [[PR790335](#)] Re: Tamworth Dementia Respite Service Inc

C2025/8264
Hatcher J
Gibian VP
Wright DP

Sydney

[\[2025\] FWCFB 231](#)
17 October 2025

- 2** CONDITIONS OF EMPLOYMENT – unfair contract term – ss.536JQ, 536ND Fair Work Act 2009 – Full Bench – two questions referred to Full Bench in relation to jurisdiction to review a contract for services on grounds that contract contains one or more unfair contract terms – applicant is a driver and entered into an agreement with respondent, 'Driver Partner Services Agreement (Australia)' (Services Agreement) on 1 September 2024 – provision of services by applicant facilitated through Uber Driver app – on 9 January 2025, applicant filed application under s.536ND of FW Act seeking order granting remedy on basis Services Agreement contains unfair terms – on 23 January 2025, respondent filed response to application and objected on basis of want of jurisdiction on two bases: (1) application did not identify specific clause that is unfair; (2) no term of Services Agreement that applicant claims is unfair, in an employment relationship, relates to 'workplace relations matters' within meaning of s.536JQ – Full Bench to determine two questions: (1) to extent that applicant contends that his services contract with respondent is unfair, because it does not include terms providing for particular matters, is application within jurisdiction of Commission under Part 3A-5 of FW Act? and (2) as to unfair contract terms contended by applicant, would they, in an employment relationship, relate to workplace relations matters within meaning of s.536JQ of FW Act? – respondent contended both questions should be answered in negative and applicant's application should be dismissed for want of jurisdiction, or because not made in accordance with Act, or has no reasonable prospects of success – Transport Workers' Union of Australia (TWU) intervened in proceedings and filed submissions on 25 August 2025 – applicant addressed three unfair contact terms: (1) lack of accountability for platform failures, no explicit clause in Services Agreement covers Uber's responsibility for app failures and lacks clause requiring Uber to ensure its platform functions properly; (2) Uber enforces penalties based on performance metrics that do not account for app malfunctions or extenuating circumstances, disproportionately disadvantaging contractors; (3) Uber can restrict or terminate platform access based on unverified claims, leaving contractors without recourse or due process under clauses 15.2 and 15.3 of Services Agreement – Full Bench observed relevant statutory provisions – s.536NA permits Commission to make order in relation to services contract if satisfied it contains one or more unfair contact terms – observed six key requirements to be considered: (1) order to be made by Commission must

relate to a 'services contract' as specified under s.15H(1); (2) Commission must be satisfied that services contract includes one or more unfair contract terms; (3) unfair contract terms must be terms which, in an employment relationship, would relate to 'workplace relations matters' as defined in s.536JQ in context of s.536NA(1); (4) s.536NB sets out matters that Commission may take into account in determining whether a term of a services contract is an unfair contract term; (5) orders the Commission is able to make if it is satisfied that services contract includes one or more unfair contract terms are set out in s.536NC; (6) s.536NA(2) provides that Commission may only make an order if a person has made an application 'under s.536ND' in relation to services contract – Full Bench considered the two questions to be determined – in relation to question (1), failure of a services contract to include provisions as to make it fair – observed no dispute between parties that Commission cannot make order under s.536NA(1) unless satisfied that relevant services contract includes one or more unfair contract terms – Full Bench observed important to distinguish between jurisdiction of Commission to consider an application made to it and power of Commission to make order in relation to services contract under s.536NA(1) – power for Commission to make an order under s.536NA(1) dependent upon Commission ultimately being satisfied services contract contains one or more unfair contract terms – not sufficient that Commission forms general view that services contract is unfair or point to unfair conduct by a party to services contract – observed s.24(2)(b) of *Australian Consumer Law* and s.12BG(2)(c) of *Australian Securities Investment Commission Act 2001* (Cth) require that in determining that term of a contract is unfair, court must take into account 'the contract as a whole' – Full Bench observed same approach is appropriate in context of Part 3A-5 and necessary to identify a particular term or terms that are unfair – Full Bench satisfied applicant's application may be characterised as one that seeks an order granting remedy on basis that Services Agreement contains unfair terms – applicant identified specific clauses of Services Agreement he claimed are unfair, at least in relation to second and third unfair contract terms identified in application – in relation to first contract term, applicant contended Services Agreement did not hold Uber accountable for ensuring that its platform 'functions properly' – however, applicant did not identify a particular clause subject of complaint, nor did TWU – however, as submitted by TWU, observed contention could possibly be reframed as complaint that clause 3(a) of Services Agreement requires payment of Services Fee in order to obtain access to Uber Driver app without ensuring respondent has obligation to ensure app operates adequately – noted whether this contention would have merit is not matter which must be considered – in relation to second contract term, applicant claimed Services Agreement permits respondent to penalise contractors through metrics such as cancellation rates, even when cancellations occur due to app malfunctions beyond contractor's control under clauses 5.4 and 7.4 – Full Bench satisfied complaint is capable of being characterised as including allegation that Services Agreement contains specific unfair contract terms – in relation to third contract term, applicant submitted Services Agreement allows respondent to impose restrictions on platform access based on accusations even when accusations are unsubstantiated or incorrect under clauses 15.2 and 15.3 – Full Bench satisfied with applicant's claim that clause 15.2 is unfair and type of claim contemplated by Part 3A-5 of FW Act – Full Bench considered question (2), workplace relations matters – observed for power to make order under s.536NA(1) to

arise, it is not necessary that unfair contract term itself directly provides for a 'workplace relations matter' – language indicates it is sufficient that Commission is satisfied services contract contains an unfair contract term that 'relates to' subject matter that falls within definition of 'workplace relations matter' – Full Bench observed it should not express concluded view as to whether terms of Services Agreement identified by applicant are terms in which an employment relationship would relate to workplace relations matters and agreed with respondent that this question might be influenced by evidence – however, given respondent sought orders that application be dismissed, Full Bench found it appropriate to consider whether it was at least arguable that terms identified by applicant relate to workplace relations matters – in relation to first contract term, applicant did not identify a particular term, however Full Bench observed complaint might be reframed to allege unfairness in clause 3(a) of Services Agreement – Full Bench observed such a complaint is distant from being, in an employment relationship, related to a workplace relations matter – possible unfairness alleged by applicant might be described as 'remuneration, allowances or other payments payable to employees' for purposes of s.536JQ(1)(a), since interruptions in platform functioning affect applicant's capacity to earn monies through performance of work – observed answer to question likely to be affected by evidence and not possible for Full Bench to form view about matter, but arguable – in relation to second contract term, satisfied applicant raised arguable basis upon which Commission might be satisfied that terms would, in an employment relationship, relate to a workplace relations matter – clause 7.4 specifically permits respondent to withhold payment of Transportation Fee in certain circumstances, strongly arguable this provision in an employment relationship would relate to 'remuneration, allowances or other amounts payable to employees' under s.536JQ(1)(a) – in relation to third contract term, Full Bench acknowledged that submission ignores that s.536NA(1) requires consideration of whether a term of a services contract would relate to a workplace relations matter 'in an employment relationship' – clause 15.2 permits respondent to terminate Services Agreement or restrict or remove access to Uber Driver app if there has been a material breach of Services Agreement, arguable that this provision, in an employment relationship, would relate to 'enforcing or terminating contracts of employment' for purposes of s.536JQ(1)(d) – Full Bench concluded in relation to question (1), an application under s.536ND(1) is within jurisdiction of Commission, if applicant sought an order granting a remedy 'on basis that the services contract contains a term that is unfair' – Commission cannot make an order under s.536NA(1) purely on basis that a services contract is unfair, because it does not include a particular provision – necessary for Commission to identify a term or terms which are unfair contract terms – whether a particular term is unfair must be assessed by reference to whole of services contract – Full Bench indicated question (2) cannot be answered at this stage, and no basis application should be dismissed for want of jurisdiction, or because application not made in accordance with Act, or has no reasonable prospects of success – application to be listed for further programming.

Thongkhamchanh v Rasier Pacific P/L

UC2025/1
Hatcher J
Gibian VP

Sydney

[\[2025\] FWCFB 247](#)
31 October 2025

3 CONDITIONS OF EMPLOYMENT – flexible working arrangement – ss.65B, 65C Fair Work Act 2009 – permission to appeal – appeal – Full Bench – appellant sought appeal of Commission’s decision regarding flexible working arrangement (FWA) under s.65 of FW Act – first instance decision made following arbitration and dispute about appellant’s refusal to grant FWA to its respondent – respondent had requested for flexibility regarding start and finish times on Thursdays to meet parental responsibilities associated with school pickups and activities – appellant refused request citing reasonable business grounds and fact that enterprise agreement provided no mechanism for type of individual roster change sought by respondent – at first instance, Commission made order pursuant to s.65C that grounds of appellant’s refusal were not taken to be reasonable business grounds, requiring appellant to grant request – Australian Industry Group (AIG) sought leave to be heard by Full Bench in appeal, made submissions in support of appellant’s contention of error by Commission in relation to enterprise agreements and FWA’s – Full Bench listed background of matter – respondent a longtime employee of appellant, currently employed in Team Leader position – respondent a parent of school aged children since 2006, his wife a co-ordinator of Transient Ischaemic Attack Clinic at La Trobe Regional Hospital – due to no other carers and wife’s work commitments, respondent responsible for picking up children from school on Thursdays – respondent had reached agreement with appellant that permitted alteration of start times on Thursday, commencing in 2011, and reached later agreement in 2016 at commencement of four-day working week allowing him to finish work at 3.30pm – in July 2024, appellant sent email to employees effecting cessation of individual roster variations, under proviso of compliance with enterprise agreement – following this, respondent sent request via email to appellant for FWA; swapping a 10 hour shift on Thursday with an 8 hour day, and commencing work 30 minutes earlier on Thursday – appellant subsequently refused request, citing reasonable business grounds and lack of enterprise agreement mechanism for changing of rosters by individual agreement – refusal letter proposed alternate arrangement with use of make-up pay arrangement which was not accepted by respondent – Full Bench noted clause 2.3 of Agreement provides National Employment Standards (NES) applies at all times and the more beneficial term shall apply in event of inconsistency – hours of work provided in clause 18 – dispute dealt by Commission through conference and then arbitration; Commission issued decision and order requiring appellant to grant request, reasoning that provisions relating to FWA’s contained in NES section of Act, and include changes to hours of work, start finish times and patterns of work – s.56 of FW Act additionally provides that a term of an agreement has no effect to extent it contravenes s.55 – Commission at first instance considered that mere inconsistency between requested FWA’s and terms of Agreement could not be relied upon as reasonable business grounds for refusing request under s.65A – in relation to order made under s.65C, Commission had regard to explanatory memorandum in respect of the FWA amendments to consider s.65C(2A) did not prohibit making of order, with s.65C(2A) directed to restricting orders inconsistent with terms providing for pay, penalty rates or like conditions applying to patterns of work – Commission cited clause 2.3 of Agreement together with s.55 to operate such that express limitation in clause 18 of Agreement

overridden – Full Bench considered whether appeal under s.604(1), by way of rehearing, in public interest – appeal raised two issues of importance and general application: first, proper construction of Division 4, Part 2-2, in particular s.65A and nature of limitation imposed by s.65C(2A) on Commission’s power to make order under s.65(1)(f), and second, relationship between NES and terms of an Agreement having regard to Act, particularly ss.55, 56 and 61 – Full Bench permitted Ai Group to make submissions in matter, as peak council for employer organisations with proper representative interest in matter – appellant advanced three grounds of appeal: (1) that Commission erred in law by concluding proposed FWA’s inconsistency with Agreement not reasonable business grounds for refusal; (2) that Commission erred in law by concluding clause 18 of Agreement limited respondent’s entitlement to legislative minimum standard and was of no effect by operation of s.55 and clause 2.3; (3) and that Commission erred in law by concluding s.65C(2A)(b) did not prevent making of order inconsistent with clause 18 – Full Bench observed that in case of discretionary decision at first instance, appellate intervention limited to circumstances where decision maker acted upon wrong principle, allowed irrelevant matters to affect decision; mistook facts, failed to take into account material consideration or made unreasonable or plainly unjust decision [House] – Full Bench observed that if established, errors alleged by appellant would be sufficient to warrant appellate intervention – for convenience, Full Bench considered grounds (1) and (2) together (inconsistency between agreement and NES) – appellant contended ‘reasonable business grounds’ in s.65A(3)(d) must include avoiding exposure to civil penalties for contravening Agreement – Full Bench noted argument premised on notion that terms of Agreement can affect meaning of ‘reasonable business grounds’ to detriment of employee, which if correct would permit or compel employer to decline request that may otherwise not be declined under reasonable business grounds – Full Bench considered rights conferred by NES and relationship by NES and enterprise agreement – noted most relevantly, s.55(1) provides term of Agreement must not exclude NES – Division 4, part of NES, confers right on employee to request in writing change in working arrangement for various reasons, and s.65A imposes certain obligations on employer to respond – ‘reasonable business grounds’ identified without limitation in s.65(5) – Full Bench discussed history of amendments to FWA provisions, noting 2023 amendments created more rigorous obligations in NES on employers responding to requests, and conferred power on Commission to arbitrate and make orders resolving disputes about FWA requests – Full Bench considered provisions relating to Agreements, noting s.202 requires enterprise agreements to include ‘flexibility term’ enabling employee and employer to agree to arrangement (IFA) varying terms of Agreement to meet genuine needs of either – if IFA made, taken to be term of Agreement – Full Bench considered proper construction of provisions, with regard to context and purpose of provisions [SZTAL] and basis that provisions intended to give effect to harmonious goals [Project Blue Sky] – Full Bench considered purposive meaning of ‘reasonable business grounds’, citing explanatory memorandum of inserting amendments, and natural and ordinary meaning in dictionary – Full Bench observed no contention from appellant that granting request would cause operational or practical difficulties, that it would be too costly, or it would be impractical to accommodate, noting respondent had been working in accordance with arrangement from 2011 to 2024 – appellant contended reasonable business grounds based on

assertion that granting request would contravene Agreement and 'reasonable business grounds' must include avoiding exposure to civil penalties for contravening Agreement – Full Bench turned to interaction between NES and enterprise agreements – Full Bench cited clear legislative purpose of s.61(1) as providing the NES to be 'minimum standards...which cannot be displaced' – provisions in s.55(2)-(7) reveal intention that Agreement cannot affect operation of the NES or detrimentally affect operation of employee's right in NES, except as permitted by those subsections – Full Bench questioned whether clause 18 provides reasonable business grounds to displace or exclude, observed contention of appellant that s.65 merely confers entitlement to make a request, and clause 18 would only displace s.65 if it prevented employee making request – Full Bench found this contention too narrow a characterisation of s.65, which when read with s.65A, would be excluded by term of Agreement if employer refuses to grant request for FWA for reasons other than reasonable business grounds – consequently, Full Bench held appellant would not contravene Agreement by granting respondent's FWA request – Full Bench observed citing contravention of Agreement as 'reasonable business grounds' would be inconsistent with statutory scheme of NES – Full Bench turned to further matters raised by appellant – Full Bench disagreed with contention that approach of Commission at first instance inconsistent with scheme in ss.202 and 203, which require an enterprise agreement to contain flexibility terms providing for making of IFA's; Full Bench drew distinction between FWA request scheme as part of NES, whereas ss.202 and 203 directed to making of IFA's by agreement to 'meet genuine needs of employer and employee' – Full Bench considered appellant contention that first instance construction risks sidelining interests of employees who bargained for conditions such as span of hours or roster pattern in Agreement, but was not persuaded contention had substance – Full Bench also rejected final contention of appellant, that existence of s.65C(2A)(b) contemplates that term of Agreement or Award could limit range of permissible flexible work arrangements – Full Bench construed s.65C(2A)(b) to constrain Commission in making orders when arbitrating a dispute under s.65C and not scope of employee's request for FWA, or circumstances where request may be refused – Full Bench rejected appeal grounds (1) and (2) – Full Bench turned to appeal ground (3), in which appellant alleged Commission erred considering the interaction between clause 18 and NES, or by failing to find reasonable business grounds for refusing request on basis that request was inconsistent with Agreement – Full Bench listed types of orders that may be made under s.65C, and noted Commission's order had two substantive aspects: paragraph A, providing grounds for refusing request for FWA taken not to be reasonable business grounds, and paragraph B, requiring appellant to grant request – appellant contended paragraph B inconsistent with clauses 18.2 and 18.5 of Agreement – Full Bench noted while s.65C(2A) prohibits making order inconsistent with term of Agreement, term in question detrimentally constrained right conferred by NES, so it had no operative effect – to extent that clause 18 of Agreement required refusal of FWA request without reasonable business grounds, it was of no effect by operation of ss.55(1), 56 and 61(1) – Full Bench rejected ground (3) of appeal – Full Bench granted permission to appeal, but dismissed appeal.

- 4** REGISTERED ORGANISATIONS – registration – s.18(b) Fair Work (Registered Organisations) Act 2009; s.587(1)(c) Fair Work Act 2009 – United Nurses of Australia (UNA) applied for registration under s.18(b) of RO Act – application opposed by Australian Nursing and Midwifery Federation (ANMF), Health Services Union (HSU), the Australian Workers’ Union (AWU), the United Workers’ Union (UWU) and the Community and Public Sector Union (CPSU) (the Unions) on the basis it had no reasonable prospects of success, because the material filed did not demonstrate facts required to obtain registration – Commission observed appropriate question is not whether UNA had proven its entitlement to registration but instead whether, looking forward, there is a real prospect that UNA will be able to satisfy the requirements for registration – Commission noted fact UNA had been directed to file material in support of its application was a relevant consideration – ANMF (with support of the other Unions) submitted UNA not a federally registrable employee association (s.18B(1) RO Act) and unable to apply – submitted no evidence UNA was ever formed as an association – Commission considered requirements for the formation of unincorporated association: ‘a group of people with a common purpose come together to form a body to achieve that purpose...must have a sufficient degree of organisation and coherence and criteria or method for determining membership’ [*Kibby*] – Commission found UNA not formed in a manner that permitted it to operate as a coherent body [*Society of Australian Surgeons*] – apparent on evidence that UNA had no members within the meaning of its purported rules (e.g. rules required application for membership on a specified form that did not appear to exist; required fees to be paid and evidence was that no such fees were received) – Commission noted although list of members was filed by UNA it was not satisfied any of those persons were in fact members of the association – found no functional organs of the UNA and no persons properly holding office – observed no evidence UNA had engaged in activities beyond two meeting agendas filed with Commission – did not demonstrate sufficient degree of organisation and continuity to constitute an association capable of making an application for registration – ANMF submitted if UNA was a federally registrable employee association it was not compliant with other requirements: it did not have at least 50 members who are employees (s.19(1)(d)), did not have rules as required by the RO Act (s.19(1)(f)), a majority of members have not passed a resolution in support of registration in accordance with the UNA’s rules (s.19(1)(h)) – Commission found as to s.19(1)(d), no reasonable prospect of UNA being able to demonstrate it had 50 members who are employees – as to s.19(1)(f), that no confidence that UNA currently had capacity or competence to formulate and adopt rules which comply with RO Act and therefore no real prospect it would do so at present even considering capacity for applicant to amend rules during registration process – as to s.19(1)(h), that there is no reasonable prospect of success not only because of the lack of evidence of such a meeting being conducted, but the Commission’s finding that no persons were properly elected to be able to constitute or
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conduct such a meeting – AWU additionally submitted that Commission should not be satisfied that UNA would conduct its affairs in a way that meets FW Act and RO Act obligations (19(1)(e)) or that registration would further Parliament’s intention in enacting the RO Act and object of FW Act (19(1)(i)) – Commission noted some concerns with conduct of UNA in proceedings but unable to make definitive finding as to these aspects due to preliminary nature of hearing – Commission commented that it was apparent UNA misunderstood application process in that it sought registration prior to formally enrolling members, establishing decision-making bodies and instituting rules compliant with RO Act – RO Act requires that an association must have been established and exist to be eligible to apply for registration – UNA was not formed in a manner that allows it to apply for registration and this deficiency cannot be cured – Commission satisfied application should be dismissed under s.587(1)(c) – Commission found UNA application had no reasonable prospects of success – application dismissed.

Application by United Nurses of Australia

D2024/8
Gibian VP

Sydney

[\[2025\] FWC 3101](#)
16 October 2025

- 5** CONDITIONS OF EMPLOYMENT – flexible working arrangement – ss.65A, 65B, 65C Fair Work Act 2009 – applicant employed with respondent since 2002 and currently works part-time in Mortgage Operations Team – on 17 January 2025, applicant made flexible working arrangement (FWA) request to work remotely from her home in Wilton NSW to accommodate school drop offs and pick ups for her two six year old children – applicant’s partner is self employed and has been working at variable locations in Sydney and interstate since early 2025, and has limited capacity to assist with school drop offs and pick ups due to his work commitments – applicant had history of working remotely since early 2017 in ‘Change Team’, where she attended corporate office one day per week, and in mid-2018 transferred to ‘Discharges Team’ where she worked remotely full time until she went on maternity leave in February 2019 – upon return from maternity leave in April 2021, applicant worked remotely full time until August 2022, when required to attend Kogarah office one day per month pursuant to arrangement entered into with respondent – applicant submitted it takes her approximately two hours to travel from her children’s school to Kogarah or Parramatta corporate offices – on 18 March 2025, respondent refused applicant’s FWA request, citing its Hybrid Working Policy which required two days in office attendance – applicant proposed a compromise to work from Bowral branch two days per week rather than attend closest corporate office at Kogarah, however respondent rejected proposal – applicant was previously granted approval to work at Bowral branch two days per week in December 2024, however decision was reversed by respondent in January 2025 – respondent submitted there was a genuine and reasonable business need for applicant to attend corporate office at least two days per week and reasonable business grounds for refusing FWA request – respondent submitted orders proposed by applicant were inconsistent with terms of *Westpac Group Enterprise Agreement 2025* (Agreement) – on 19 March 2025, Senior Operations Manager sent applicant email which referred to respondent’s remote working policy and indicated ‘working from home is no substitution for childcare’ and arrangements for
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working remotely may change 'at any time' at respondent's discretion – applicant submitted there was no reasonable business grounds for refusing request – respondent conceded it did not provide applicant written response to FWA request within 21 days under s.65A(1) – Commission considered ss.65A and 65C of FW Act – observed respondent did not meet requirements of s.65A(3)(a) in relation to discussing request with employee and genuinely trying to reach agreement with applicant about making changes to working arrangements to accommodate circumstances – acknowledged respondent and applicant had not reached agreement under s.65(3)(b) and written refusal by respondent made no mention of respondent having regard to consequences of refusal for applicant under s.65(3)(c) – noted these failures by respondent should be taken into account in exercise of Commission's discretion under s.65C – Commission considered reasonable business grounds – Commission satisfied evidence did not establish there were reasonable business grounds for refusal of FWA request – found respondent's concerns about loss of productivity, reduced collaboration and negative impact on customer service unsubstantiated – found applicant successfully worked remotely for years, her performance was consistently high, collaboration occurred mostly online due to team dispersion and no quantifiable loss or impact demonstrated – Commission considered fairness between parties per s.65C(2) – Commission accepted present circumstances arose in part and within usual economic constraints that apply to choices that every person makes, because applicant decided to move to her present location and send her children to school of her choosing – found evidence did not demonstrate applicant obtained any assurances from respondent that it would accommodate applicant's choice of residence indefinitely through remote working arrangements – Commission did not think evidence supported view that applicant's partner could realistically play greater role in arrangements for before and after school care, since partner's work is done in store at various locations, he is unable to work remotely, leaves home at 4.30am and does not return home until 6 or 6.30pm, and works six days a week including Sundays – took into account additional costs for applicant for before and after school care – Commission acknowledged majority of applicant's Team interactions occur online and Team functions 'very effectively remotely' across various locations – observed consequences of not making an order to be seriously prejudicial for applicant and her family – found fairness considerations weighed in favour of making order and minimal impact on respondent – Commission considered inconsistency with Agreement under s.65C(2A) – respondent submitted the order sought by applicant would be inconsistent with Agreement and that s.65C(2A)(b) prevented making of such an order under s.65C(1)(f) – Commission rejected respondent's argument that s.65C(2A) restricts capacity of Commission to make an order other than one which is consistent with terms of clause 19 of Agreement (hybrid/home based work) – noted even if clause 19 applied to full extent of its terms and is not rendered inoperative by ss.55, 56 and 61(1) in way in which relevant clause in *Paper Australia* was, there is simply no inconsistency between terms of Agreement and order sought – Commission did not consider that order that respondent grants FWA request under s.65C(1)(f)(i) would be inconsistent with terms of Agreement for purposes of s.65C(2A)(b) – satisfied no reasonable prospect of dispute being resolved without making of order under s.65C(1)(f)(i) – order granted.

Other Fair Work Commission decisions of note

Application by Construction, Forestry and Maritime Employees Union for an entry permit for McQuaid

RIGHT OF ENTRY – application for permit – ss.512, 513 Fair Work Act 2009 – applicant (CFMEU) lodged request for new right of entry permit for Mr Gerard Anthony McQuaid – Mr McQuaid employed as organiser for Construction, Forestry and Maritime Employees Union (CFMEU) since July 2015 – in 2019, Mr McQuaid was elected as delegate to Divisional Branch Council and as delegate to Divisional Conference – as a result of *Fair Work (Registered Organisations) (CFMEU Construction and General Division Administration) Determination 2024*, offices held by Mr McQuaid were declared vacant – McQuaid deemed ‘removed person’ under s.177A of FW Act and s.323MA of RO Act – following CFMEU being placed in administration in August 2024, Mr McQuaid was appointed as coordinator by National Secretary of CFMEU and the Divisional Secretary of the Construction and General Division, which was approved by administrator of CFMEU – Mr McQuaid has remained employed by CFMEU since that time – Mr McQuaid held right of entry permit since 2016 and continued to hold permit after commencement of administration of CFMEU – Commission considered whether Mr McQuaid is a ‘fit and proper person’ to hold an entry permit – observed whether ‘removed person’ status relevant to finding Mr McQuaid a ‘fit and proper person’ to hold permit under s.512 – CFMEU submitted status not attributable to any conduct of Mr McQuaid and being ‘removed person’ was not relevant as to whether he is considered a ‘fit and proper person’ – Commission considered permit qualifications matters in s.513(1) to determine whether Mr McQuaid is a ‘fit and proper person’ – observed no statutory prescription of weight attached to each matter, is for decision-maker to determine – Mr McQuaid previously granted entry permit with condition that he must not exercise certain rights until he has completed appropriate training and filed a copy of training completion certificate with Commission – CFMEU confirmed Mr McQuaid did not undertake further right of entry training – Commission declared same condition be imposed but otherwise satisfied Mr McQuaid had received necessary training about rights and responsibilities of permit holder under s.513(1)(a) – Commission considered offences and penalties under s.513(1)(b)-(g) – Commission satisfied Mr McQuaid was never convicted of offences relating to industrial law, fraud, dishonesty, intentional use of violence against another person, or damage to property, nor been subject of penalty under FW Act or any other industrial law – Commission satisfied Mr McQuaid never had permit revoked, suspended or made subject to conditions, nor been disqualified from exercising or applying for right of entry – Commission stated findings weigh in favour of Mr McQuaid being a ‘fit and proper person’ – Commission noted number of ‘removed persons’ employed by CFMEU were issued new entry permits after commencement of administration, however not clear if status was put forward in applications – Commission observed that fact an individual is a ‘removed person’ for purposes of FW Act and RO Act could rationally bear upon whether official is a ‘fit and proper’ person to hold a permit, such that it is a matter which should be disclosed on a permit application and must be considered by Commission – Commission stated it is Parliament’s view that restrictions on activities of ‘removed persons’ are necessary to address serious allegations made against Construction and General Division of CFMEU – Commission stated restrictions and status of ‘removed persons’ may be relevant to determining whether an individual is a ‘fit and proper person’, however whether fact is significant should be considered in circumstances – Mr McQuaid stated he was not aware of any allegations of wrongdoing or of any investigation into misconduct – Commission accepted this – Commission found Mr McQuaid’s status as ‘removed person’ did not weigh significantly against finding he was a ‘fit and proper person’ to hold an entry permit with a condition – condition stated Mr McQuaid must not exercise rights under

Subdivision AA of Division 2 of Part 3-4 of Act until he has completed appropriate training and filed a copy of training completion with Commission – application for entry permit to Mr McQuaid granted.

RE2025/905
Gibian VP

Sydney

[\[2025\] FWC 3196](#)
24 October 2025

Mansoor v Rasier Pacific P/L

CONDITIONS OF EMPLOYMENT – unfair deactivation – ss.536LH, 536LU Fair Work Act 2009 – applicant performed Uber Driver Partner work from 19 February 2016 for approximately 9 years under applicable services agreement with respondent using Uber Driver Platform (Platform) – services agreement required compliance with conduct requirements under Community Guidelines – serious misconduct allegation made against applicant involving inappropriate sexual behaviour – applicant deactivated from Platform on 13 June 2025 – applicant applied for unfair deactivation remedy and vehemently denied inappropriate sexual behaviour allegations – respondent raised jurisdictional objection that Digital Labour Platform Deactivation Code (Code) does not apply because of applicant’s alleged serious misconduct – Commission considered whether applicant’s deactivation was consistent with Code – found respondent was not required to provide warning for having reasonable grounds to believe alleged misconduct engaged in by applicant presented health and safety risk to riders – found respondent failed to comply with ss.14(5)(b) and 14(6) of Code as Final Deactivation Notice issued failed to specify reason for termination – considered whether there was a valid reason for applicant’s deactivation under s.536LH(1)(a) – Commission considered ‘*Briginshaw* standard’ – not satisfied applicant engaged in alleged inappropriate sexual behaviour towards complainant, as no direct witness evidence put forward by respondent to rebut applicant’s denial – observed rider’s complaint was hearsay evidence and provided a fragile base upon which to find applicant engaged in the alleged conduct – not satisfied applicant deactivated for serious misconduct within meaning of reg. 1.07 of *Fair Work Regulations 2009* (Cth) – found no probative evidence brought by respondent regarding previous alleged misconduct allegations and considered prior conduct a neutral consideration given passage of time – not satisfied applicant engaged in pattern of repeated and ongoing misconduct that would establish a valid reason for deactivation – not satisfied there was a valid reason for applicant’s deactivation – found respondent failed to comply with mandatory requirements in ss.11 and 14 of Code by failing to specify nature of misconduct and not including sufficient information enabling applicant to properly respond – held applicant unfairly deactivated within meaning of s.536LF – issued order for respondent to reinstate applicant’s access to Platform within 7 days and for respondent to pay applicant \$6,073.23 less taxation to applicant for lost earnings within 14 days.

UDE2025/141
Masson DP

Melbourne

[\[2025\] FWC 3111](#)
17 October 2025

Edwards v Inspired Building P/L

TERMINATION OF EMPLOYMENT – genuine redundancy – compensation – ss.117, 389, 394 Fair Work Act 2009 – applicant employed as a supervisor for respondent’s construction business for 8 years and 7 months – applicant went on annual leave – upon return, respondent advised applicant by phone their company was entering liquidation – applicant told to contact Fair Entitlements Guarantee (FEG) for payment in lieu of notice – FEG advised applicant he required redundancy letter to be eligible for payment – applicant then received an email from respondent confirming he was being made redundant, but did not receive FEG payment – applicant lodged unfair dismissal application – respondent raised jurisdictional objection asserting applicant was made genuinely redundant and ineligible for unfair dismissal remedy under s.396(d) – Commission considered whether the dismissal was a case of genuine

redundancy under s.389 – observed its role is not to assess the reasonableness of the redundancy, rather it is to decide whether the redundancy was an operational requirement [*Helensburgh*] – found under s.389(1)(a) that the redundancy was based on operational requirements as there was no further work available – assessed under s.389(1)(b) whether the respondent complied with consultation obligations regarding redundancy in the *Building and Construction General On-site Award 2020* (Award) – clause 37 of Award sets out consultation obligations that arise in the event an employer makes a ‘definite decision’ regarding major workplace changes – Commission observed ‘definite decision’ includes both a decision proactively made and one borne of financial necessity [*Short*] – found respondent made ‘definite decision’ to change workplace composition and cease trading as a result of financial difficulties, including risk of insolvency – therefore consultation obligations in the Award apply – respondent contended it attempted to call applicant to advise of redundancy prior to dismissal – Commission found applicant not obliged to answer phone during period of leave – found applicant not consulted regarding changes to the business including likelihood it would cease trading, nor advised prior to being made redundant that redundancy was a possibility – found applicant was not made genuinely redundant – considered whether dismissal was harsh, unjust or unreasonable – found s.387(a)-(g) neutral factors – considered under s.387(h) whether there were any other relevant matters – observed while a failure to follow consultation obligations of a relevant Award does not ensure a dismissal is unfair, it may contribute overall to a finding in favour of unfairness [*English*] – found abrupt nature of dismissal, failure of respondent to provide notice of impending changes and provide payment in accordance with s.117 meant dismissal was harsh and unfair – held applicant unfairly dismissed – compensation remedy considered [*Sprigg*] – respondent’s liquidation process delayed with company yet to be wound up – Commission noted applicant ineligible for FEG payment while respondent’s business remains operational – respondent ordered to pay applicant in lieu of notice in addition to two weeks’ compensation amounting to two weeks’ pay at \$2,859.61 per week, plus superannuation, minus applicable taxation – Commission to hear application from the respondent regarding payment in instalments due to issue of respondent’s viability.

U2025/8718

Lake DP

Brisbane

[\[2025\] FWC 2879](#)

3 October 2025

Singha v Metal Manufactures P/L

TERMINATION OF EMPLOYMENT – costs – ss.394, 400A, 611 Fair Work Act 2009 – on 11 June 2025, Commission issued decision ([\[2025\] FWC 1574](#)) which found applicant was above the high income threshold and application was dismissed – on 25 June 2025, employer applied for costs against applicant pursuant to ss.400A and 611 – Commission cited previous interpretations and applications of s.611 [*Church; Hansen; Mitford Investments; Baker; Keep; Carter; Macushla*] and authority on operation of s.400A [*Gugiatti*] – employer contended that applicant was not a person protected from unfair dismissal due to annual earnings exceeding high income threshold – applicant did not dispute that his annual rate of earnings at the time of dismissal (\$200,000) was higher than the high income threshold (\$175,000) – employer contended applicant failed to discontinue application despite being advised by Commission that high income threshold applied to him, which was unreasonable – Commission noted applicant made various submissions however these largely did not address the issue of the costs application nor engage with the points raised by the employer – in support of its arguments the applicant relied upon incomplete citations and two case law references which did not exist – applicant confirmed he utilised AI in preparing his material – Commission found it did not need to make findings whether application was vexatious given the findings – Commission satisfied employer had established applicant acted unreasonably in not discontinuing application, as it should have been reasonably apparent to applicant that his application had no reasonable prospects of success as it was jurisdictionally barred and ‘doomed to fail’ given the high income threshold – Commission satisfied applicant’s unreasonable actions

caused employer to incur costs on and from 10 May 2025 after the applicant was advised by the Commission on 28 April and 9 May 2025 regarding the high income threshold – Commission reviewed itemised 36 cost items plus counsel’s fees at a total amount of \$18,231 – Commission exercised discretion under s.403 and reg 3.08 of the *Fair Work Regulations 2009* – Commission granted costs under s.611 for the amount of \$7,869 payable within 21 days by applicant to employer.

U2025/2703

[\[2025\] FWC 2817](#)

Boyce DP

Sydney

8 October 2025

Aljobouri v Cosmetique Cosmetic Clinics (Services) P/L

TERMINATION OF EMPLOYMENT – high income threshold – ss.394, 382 Fair Work Act 2009 – applicant filed unfair dismissal claim in respect of role as General Manager – respondent objected on basis that applicant’s annual earnings were above high-income threshold (\$175,000) – applicant was engaged as General Manager on salary of less than \$175,000, although was simultaneously engaged by respondent pursuant to a ‘Contractor Agreement’ (CA) – respondent claimed that CA was an extension of applicant’s annual earnings – Commission considered whether CA was contract for services or a contract of service – respondent’s evidence was that CA had effect of appointing applicant as a Director and Chairperson – responsibilities were linked to applicant’s existing employment obligations, however were provided under a CA for ‘sector-standard’ governance reasons – appointments arising from CA were conditional on applicant’s employment – respondent claimed applicant’s functions pursuant to CA complemented and were concurrent with employment duties – respondent submitted that two contracts were consistent with governance and legal practice, roles and responsibilities between the two were intertwined, applicant considered contractor fees part of her overall remuneration, and CA was conditional on employment – respondent submitted applicant was providing CA services as an employee rather than independent contractor, performing work subject to control by respondent, and that employment and CA tasks could not be separated – applicant indicated she was told that for a pay increase she would have to take on roles outside of existing role, and was offered CA role following this – applicant understood duties as separate and distinct from employment – applicant only invoiced for work performed outside of General Manager duties – CA payments were contingent and discretionary – respondent sought to recover CA payments separately to unrecoverable wages – applicant submitted Prospectus terms reinforced distinction between salaried and CA role – Commission found applicant was already employed as General Manager for respondent and was not an independent business contracting services with the respondent – observed not plausible to say applicant was running her own independent business for her own purposes, since she provided no tools, incurred no business expenses, created no goodwill, and was not free to delegate work to others – found applicant was limited to providing services to respondent – Commission found CA was an employment arrangement – observed irony in respondent having proposed and promoted CA model as an independent contract and now being beneficiary of finding that it was in fact an employment relationship – Commission considered how to view employment arrangements arising from CA – respondent submitted that total earnings across both contracts should be aggregated as roles were ‘inseparably linked’ – role structure was continuous and indivisible [*Lacson*] – applicant submitted that contracts were deliberately drafted separately for a clear purpose – Commission found roles were separate and distinct [*Lacson; Kroeger*] – Commission’s observed dual employment, where employee has two separate and distinct contracts of employment with one employer, can operate under Australian employment law [*Lacson; Kroeger*] – found applicant’s two roles can be clearly distinguished – found at least one occasion where applicant was not paid for CA role – observed roles did not materialise at the same time – Commission could not countenance respondent’s proposition that a document stating it did not create an employment relationship should now be regarded as having created an integrated one – Commission considered whether applicant could make an unfair dismissal application for one role – acknowledged two distinct instances of employment should remain separate for purpose of unfair dismissal – observed separate instances of

employment have separate employment relationships, whereby one relationship can survive the ending of the other [*Lacson*] – Commission held CA role held by applicant was sufficiently distinct and classified as an employment relationship – held annual earnings of General Manager role was below high-income threshold – jurisdictional objection dismissed – matter to be programmed for merits hearing.

U2025/5602
O'Keeffe DP

Perth

[\[2025\] FWC 2987](#)
7 October 2025

Balhara v EZYDental Australia P/L

GENERAL PROTECTIONS – contractor or employee – ss.15AA, 365, 386 Fair Work Act 2009 – applicant filed general protections application after being dismissed by respondent – respondent made jurisdictional objection that applicant was not an employee – Commission considered whether applicant was an employee of respondent and considered multifactorial test [*Jiang Shen Cai*] – applicant engaged on 25 November 2024 as Practice Manager for respondent's dental practice – applicant had worked at the same studio where a previous dental clinic (SKBTB) owned by his sister operated – applicant's sister sold studio to respondent – applicant and his sister had shared business connections with respondent – applicant's sister recommended applicant be engaged as Practice Manager – during November 2024, parties negotiated a contract – applicant prepared a contract of employment based on previous templates used by SKBTB – draft contract contained terms such as 'employer' referring to respondent and employee as applicant – other terms such as 'employed', 'employment', and 'national employment standards' were also used – contract also made provisions for various conditions including paid carer's leave, annual leave and long service leave – contract included express provisions regarding termination of employment and redundancy – respondent arranged for applicant to be remunerated based on provision of a fortnightly invoice provided by applicant – respondent acknowledged he had not read draft contract before signing it – Commission found applicant was engaged as Practice Manager – applicant undertook 'front desk' tasks such as managing patient plans, tracking laboratory work and sterilisation and running marketing for respondent – applicant's engagement was terminated on 10 July 2025 – Commission found applicant was an employee – reached view after considering totality of relationship between the parties, including terms of contract and how contract was performed in practice – Commission found various factors to be indicative of employment relationship – (1) applicant was not in the business of providing practice management services to other dental practices and had no business interest in respondent – respondent attempted to demonstrate applicant was not regularly in attendance at work – applicant denied respondent's allegations and stated he had taken approved leave for a period of time to explain his absence – respondent's questions were found to be an attempt to demonstrate applicant did not regularly work at studio – Commission observed it was not necessary to resolve any difference between parties on such matters – (2) found terms in contract such as 'employee, 'employer' and 'employment' – (3) respondent had express power to direct applicant in performance of his duties – (4) contract did not allow for and applicant did not in practice delegate his work to third parties – (5) applicant did not create any goodwill or saleable assets of his own – Commission acknowledged remuneration by periodic payments via an invoice was indicative of an independent contractor relationship – however, noted respondent provided applicant with template form for invoices which ameliorated the force of respondent's contention that invoices were indicative of independent contracting – Commission weighed up the various factors and concluded applicant was an employee of respondent – ordered respondent's jurisdictional objection be dismissed and matter proceed to conference.

C2025/7442
Farouque DP

Melbourne

[\[2025\] FWC 3105](#)
16 October 2025

Sumal v RACQ Operations P/L and Ors

GENERAL PROTECTIONS – extension of time – representative error – ss.365, 366 Fair Work Act 2009 – applicant’s employment was terminated on 23 July 2025 – applicant lodged unfair dismissal application on 14 August 2025 – application filed 1 day outside of statutory timeframe – applicant submitted representative error as reason application was filed outside timeframe – on 4 August 2025, applicant contacted representative and formally engaged them on 5 August 2025 – applicant provided instructions to representative on 8 August 2025 and provided document and further instructions on 11 August 2025 – applicant sought an update on application twice on 12 August 2025 – legal practitioner returned to Australia on 14 August 2025, and provided draft application to applicant – application filed on 14 August 2025, one day late – Commission considered whether exceptional circumstances existed in order to justify extension of time in filing application [*Nulty*] – Commission found applicant took diligent steps to engage legal practitioner and followed up on status of application on several instances – found applicant blameless and did not contribute to delay – acknowledged explanation for delay uncontroversial – legal practitioner set calendar event incorrectly calculating 21-day timeframe – found reason for delay favoured granting of extension – observed applicant took steps to dispute dismissal – respondent argued applicant took steps to dispute reasons, not dismissal itself – applicant argued that she expressed at an early stage that she disputed reasons for dismissal – found applicant took steps to dispute dismissal by querying contents of termination letter and consulting with representative promptly after termination, which favoured extension of time – Commission satisfied exceptional circumstances existed – extension of time granted – matter to proceed to conference.

C2025/8080
Simpson C

Brisbane

[\[2025\] FWC 2946](#)
2 October 2025

Morgan v Kelly Partners Group Holdings Limited

TERMINATION OF EMPLOYMENT – extension of time – representative error – s.394 Fair Work Act 2009 – applicant was employed as a talent resourcer since 8 October 2024 – respondent is an accounting business – applicant was dismissed on 30 July 2025 on grounds of redundancy – applicant filed unfair dismissal application on 21 August 2025 – application was filed 1 day outside statutory timeframe – Commission considered reason for delay – observed delay is period commencing immediately after 20 August 2025 to the time until 21 August 2025 – applicant cited representative error as reason why application was filed outside statutory timeframe – on 13 August 2025, applicant contacted representative – representative stated they would file an unfair dismissal application on behalf of applicant – representative finalised application on 20 August 2025 and was instructed to submit application by applicant – representative was not able to submit application on this date due to internet outages and water leakage issues, which prevented them from filing application until 21 August 2025 – representative had attempted to lodge application on 20 August 2025 via Commission’s online lodgement system, but was not aware this had been unsuccessful until 21 August 2025 – Commission found applicant’s actions following dismissal left ample time for filing of an unfair dismissal application by representative – Commission found applicant was blameless and had a satisfactory explanation for the very brief delay in filing unfair dismissal application – Commission acknowledged delay caused by representative error – Commission satisfied exceptional circumstances existed – extension of time granted.

U2025/14067
Crawford C

Sydney

[\[2025\] FWC 2990](#)
8 October 2025

Al Hussein v Rasier Pacific P/L

CONDITIONS OF EMPLOYMENT – unfair deactivation – remedy – reactivation and lost pay – s.536LU Fair Work Act 2009 – applicant worked for respondent (Uber) as a driver from 30 July 2016 – Uber received reports via Uber Driver Platform from riders on three occasions in 2016, 2018 and 2019 – in 2019, rider alleged applicant flirted

with them despite being ask not to – at the end of service applicant asked for a kiss and accepted \$500 tip from inebriated rider – Uber conducted a review into 2019 allegation – applicant’s access to Uber Driver App suspended – following review applicant’s access restored on 19 January 2019 and warning issued for future complaints of inappropriate behaviour – on 24 May 2025, Uber received a request for information from NSW Police investigating complaint of non-consensual kissing from a rider – on 10 June 2025, Uber sent a final deactivation notice on the basis that applicant engaged in ‘sexually inappropriate behaviour’ – on 25 June 2025, applicant applied to Commission for unfair deactivation remedy – Commission considered s.536LW factors – (a) whether application made within statutory time period; (b) whether applicant is person protected from unfair deactivation; and (c) whether deactivation was consistent with Digital Labour Platform Deactivation Code (Code) – Commission satisfied on evidence for (a) and (b) – contention from parties whether Code applied – Uber claimed applicant deactivated because of serious misconduct, therefore Code not applicable – Commission held Uber’s evidence characterised as ‘inexact proofs, indefinite testimony, or indirect inferences’ [*Briginshaw*] – Commission determined deactivation not consistent with Code – Commission considered merits of application under s.536LH – in relation not valid reason, found Uber failed to demonstrate applicant engaged in serious misconduct, hence no valid reason for deactivation provided – Commission 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) Uber failed to comply with process specified in Code; (b) evidence does not support serious allegations made against applicant; and (c) there was no valid reason for deactivation – order to restore lost pay under s.536LQ(3) to be made after parties confer in relation to quantum of order.

UDE2025/134
Sloan C

Sydney

[\[2025\] FWC 3176](#)
24 October 2025

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Websites of Interest

Department of Employment and Workplace Relations - <https://www.dewr.gov.au/workplace-relations-australia> - provides general information about the Department and its Ministers, including their media releases.

AUSTLII - www.austlii.edu.au/ - a legal site including legislation, treaties and decisions of courts and tribunals.

Australian Government - enables search of all federal government websites - www.australia.gov.au/.

Federal Register of Legislation - www.legislation.gov.au/ - legislative repository containing Commonwealth primary legislation as well as other ancillary documents and information, and the Federal Register of Legislative Instruments (formerly ComLaw).

Fair Work Act 2009 - www.legislation.gov.au/Series/C2009A00028.

Fair Work (Registered Organisations) Act 2009 - www.legislation.gov.au/Series/C2004A03679.

Fair Work Commission - www.fwc.gov.au/ - includes hearing lists, rules, forms, major decisions, termination of employment information and student information.

Fair Work Ombudsman - www.fairwork.gov.au/ - provides information and advice to help you understand your workplace rights and responsibilities (including pay and conditions) in the national workplace relations system.

Federal Circuit and Family Court of Australia - <https://www.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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