

FWC Bulletin

4 December 2025 Volume 12/25 with selected Decision Summaries for the month ending Sunday, 30 November 2025.

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President's statement on reforms to general protections dismissal application processes

12 November 2025

Our President, Justice Hatcher, has issued a statement about reforms to the case management processes for general protections dismissal cases.

We received 44,075 applications in 2024–25. This is 24% above the 5-year average. The increase is substantially driven by the growing number of applications in our 2 largest case types:

- unfair dismissal applications
- general protections dismissal applications.

The rate of growth has been highest for general protections dismissal applications. There were 6,209 general protections dismissal applications made in the 2024–25 financial year. This is 27% above the 5-year average.

The rate of growth has accelerated in the first quarter (Q1) of 2025–26. We received 13,671 applications in Q1 exceeding the 3-year average by 45%. This included 2,102 general protections dismissal applications which represents a 57% increase on the 3-year average.

This continuing growth in workload is unsustainable within our current operational, performance and funding structures. As a result, it is necessary to review and reform our case management processes to accommodate the increasing workload. The statement provides more detail and sets out the 3 stages of the review, the reforms we are implementing and the next steps.

Read the President's statement: [Reforms to general protections dismissal application processes \(pdf\)](#).

End of year timeframes for approval of enterprise agreement applications

25 November 2025

December is usually the busiest time of the year for enterprise agreement applications. The Commission does not close over the festive period, and we will continue to process and approve enterprise agreements as quickly as possible.

To support your application being dealt with efficiently, we recommend you:

- check the helpful information on our online guide: [Make an enterprise agreement](#)
- make sure your application is complete and complies with all requirements
- lodge your application as early as possible
- provide contact details for someone available during the festive period or tell us if no one will be.

Note: If you don't respond to our requests for more information, your application may be delayed or dismissed.

We usually approve simple (complete and compliant) applications in about 2 weeks. More complicated or incomplete ones often take longer. If a large number of applications are lodged in the second half of December, the increased volume may also cause delays, so we recommend you get in early.

Decisions of the Fair Work Commission

The summaries of decisions contained in this Bulletin are not a substitute for the published reasons for the Commission's decisions nor are they to be used in any later consideration of the Commission's reasons.

Summaries of selected decisions signed and filed during the month ending Sunday, 30 November 2025.

- 1** MODERN AWARDS – variation – gender-based undervaluation – ss.157, 160 Fair Work Act 2009 – Full Bench – on 7 June 2024, Commission initiated review of identified classifications in five modern awards to consider whether those classifications have been subject of gender-based undervaluation (Review) – on 16 April 2025, Full Bench issued decision ([\[2025\] FWCFB 74](#)) in Review which found dental assistants and dental/oral health therapists have been subject of gender-based undervaluation, and for purpose of s.157(2)(a) of FW Act, an adjustment of those rates of pay was justified by ‘work value reasons’, as defined in s.157(2A) – Full Bench also expressed provisional views as to how the identified gender-based undervaluation should be rectified by way of variations to classifications and rates of pay in *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020* (ATSIHW Award) – in relation to dental assistants, provisional view of Full Bench was that current discrete classification structure applying to them should be abolished and should be incorporated within existing Aboriginal Health Worker classification structure at Grades 2, 3 and 4 – in relation to dental/oral health therapists, Full Bench proposed inclusion of a new classification structure which would mirror structure proposed in April decision for equivalent health professionals (with AQF Level 7 qualifications) under the *Health Professionals and Support Services Award 2020* – following issuing of April decision, numerous conferences were conducted by a member of Expert Panel to allow interested parties to provide views in response to provisional views of Full Bench – on 15 August 2025, parties were provided with a draft award variation determination prepared by Commission, which would give effect to provisional views – on 19 September 2025, the Australian Council of Trade Unions, the Health Services Union, the United Workers’ Union and the Australian Services Union (Unions) filed a joint submission and draft award variation determination, which set out a consent position reached between the Unions, the National Aboriginal Community Controlled Health Organisation (NACCHO) and the Victorian Aboriginal Community Controlled Health Organisation (VACCHO) – the submission supported the implementation of the provisional view in relation to dental/oral health therapists and supported the implementation of the provisional view in relation to dental assistants subject to the inclusion of an explanatory note in the ATSIHW Award regarding integration of dental assistants into the classification structure for Aboriginal Health Workers and the distinctions between those roles – Full Bench considered it appropriate to finalise Review in relation to ATSIHW Award on basis of written materials already filed – in relation to aspects of position agreed between Unions, the NACCHO and VACCHO, which were not part of the provisional views stated in the April decision, Full Bench determined the following – (1) found it appropriate to include proposed explanatory note having regard to differences between roles of dental assistants and Aboriginal Health Workers,

including the nature of work of Aboriginal Health Worker roles, qualifications required to undertake those roles and regulation of profession of Aboriginal and/or Torres Strait Islander Health Practitioner, note to be inserted into classification structure at Schedule A.2.1 – (2) considered the phasing-in arrangements for wage increases proposed to be appropriate, noted that where the increases are in excess of a total of 20%, they will be implemented in 3 stages, 12 months apart, with the first 2 stages involving 10% increases and the third stage delivering the balance of the total increase; and where the total increase is less than 20%, there will be a first stage increase of 10% and the second stage will implement the balance of the increase 12 months later – (3) found proposed operative date of 1 January 2026 appropriate, having regard to advice from parties that implementation of previous Award variations had taken approximately one month – (4) Full Bench will insert the proposed retained minimum rates of pay provision to ensure that rate of pay for Dental Therapist Grade 2 Level 5 employees employed immediately prior to operative date is not reduced by Award variation – Full Bench otherwise confirmed provisional views stated in April decision – ATSIHW Award to be varied in light of provisional views and additional matters determined – Full Bench considered modern awards objective and minimum wages objective – satisfied variations to ATSIHW Award which will be made arising from decision are necessary to achieve modern awards objective – observed for award safety net to be ‘fair and relevant’ under s.134(1), modern award minimum wage rates must properly reflect work value and be free of assumptions based on gender – Full Bench considered the modern awards objective under s.134(1) – significant factors in favour of making variation included the following: in relation to s.134(1)(a), the measure of ‘low paid’ as being two-thirds of median adult ordinary-time earnings for full time employees, the ‘low paid threshold’ may be quantified in 2 ways: \$1139.65 per week (using ABS Characteristics of Employment data for August 2024) or \$1131.33 per week (using the EEH data for May 2023), classifications for Dental Assistants Grades 1-5 currently have a rate of pay that falls below both of these measures, wage rate adjustment will have result of lifting most of the dental assistant classifications in the ATSIHW Award above the low paid threshold – in relation to s.134(1)(ab), variations will rectify undervaluation in a female-dominated occupation and aid in achieving gender equality, ensuring equal remuneration for work of equal value and eliminating gender-based undervaluation of work – considered s.134(1)(f) to be a factor adverse to the making of a variation, since accepted variations would have impact on employment costs for employers in Aboriginal Community Controlled Health sector – however, acknowledged negative weight significantly diminished by fact that on basis of phasing-in timetable which will be implemented, the NACCHO and VACCHO support making of the variations, indicating a capacity and readiness to pay the wage increases involved, and there is no reason to think that variations will affect productivity or the regulatory burden – Full Bench also found that variations consistent with achievement of minimum wages objective in s.284(1) of FW Act – determination varying ATSIHW Award to implement the revised classification structure and first phase of pay increases published with decision – Full Bench considered errors in Schedule A to Award – on 6 June 2025, President published a Statement containing provisional view that some of changes made to classification structure in ATSIHW Award during 4 yearly review of modern awards had involved a number of unintended drafting errors and should be amended

under s.160 of FW Act – a draft determination containing corrections to identified errors was published with Statement – interested parties invited to comment on provisional views – none of the interested parties opposed Commission amending the ATSIHW Award in same terms as 6 June draft determination – following publication of Statement, further errors in ATSIHW Award identified (cross-referencing errors in footnotes in Schedule B.3.2 and B.4.2) – Full Bench satisfied that issues identified constitute errors for purpose of s.160 and should be corrected – amendments proposed in 6 June draft determination and in decision have been incorporated into determination.

Gender-based undervaluation – priority awards review – Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020; Variation on the Commission’s own motion – Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020

AM2024/22 and Anor
Hatcher J
Asbury VP
O’Neill DP
Slevin DP
Grayson DP

Sydney

[\[2025\] FWCFB 271](#)
28 November 2025

- 2** ENTERPRISE AGREEMENTS – approval – ss.185, 187, 604 Fair Work Act 2009 – permission to appeal – appeal – Full Bench – The Australian Workers’ Union (AWU) lodged appeal against first instance decision of Commission made on 8 August 2025 to approve the *Hawthorne Civil P/L Gold Coast Light Rail Stage 3 Project Agreement* (Agreement), a greenfields agreement made by Hawthorne Civil P/L (Hawthorne) and the Construction, Forestry and Maritime Employees Union (CFMEU) – AWU contended that requirement in s.187(5)(a) of FW Act that relevant employee organisations that will be covered by Agreement are entitled to represent industrial interests of a majority of employees who will be covered by Agreement, in relation to work to be performed under Agreement was not satisfied – AWU submitted that CFMEU, being the only employee organisation covered by Agreement, was not entitled to represent the industrial interests of a majority of employees who would be covered by Agreement in relation to work to be performed under Agreement – in first instance decision, Commission rejected AWU’s contention and found s.187(5)(a) prerequisite satisfied and approved Agreement – AWU raised 8 appeal grounds – grounds 1 to 5 claimed Commission erred in reaching state of satisfaction that s.187(5)(a) requirement was met – Full Bench did not find it necessary to consider appeal grounds 6 to 8 – AWU submitted because CFMEU (unlike AWU) did not have industry coverage in civil construction sector, CFMEU bore onus of demonstrating that majority of relevant employees would be employed to perform tasks which have, as primary purpose, performance of work falling within occupational categories of CFMEU’s eligibility rule in rules 2(A)(A)(3)(i) or 2(E) – AWU also claimed evidence relied on by Commission (emails, declarations and CFMEU’s classification analysis) was of no probative value – Full Bench granted AWU permission to appeal under s.604 – considered AWU had strongly arguable case that there was no reasonable basis upon which Commission could have reached state of satisfaction that approval requirements under s.187(5)(a) was met – Full Bench considered s.187(5)(a) criterion – (1) observed it is normally a ‘simple and

uncontroversial' task to identify the relevant employee organisations covered by an Agreement – however, noted there is a complication because clause 1.1.3 of Agreement provides that the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU) is covered by Agreement in addition to CFMEU and signature page clearly contemplated that CEPU would sign agreement, yet this did not occur – acknowledged under s.182(3), a greenfields agreement is made when it is signed by each employer and each relevant employee organisation that Agreement is expressed to cover, given that CEPU did not sign Agreement, it is not an employee organisation which made Agreement and is not covered by it – noted for purpose of s.187(5)(a), the CFMEU was the only relevant employee organisation which required consideration and Commission approached matter on this basis in first instance decision – (2) Full Bench considered the identification of employees who would be covered by Agreement, in relation to work to be performed under Agreement – noted at time a greenfields agreement is made, employer must by definition not have any employees employed within coverage of Agreement (ss.172(2)(b)(ii), (3)(b)(ii) and (4)) – observed ascertaining the employees 'who will' be covered by Agreement (the persons who will actually be employed in the positions within scope of Agreement's coverage) usually involves 'a predictive element' [*John Holland*], although in some cases by the time Commission gives consideration to approval of greenfields agreement, employer may have already begun employing persons under Agreement – (3) found it necessary to consider whether identified relevant employee organisations are 'entitled to represent industrial interests' of majority of identified relevant employees – noted CFMEU has only limited occupational eligibility in civil construction sector and it was necessary for Commission to make evaluative findings, based on probative material, as to the employees who would in future be employed under the Agreement, and then determine whether a majority of them would fall within scope of CFMEU's eligibility rule – Full Bench made observations in relation to CFMEU's eligibility rules (rule 2, Constitution) – (1) observed rule 2(B) gives CFMEU industry coverage of non-tradespersons in respect of what might be termed the 'building sector' only – CFMEU does not (unlike AWU) have any general eligibility in respect of non-tradespersons in civil construction sector, and any coverage of specific categories of such non-tradespersons must be found in the occupational parts of eligibility rule – (2) eligibility rule in rule 2(A)(A) is occupational in nature only, same for rule 2(E) – for an employee to fall within occupational coverage of rule 2(A)(A)(3) or rule 2(E), primary purpose of employee's employment must be to undertake one or more of occupations identified in these rules – Full Bench considered reasons for decision – observed there were three stages in Commission's course of reasoning – (1) at paragraphs [4] to [6] of first instance decision, Commission placed weight upon affirmative answers given by Mr Cvetanoski (General Manager of Hawthorne) and Mr Dunbar (IR Coordinator of CFMEU's Construction and General Division, QLD and NT Divisional Branch) in their respective declarations to question of 'are the employee organisations covered by the agreement, taken as a group, entitled to represent the industrial interests of a majority of the employees who will be covered by the Agreement, in relation to work performed under the Agreement?' – Full Bench noted approach taken by Commission misconceived nature of specific question which Mr Cvetanoski and Mr Dunbar answered – observed any answer to the question would need to involve the

identification of the relevant employee organisations, a predictive evaluation of the employees who would in future be employed under the Agreement, and an assessment of whether those employees would fall within the eligibility rules of the relevant organisations – noted answers given by Mr Cvetanoski and Mr Dunbar were better characterised as expressions of opinion rather than fact – (2) at paragraphs [7] to [8] of first instance decision, Commission made reference to Mr Cvetanoski's email as constituting 'evidence' relevant to consideration under s.187(5)(a), however Commission made no finding that categories of employees described in email were 'the employees who will be covered by the Agreement' for purpose of s.187(5)(a) consideration, nor did Commission undertake any analysis of whether a majority of those employees fell within scope of CFMEU's eligibility rule – (3) found at paragraphs [9] and [10] of first instance decision, Commission placed reliance upon CFMEU's Classification analysis to find conclusion that CFMEU has eligibility 'to represent the vast majority of occupations covered by the Agreement' – acknowledged Commission's conclusion misconceived the statutory test in s.187(5)(a) – found there was no evidence that Hawthorne would need to engage employees under the Agreement to perform work in most of the occupations specified in Construction Worker/Labourer classifications in Appendix B of Agreement, and such evidence was provided in Mr Cvetanoski's email (i.e. of the 74 different occupations specific in the 8 CW levels in the Construction Worker/Labourer classifications, CFMEU claimed coverage of 54 of these) – observed the classification analysis upon which Commission relied on was 'substantially flawed' and did not take into account the 9 Plumbing and Mechanical Services classifications in Appendix B of Agreement, which did not fall within scope of CFMEU's eligibility rule – Full Bench did not consider that manner in which Commission relied upon materials (declarations made by Mr Cvetanoski and Mr Dunbar, the email from Mr Cvetanoski and CFMEU's Classification analysis) could give rise to satisfaction that s.187(5)(a) approval requirement was met – Full Bench also observed that email of Mr Cvetanoski provided no reasonable basis for finding that majority of employees to be engaged by Hawthorne on project under Agreement would be eligible to be members of CFMEU – Full Bench satisfied Commission erred in approving Agreement – found it was not reasonably available for Commission to reach state of satisfaction on material that requirement in s.187(5)(a) was met [*House v The King*] – Full Bench considered rehearing – found no basis upon which a rehearing of matter could find that s.187(5)(a) requirement was satisfied – not satisfied that further evidence should be admitted under s.607(2) – Full Bench referred to other matters – noted s.182(3) provides that 'a greenfields agreement is made when it has been signed by each employer and each relevant employee organisation that the agreement is expressed to cover (which need not be all of the relevant employee organisations for the agreement)' – noted CEPU is likely a 'relevant employee organisation', representing employees in the Plumbing and Mechanical Services classifications in Agreement, CEPU also an organisation that Agreement is expressed to cover pursuant to clause 1.1.3 and the signature page of Agreement – noted CEPU's failure to sign Agreement may have had consequence that Agreement was never 'made' for purposes of Act – however, AWU never raised this argument in their appeal or submissions, so not necessary to explore further – Full Bench also noted there was another Agreement in existence that would apply to Hawthorne's employees employed on Project until 30 September 2025 – the

classification structure in that Agreement would put an entirely different complexion on question of work functions of Hawthorne's employees on Project and their eligibility to be members of CFMEU – however, AWU never raised this issue in their appeal or at first instance, so not required to explore further – Full Bench granted permission to appeal – upheld appeal – quashed first instance decision – dismissed application to approve Agreement.

Appeal by The Australian Workers' Union re *Hawthorne Civil P/L Gold Coast Light Rail Stage 3 Project Agreement* against decision of Lee C of 8 August 2025 [[\[2025\] FWCA 2640](#)] Re: Construction, Forestry and Maritime Employees Union

C2025/8498
Hatcher J
Boyce DP
Wright DP

Sydney

[\[2025\] FWCFB 263](#)
20 November 2025

- 3** INDUSTRIAL ACTION – intractable bargaining declaration – ss.234, 235, 604 Fair Work Act 2009 – permission to appeal – appeal – Full Bench – on 2 July 2024, the Association of Professional, Engineers, Scientists and Managers, Australia (APESMA) applied for an intractable bargaining declaration under s.234 of FW Act in respect of proposed agreement to cover Deputies employed by respondent at Ulan West coal mine in regional NSW – on 25 June 2025, Commission issued first instance decision which concluded that it was not satisfied it was reasonable to make the intractable bargaining declaration sought by APESMA and the application was dismissed – APESMA lodged appeal against first instance decision of Commission – APESMA raised grounds of appeal – grounds 1 to 5 contended Commission acted on a wrong principle in various ways and grounds 6 to 8 alleged Commission made mistakes of fact or factual findings that were not open on evidence – Full Bench split on views – Full Bench majority (Gibian VP and Butler DP) considered permission to appeal – considered it in public interest to grant permission to appeal under s.604, given nature of submissions advanced by APESMA – noted submissions advanced by APESMA in relation to s.235 raise important questions of principle in relation to recent amendments to FW Act and approach to be adopted when assessing if it is reasonable in all circumstances to make an intractable bargaining declaration for purposes of s.235(2)(c) – observed consequences of first instance decision have substantial impact on parties, including Deputies – Full Bench majority considered grounds 1 and 2: opinion required to be formed by s.235(2)(c) – Full Bench majority found APESMA demonstrated that Commission misunderstood or misapplied the statutory context in which Commission is required to form state of satisfaction in s.235(2)(c) – noted assessment of whether it is reasonable in all the circumstances to make a declaration involves a broad value judgement in relation to which a range of matters might conceivably be relevant – found the manner in which Commission approached assessment disclosed a misunderstanding of statutory scheme in which assessment is to be made – observed language of s.235 does not suggest Commission should approach question of reasonableness with an attitude of reticence or disinclination to make a declaration having the effect of opening the capacity of the Commission to make a workplace determination – accepted requirement that Commission be satisfied of reasonableness of making a declaration is 'value neutral' – noted phrase adopted by Commission in first instance decision of 'lightly engaged' indicated a predisposition against
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making a declaration – found Commission erred by approaching question of whether it was reasonable in all circumstances to make a declaration on basis that Commission’s powers to make a workplace determination should not be ‘lightly engaged’ and that making an intractable bargaining declaration undermined or is in tension with regime for collective bargaining, particularly at enterprise level, otherwise created by Part 2-4 – Full Bench majority rejected grounds 3 to 8 – Full Bench majority granted permission to appeal – appeal allowed – first instance decision quashed – matter remitted to another Member of Commission – Saunders DP provided Full Bench minority view – observed FW Act does not confer right on employees to have Commission impose a workplace determination on parties merely because agreement has not been reached after nine months of bargaining, and FW Act permits Commission to make such a determination where it is ‘reasonable in all the circumstances to do so’ under s.235(2)(c) – noted the small group of around 24 Deputies are high-income earners paid between \$272,000 and \$352,000 per year, are entitled to five weeks’ annual leave and three months’ personal leave per year, they work three to four days per week, and in recent years received annual pay increases of 4.5%, 5% and 4.56%, a \$16,000 regional allowance and increases in total fixed remuneration through short term incentive payments – accepted evidence of Commission at first instance that Deputies have considerable bargaining power and have not needed to bargain collectively in past to ensure wages and conditions remained up to date and competitive – Saunders DP not persuaded Commission misunderstood, or misapplied the statutory context or otherwise erred (in *House v The King* sense) in any of the ways contended for by APESMA – noted Commission plainly understood the phrase ‘in all the circumstances’ was unmistakably broad and points against imposition of binding rules or presumptions in application of s.235(2)(c) of Act – Saunders DP agreed with reasons of Full Bench that no error was demonstrated in relation to grounds 4 to 8 and that permission to appeal should be granted, because the appeal raises important questions of principle in relation to significant recent amendments to the Act – Saunders DP noted appeal would be dismissed on basis that no error disclosed in decision at first instance.

Appeal by Association of Professional Engineers, Scientists and Managers, Australia against decision of Easton DP of 25 June 2025 [[\[2025\] FWC 1806](#)] Re: Ulan West Operations P/L

C2025/6451
Gibian VP
Saunders DP
Butler DP

Sydney

[\[2025\] FWCFB 264](#)
20 November 2025

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- 4** NET ZERO ECONOMY AUTHORITY – community of interest determination – ss.56, 57 Net Zero Economy Authority Act 2024 – CEO of Net Zero Economy Authority (applicant) applied for a community of interest determination under s.56(1) of NZEA Act, in relation to closure of Torrens B power station, an open cycle steam turbine gas-fired power station in Torrens Island, South Australia – AGL Energy Ltd and AGL Torrens Island P/L (collectively AGL) were named in application as ‘closing employers’ – AGL did not oppose application – the Energy Industry Worker Redeployment Advisory Group and Joint Unions (ASU, APESMA, AWU, AMWU and CEPU) were in support of application – Commission considered whether community of
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interest determination should be made under s.57 of NZEA Act – satisfied employers named in application (AGL) are ‘closing employers’ within meaning of NZEA Act – found it reasonable in circumstances to specify AGL as ‘closing employers’ in determination, having regard to following – (1) objects of NZEA Act, which are to promote orderly and positive economic transformation as world decarbonises, facilitate achievement of Australia’s greenhouse gas emission reduction targets and ensure Australia’s regions, communities and workers are supported to manage impacts and share in benefits of Australia’s transition to a net zero emissions economy, and noted effect of determination would be to place obligations on AGL to take action in support of transition of employees to obtain alternative employment – (2) accepted AGL put in place range of supports to assist the transition employees, noted applicant acknowledged AGL clearly made effort to support those employees to transition to new jobs – (3) observed there are 106 transition employees and around 78 participating employees, which weighs in favour that it is reasonable in circumstances to make determination – (4) in relation to redeployment, found AGL committed to providing alternative employment within the business where possible and has ‘ring fenced’ 25 roles at Barker Inlet Power Station for transition employees, however scope of roles have not been determined, and will consider wider redeployment opportunities in its business closer to time of closure – (5) in relation to capacity of other employers in same geographic area to offer employment to transition employees, found Adelaide labour market is moderately strong in some areas, however noted there will be limited capacity of other employers to offer employment in the scope of the industries in which the transition employees would likely need to be employed (i.e. electricity, gas, water and waste service sectors) which represents only 1% of the Adelaide employment market, over 70% of transition employees are also over 45 years of age or have had a tenure at Torrens of over 10 years – (6) found information contained in application supports making of determination and suggests transition employees require ongoing support and will benefit from determination – (7) considered information obtained from entities with a right to be heard in accordance with s.57(1) of NZEA Act, including applicant, AGL, Energy Industry Worker Redeployment Advisory Group and Joint Unions – (8) considered other relevant matters, noted relevance that application not opposed by AGL and supported by Joint Unions, and acknowledged despite three of four generating units of Torrens closing on 30 June 2028, the fourth unit is to be closed in June 2026, observed the relatively short period of time prior to closure of fourth unit weights in support of making determination – Commission satisfied community of interest determination should be made, because AGL is a ‘closing employer’ within meaning of NZEA Act and it is reasonable in circumstances to specify AGL in determination as a closing employer – AGL required to comply with its obligations under ss.58 and 59 of NZEA Act, which require AGL to take a range of actions for benefit of transition employees.

Application by the Commonwealth of Australia as represented by the Net Zero Economy Authority

NZ2025/1
Saunders DP

Newcastle

[\[2025\] FWC 3468](#)
20 November 2025

5 TERMINATION OF EMPLOYMENT – Merit – reinstatement – ss.387, 391, 394 Fair Work Act 2009 – applicant was employed by respondent on casual basis as ‘pick packing associate’ – despite casual employment, applicant consistently worked full time hours over a 7-month assignment in Amazon’s distribution centre at Kemps Creek, Sydney – respondent is a labour supplier – on 25 May 2025, applicant informed respondent she was 7 weeks pregnant – applicant’s shifts were placed ‘on hold’ – a few days later, applicant worked two shifts on ‘light duties’ and then received SMS from respondent advising that ‘no light duties’ were available and her shifts would be ‘put on hold’ – applicant claimed she was dismissed within two weeks of advising her employer she was pregnant – respondent argued applicant was not dismissed and that there was work available for her at Amazon site – on 11 June 2025, applicant made unfair dismissal application – Commission considered whether applicant was dismissed – found applicant was dismissed on 5 June 2025, when respondent advised applicant via SMS that her shifts were ‘on hold’ and then took no further action to continue employment relationship – applicant pushed back in response the next day by SMS and email referring to being ‘laid off’ and that ‘no work’ was available, however respondent did not correct applicant’s characterisations – observed that balance of SMS of 5 June 2025, in which respondent stated its priority was to ensure applicant’s safety and would try its best to support her was a mixture of ‘people and culture puffery and lawyerly disclaimers’ that there was ‘no guarantee of work’ and that they could not guarantee her anything – noted the form of the SMS stated applicant’s shifts were ‘on hold’, but substance of SMS was that applicant’s employment was on hold from ‘5 June 2025 until the 12th of Never’ – Commission considered whether applicant’s dismissal was harsh, unjust or unreasonable under s.387 – in relation to valid reason under s.387(a), Commission not satisfied by respondent’s argument that applicant’s ‘capacity’, presumably meaning her incapacity to lift more than 5kg, was a valid reason for dismissal, and no other reason for dismissal was provided by respondent – consequently, found applicant was not notified of valid reason for dismissal under s.387(b) – in relation to opportunity to respond to any valid reason under s.387(c), observed respondent’s direction that applicant provide a medical certificate using a workers compensation form was not an opportunity to respond to respondent’s concerns, and when applicant tried to comply with direction her GP identified the unreasonableness of respondent’s request – Commission satisfied dismissal was harsh, unjust and unreasonable – held applicant was unfairly dismissed – Commission considered reinstatement as remedy under s.391 – observed at time applicant was dismissed she had regular and systematic work at Amazon’s premises, however when subject to lifting restrictions applicant was nonetheless offered work on ‘light duties’ as and when such duties were available – Commission made orders that applicant be reinstated to former position she was employed immediately before her dismissal on 5 June 2025 – reinstatement to occur no later than 19 December 2025 – continuity of employment to be maintained – respondent to pay applicant \$14,830.40 less tax for remuneration lost, plus superannuation.

Kaur v Adecco Industrial Australia

U2025/9780
Easton DP

Sydney

[\[2025\] FWC 3646](#)
28 November 2025

Other Fair Work Commission decisions of note

Song v Burswood Resort (Management) Limited

GENERAL PROTECTIONS – extension of time – date dismissal took effect – ss.365, 366 Fair Work Act 2009 – applicant commenced employment as a storeman beginning on or around 18 August 2025 – respondent informed of alleged inappropriate behaviour pertaining to applicant’s alleged conduct in relation to a female team member – applicant informed by respondent that two of three allegations substantiated amounting to misconduct in breach of employment contract – applicant’s employment was terminated on 29 August 2025 – applicant lodged general protections application involving dismissal on 23 September 2025 – application filed 4 days outside statutory timeframe – respondent objected to application on basis it was filed outside 21-day period prescribed by s.366(1) of FW Act – applicant cited reasons for delay included (a) emotional distress and mental impairment following sudden dismissal; (b) acute family crisis relating to applicant’s father who was unwell and battling chronic illnesses, who subsequently passed away; (c) ongoing caregiver responsibilities – Commission considered whether exceptional circumstances existed in order to justify extension of time in filing application [*Nulty; Stogiannidis; Underwood; Merhi*] – Commission rejected (a) as reason for delay, given that stress, shock, confusion and similar conditions are not exceptional circumstances [*Shaw*] – however, Commission satisfied on evidence that (b) and (c) were reasons for delay, particularly given death of applicant’s father and accompanying grief – Commission accepted applicant’s reasons for delay provided plausible explanation for part of delay period – Commission satisfied exceptional circumstances existed – Commission found no evidence to suggest applicant challenged or contested dismissal – Commission satisfied no evidence to suggest prejudice to respondent if extension of time granted – extension of time granted.

C2025/9639

Beaumont DP

Perth

[\[2025\] FWC 3340](#)

6 November 2025

Qube Logistics (Rail) P/L v Australian Rail, Tram and Bus Industry Union

ENTERPRISE AGREEMENTS – ambiguity or uncertainty – recusal – s.217 Fair Work Act 2009 – applicant applied to vary two enterprise agreements with retrospective effect – applications made to vary both 2015 and 2019 Qube Logistics (Rail) Train Crew NSW Agreements – grounds for variation were that Agreements were ambiguous or uncertain in their application because they did not reflect objectively ascertained common intention – at first instance, application dismissed by Member ([\[2024\] FWCA 616](#)) because 2015 Agreement was no longer in operation at time applicant made application, applicant did not have standing under s.217 as it was no longer covered by 2015 Agreement, and applicant did not establish common understanding or intention – permission to appeal sought by applicant – Full Bench granted permission and dismissed appeal ([\[2024\] FWCFB 331](#)) – applicant commenced proceedings in Federal Court – on 2 June 2025, Full Court of Federal Court issued writ of certiorari to quash Full Bench decision and first instance decision – Full Court issued writ of mandamus requiring Commission to hear and determine application to vary 2019 Agreement – Full Court held no utility in requiring Commission to hear application to vary 2015 application as applicant lacked standing to make application – source of error found by Full Court was Commission did not adequately consider submissions made – applicant subsequently made recusal application in relation to Member regarding s.217 application (same Member issued first instance decision in matter) – applicant submitted principles of apprehended bias well-settled and line of authorities existed which explained how general recusal principles apply in a situation where decision maker called-upon to determine factual issue about finding they have already made in prior litigation – observed test for apprehended bias is the ‘double might test’ – recusal must happen if a fair-minded lay observer might reasonably apprehend that decision maker might not bring an impartial mind to resolution of matters to decide – test concerned with possibility, not

probability and is objectively assessed – if no recusal, Commission required to revisit many factual determinations already decided – considered fair minded observer might reasonably apprehend inability of Member to bring impartial mind to remittal in which same facts must be determined – lay bystander, recognising human frailty, might reasonably apprehend Member might be disinclined to arrive at different conclusions on facts – considered it appropriate Member recuse from further hearing application – matter to be reallocated to another Member of Commission.

AG2023/2561
Cross DP

Sydney

[\[2025\] FWC 2685](#)
3 November 2025

Pushik v Woolworths Group Limited

TERMINATION OF EMPLOYMENT – Misconduct – ss.387, 394 Fair Work Act 2009 – applicant commenced employment with respondent on or around 23 October 2008 – employed as a ‘fruit and veg manager’ at one of respondent’s stores at time of dismissal – applicant completed training on respondent’s Code of Conduct on 14 September 2022 and 1 February 2024, which included topics including respectful workplace, bullying and sexual harassment – on 8 May 2025, applicant summarily dismissed for allegedly engaging in misconduct that breached respondent’s Respectful Workplace Policy and Code of Conduct – respondent alleged applicant had sexually harassed a colleague by sending her messages or Facebook posts between 30 March 2025 and 7 April 2025 – applicant sent the following messages to work colleague: on 30 March 2025, applicant sent three emojis, one after the other, which included a red lipstick kiss emoji, a thumbs up emoji and an emoji of two people kissing; on 5 April 2025, applicant wrote ‘love’; on 6 April 2025, applicant again wrote ‘love’; on 6 April 2025, applicant wrote ‘I love you’; and on 7 April 2025, applicant wrote ‘Do you love me’ – work colleague did not respond to these messages and made a complaint to the store manager on or around 14 April 2025 – a store manager of a nearby store was appointed to undertake an investigation – applicant attended a meeting on 22 April 2025, however applicant was not provided with any information regarding allegations against him and was not told of purpose of meeting – applicant was offered a support person at commencement of meeting, but declined – respondent’s notes of meeting record that applicant confirmed that: he sends love and kiss messages to his friends, and this is normal; there was no ‘sexual content’ involved because, as he was 63, the work colleague was like a granddaughter to him; he was just being ‘friendly’ and he had a ‘friendship’ with the work colleague; he eventually stopped the messages; and the messages were not inappropriate but said words to the effect of: ‘if I had posted it publicly, people may have misinterpreted my comment’ and that ‘people don’t know that we are just friends, and may think it was meant as something more. It was just friendly’ – applicant did not make any submissions that this information was an inaccurate record of the meeting, however the term ‘sexual harassment’ was not mentioned at the meeting – Commission accepted that applicant was not shown any written complaint from the work colleague, only screenshots of messages between himself and work colleague and he was asked to confirm if he was the one who sent them – on 1 May 2025, respondent wrote to applicant asking him to show cause as to why his employment should not be terminated and to provide response by 6 May 2025 – applicant suspended – applicant did not respond to show cause letter or calls from respondent following show cause letter – applicant did not give evidence or make any submission that respondent had not tried to call him during this period, but stated he did not respond to the show cause letter as he ‘had nothing else to say’ – on 8 May 2025, respondent summarily dismissed applicant on basis of the messages sent – Commission required to consider whether applicant’s dismissal was harsh, unjust or unreasonable under s.387 – respondent relied upon the messages, the context of the messages (including the period over which they were sent and the age gap between the applicant and work colleague), and applicant’s attitude towards his admitted conduct to dismiss him – following dismissal, respondent said it became aware of further evidence which demonstrated a pattern of unwanted conduct which applicant engaged in with the intent of entering into a romantic relationship with the work colleague, which it relied on in support of its argument that it had a valid reason to dismiss applicant in relation to his capacity or conduct – these additional matters

included further messages sent by applicant via Facebook Messenger, including some in reply to work colleague's Facebook 'stories': on 1 December 2024, an emoji of a person with hearts in their eyes; on 18 March 2025, a message which read 'beautiful'; on 26 March 2025, a message which read 'beautiful girl'; on 30 March 2025, an emoji of a person with hearts in their eyes; and on 30 March 2025, a message which read 'Can take you out one day', which was followed by an emoji of a person with hearts in their eyes – work colleague provided screenshots of: a comment applicant posted to work colleague's Facebook page on 18 March 2025 which read 'Always love you'; two separate comments applicant posted to an old profile picture of work colleague from 2 December 2024, one comment included a picture of a love heart and another comment of a 'gif' of a love heart with the words 'Be my valentine'; a comment applicant posted to an old picture that work colleague posted on 12 February 2024 which, again, included a 'gif' of a love heart with the words 'Be my valentine'; a comment the applicant posted on a picture of the work colleague posted on 26 December 2024, which included a picture of a 'rose'; two separate comments applicant posted on another picture of work colleague posted on 26 December 2024, both included two different pictures of a 'rose' – applicant did not deny that he had sent the messages – Commission found applicant had sent the messages and under cross-examination applicant conceded he would have liked to take the work colleague out for dinner or a show, but she was not responsive to 'have something deeper' – work colleague alleged that while she was working back late applicant asked her if she wanted to go for a drink, when she responded that she could not go for a drink as she was not finishing until 9:30pm, applicant said that they could go for a drink another time to which the work colleague responded, 'No I'm not going with you' – applicant then showed work colleague videos of karaoke suggesting they could do karaoke together and told her that in Russia you can go into a private room, to which work colleague responded that she would not go with him, to which applicant said that he had seen videos of her doing karaoke – applicant recalled this occasion and stated he 'doubted' asking her out for a drink on that occasion, however conceded that he could not definitively recall whether he did or did not ask work colleague to go out – applicant conceded that one of his messages to work colleague ('Can take you out one day') involved asking work colleague out on a date, however, he submitted this was not sexual and not sexual harassment, but that he would have liked to take her out 'for dinner and a show' – Commission found on balance of probabilities, the repeated requests for dates occurred as described by the work colleague – found applicant's evidence regarding Facebook comments was to effect that he would not post such a message to a male colleague, as he was not romantically interested in men and that he would only make such a post for 'ladies' that he had a romantic interest in, further that work colleague was not alone, as applicant would post flower emojis and nice comments where other female friends had posted 'nice' pictures on Facebook – applicant agreed that he had received Code of Conduct training in February 2024, that he did the training every two years – applicant was taken to statement in training module that stated 'complimenting someone can be sexual harassment even if it's not your intention to offend' and asked whether he understood this concept, applicant's evidence was to effect that if a person does not say they are offended by a compliment, how could the person giving it know their conduct is unacceptable, further that if his conduct was unwelcome, then the work colleague could have blocked him – applicant submitted he had not sent sexually graphic photographs, by way of illustrating distinction between his conduct and the conduct caught by Code of Conduct and training he received – work colleague alleged applicant kissed her on the cheek at Christmas party and said words to effect of 'you look so beautiful today', to which work colleague pushed applicant away – applicant's recollection is that he only imitated kissing work colleague on the cheek and said words to effect of 'You look lovely tonight' – Commission preferred work colleague's evidence and found that it occurred, as work colleague was unshakeable in cross-examination and had a clear recollection of event – work colleague alleged applicant made statements to her in relation to her appearance to effect of how she was 'so pretty', 'beautiful' and 'always looking so pretty in photos' – Commission found, on balance of probabilities, that incidents occurred as described by work colleague, noting applicant did not put on any evidence contesting that he had made the statements and the statements were consistent with the messages he previously sent – Commission noted respondent's Code of Conduct mirrors the three elements of

sexual harassment to be considered under the *Sex Discrimination Act 1984* (Cth) as set out by the Full Court of the Federal Court of Australia in *Hughes* being: (a) that there has been any sexual advance, request for sexual favours or other conduct of a sexual nature, which is a question of fact for the Commission to decide for itself (First Element); (b) the conduct was unwelcome to the person allegedly harassed, which is a subjective fact, which turns only on the attitude of the person to the conduct at the time (their actual state of mind) and the intention of the Applicant is not relevant (Second Element); and (c) that a reasonable person would have anticipated the possibility that the person allegedly harassed would be offended, humiliated or intimidated by the conduct, the reasonable person is assumed to have some knowledge of the person harassed and the motives of the Applicant is irrelevant (Third Element) – regarding the First Element, the Commission found applicant engaged in ‘other conduct of a sexual nature’ with the intent of entering into a romantic relationship with work colleague – Commission accepted that none of the conduct in question was overtly or explicitly sexual in nature, however the messages, repeated requests for a date and the making of statements on the work colleague’s appearance constituted ‘conduct of a sexual nature’ – Commission noted that the messages were sent in the context of the applicant’s unrequited desire to enter into a romantic relationship with the work colleague, to which the work colleague did not encourage or solicit any of this conduct, nor respond to it – Commission noted that the fact that these comments or messages were not explicitly sexual and the work colleague did not expressly tell the applicant that his conduct was unwelcome does not mean that this conduct was not conduct of a sexual nature nor a sexual advance – Commission found the applicant’s declarations of love and repeated requests for work colleague to go on a date (both in person and through Facebook) and to be his ‘Valentine’, or advise whether she loved him, were ‘an expression of his desire to enter into an intimate personal relationship with her’ – Commission considered this conduct to be implicit within it was a desire for sex [*Taylor*] – Commission considered applicant’s statement to work colleague during work that he ‘would do anything for her’ was anything more than workplace banter and concluded that it was not ‘conduct of a sexual nature’ – Commission satisfied applicant’s conduct at Christmas party amounted to conduct of a sexual nature – regarding the Second Element, Commission found applicant’s conduct was unwelcome to work colleague, as she did not solicit the conduct and it was disagreeable or undesirable to her based on her evidence – Commission rejected applicant’s submission that his conduct was not sexual harassment as work colleague did not complain, because work colleague did not feel like she was able to stop the applicant or block him as he was older than her and held a managerial position with respondent, which made the situation feel intimidating to her and caused her to worry that her job might be impacted if she spoke up – Commission further noted just because someone does not contemporaneously complain that conduct is not welcome, does not make the opposite true – Commission accepted applicant genuinely did not intend to upset, offend, humiliate or intimidate work colleague, but this is not determinative of whether someone has engaged in unwelcome conduct of a sexual nature – in relation to the Third Element, Commission found that a reasonable person would have anticipated the possibility that work colleague would be offended, humiliated or intimidated by the conduct, noted a reasonable person is assumed to have some knowledge of personal qualities of person harassed – Commission had regard to the following: (a) the significant age gap between applicant and work colleague (34 years); (b) that applicant was in a position of authority over work colleague (applicant was a manager and the third most senior person employed at the store and could direct the work colleague’s work even though she did not work in his section); (c) that work colleague was vulnerable as a result of her being an international Nepalese student on a student visa; and (d) lack of any relationship other than a work relationship between applicant and work colleague – Commission considered that applicant’s conduct breached respondent’s Policy and Code of Conduct, both of which apply to conduct in the workplace, at the respondent’s functions even if out of hours (if there is a sufficient connection to the workplace) and conduct over internet or social media – applicant did not contend that a sufficient connection between his impugned conduct, the work colleague and the workplace did not exist, subsequently Commission found that it did as the conduct occurred in the workplace, at work functions or over social media (where the only reason for the social media connection and exchanges was that they were work

colleagues) – Commission found that applicant engaged in sexual harassment and that his conduct was serious misconduct – Commission satisfied that in all the circumstances a valid reason existed for applicant’s dismissal relating to his conduct under s.387(a) – Commission found applicant was notified of valid reason (the messages known to respondent at time of dismissal), as 1 May 2025 show cause letter clearly articulated the reasons relied upon including the nature of alleged conduct and polices breached – however, found applicant was not notified of the other matters that have been found to constitute a valid reason for his dismissal, noting Commission found that respondent was not aware of those matters prior to the applicant’s dismissal – Commission found that in all the circumstances, the applicant was not notified of the reason for his dismissal under s.387(b) in explicit, plain and clear terms – Commission found applicant was given an opportunity to respond to allegations and findings as outlined in 1 May 2025 show cause letter, however Commission found applicant was not given an opportunity to respond to all of the reasons for his dismissal prior to decision to dismiss being made under s,387(c) – Commission considered applicant’s concerns regarding whether his conduct could have been dealt with differently (the issues being raised informally and notice of the allegations ahead of 22 April 2025 meeting), the applicant’s age, the impact dismissal might have on his ability to find other employment, the length of service and that there was no allegation that the applicant had ever engaged in any other misconduct while he was employed by the respondent – however, Commission was not persuaded to reach a conclusion that the dismissal was harsh, unjust or unreasonable in the circumstances – Commission considered the gravity of the applicant’s misconduct and weighed this against all the other factors, circumstances and relevant matters applying to his dismissal (not being notified of the valid reason for the dismissal nor given a proper opportunity to respond to the valid reason) – Commission found that applicant’s misconduct outweighed the other matters – Commission satisfied that dismissal of applicant was not harsh, unjust or unreasonable – satisfied applicant was not unfairly dismissed – application dismissed.

U2025/8980

Grayson DP

Sydney

[\[2025\] FWC 3290](#)

17 November 2025

Smith v Thunder Tax P/L

TERMINATION OF EMPLOYMENT – permission to be represented – ss.394, 596 Fair Work Act 2009 – applicant sought permission to be represented by paid agent – respondent objected – Commission considered s.596(2) and *Warrell* in relation to whether permission to be represented should be granted – applicant submitted: (1) representation would allow matter to be dealt with more efficiently by keeping hearing on legally relevant issues; (2) matter was complex making them unable to represent themselves; and (3) would be unfair to force him to confront respondent directly – respondent submitted: (1) matter was not of sufficient complexity to grant permission; (2) matter was not novel; (3) paid agent had previously made errors in matters, discounting ability to expedite matter; (4) unlikely applicant would meet criteria of being unable to represent himself; (5) experience of applicant and respondent was roughly equivalent; (6) representation would change dynamic of hearing, particularly if only one party represented [*Warrell*; *Manoleskos*]; and (7) allowing professional representation to applicant where respondent does not hold representation directly undermines purpose of Small Business Fair Dismissal Code, which aims to simplify unfair dismissal processes for small business employers – Commission not persuaded that paid agent would allow the matter to be dealt with more efficiently, taking into account complexity of matter – Commission sighted instances of paid agent’s incompetence with chambers – Commission found applicant had not demonstrated their inability to represent themselves – Commission found relationship between parties did not give rise to issues of fairness – Commission found discretion under s.596 not enlivened – application for permission for applicant to be represented by paid agent dismissed.

U2025/11868

Butler DP

Brisbane

[\[2025\] FWC 3405](#)

13 November 2025

Crafti v Cohealth Ltd

CASE PROCEDURES – evidence – production of documents – ss.394, 590, 739 Fair Work Act 2009 – applicant sought order for production of documents under s.590(2)(c) – respondent asserted client legal professional privilege – applicant formerly employed as Community Health Worker with respondent under *Community Health Centre (Stand Alone Services) Social and Community Service Employees Multi Enterprise Agreement 2022* (SACS EA) – client verbally complained about interaction with applicant – respondent commenced internal investigation – applicant expressed lack of confidence in investigation processes being consistent with SACS EA – respondent engaged counsel (Mr Fawcett) – Fawcett Report provided to respondent – respondent issued letter regarding investigation outcome to applicant – applicant exercised right to appeal decision – respondent denied any failure of process and arranged independent internal review – applicant contested performance management and sought relevant materials under clause 13.6(b) of SACS EA – respondent stated applicant would not be provided investigation report or any other materials used in investigation – Commission considered whether dominant purpose for Fawcett Investigation was a privileged purpose – noted dominant purpose is a matter of fact to be ascertained objectively [*Stephen*] – held multiple purposes for commencing Fawcett Investigation – noted relevant time to assess purpose was when decision to obtain report from Mr Fawcett was made – considered whether legal advice purpose was ‘ruling, prevailing, paramount or most influential purpose’ – considered respondent bore onus of establishing dominant purpose as being legal advice purpose – concluded respondent held a legal advice purpose in addition to employment disciplinary purpose for authorising commencement of Fawcett Investigation – found no direct evidence from a relevant officer or employee of respondent set out dominant purpose of respondent’s authorisation of Fawcett Investigation was to obtain legal advice – not satisfied legal advice purpose was dominant purpose held by respondent with regard to clear significance of employment disciplinary purpose in respondent’s decision to authorise engagement of Mr Fawcett – not satisfied evidence established legal advice purpose was dominant purpose for Fawcett Investigation – observed a party asserting waiver of privilege bears onus of establishing a waiver – considered if Fawcett Report was privileged, waiver of privilege occurred by extent of disclosure made to applicant, as extent of disclosure to applicant is inconsistent with maintenance of confidentiality – found applicant made out a waiver by respondent of Fawcett Report and certain related documents – Commission ordered respondent to produce Fawcett Report and certain other documents relating to Report.

C2024/6415 and Anor
Farouque DP

Melbourne

[\[2025\] FWC 3285](#)
31 October 2025

Ellis v Beach Hotel Stradbroke Island No. 2 P/L

TERMINATION OF EMPLOYMENT – Merit – reinstatement – ss.389, 394 Fair Work Act 2009 – applicant employed as casual bottle shop attendant from 4 April 2022 at various sites on North Stradbroke Island – applicant became permanent full-time employee on 30 July 2024 working at Dunwich site only – employed under *Hospitality Industry (General) Award 2020* (Award) – applicant suffered workplace injury on 2 February 2025 – WorkCover advised applicant on 10 March 2025 that respondent did not want her to return to work until fully recovered – respondent notified staff by letter on 19 March 2025 of major renovation to Beach Hotel site – notified relevant employees by group SMS on 19 March 2025 there would be no immediate changes to bottle shop operations – notified applicant of immediate redundancy by termination letter on 31 March 2025 – stated full-time position of bottle shop attendant was no longer required and no suitable alternative positions within the enterprise and any associated entities were available – respondent raised jurisdictional objection that dismissal was genuine redundancy under s.389 – applicant submitted respondent did not discuss options with her – submitted she would have accepted redeployment to casual employment, returning when cleared fit to work – respondent submitted

applicant's limited availability, geographical preference and medical restrictions meant there were no reasonable or safe options for redeployment – submitted employees need to safely lift a minimum of 15kg and applicant could only lift 2-5kg – respondent agreed no contact was made with applicant to discuss consultation or redeployment – Commission considered s.389 – observed respondent was entitled to utilise skilled and more qualified staff in their bottle shops and to distribute hours across various employees – found respondent no longer required applicant's job to be performed by anyone – found respondent did not consult with applicant after definite decision was made about redundancy, nor give applicant opportunity to raise any matters for respondent to consider, nor communicate with applicant in writing – found respondent did not comply with consultation obligations prescribed by Award – acknowledged respondent did not consider potential duration of applicant's medical restriction – found respondent did not consider roles in other locations because they failed to discuss options with applicant – satisfied applicant ought to have been redeployed into a casual role at respondent's other bottle shops when cleared fit to perform required work – Commission not satisfied dismissal was genuine redundancy – jurisdictional objection dismissed – Commission considered s.387 – accepted respondent dismissed applicant because of contemporaneous incapacity – noted fairness is not a consideration in s.389 but is a consideration in s.387 – satisfied respondent had valid reason to end applicant's permanent full-time employment but not to dismiss her from employment with respondent under s.387(a) – found applicant was not given opportunity to respond to any reason related to her capacity to have been retained by respondent under s.387(c) – in relation to other matters under s.387(h), found respondent conducted dismissal in breach of consultation provisions of Award, which weighed heavily in finding that dismissal was harsh, unjust or unreasonable – Commission determined dismissal was harsh, unjust and unreasonable – held applicant unfairly dismissed – remedy considered – applicant to provide Commission and respondent with current medical evidence as to capacity to work – preliminary view of reinstatement to be determined.

U2025/4144

Hunt C

Brisbane

[\[2025\] FWC 3302](#)

3 November 2025

Warraich v Rasier Pacific P/L t/a Uber

CONDITIONS OF EMPLOYMENT – unfair deactivation – reactivation – ss.536LH, 536LU, 536LQ Fair Work Act 2009 – applicant commenced work through respondent's digital labour platform as rideshare driver on or around 10 March 2021 – respondent deactivated applicant due to five complaints received from riders regarding applicant's alleged conduct including discriminatory behaviour – respondent contended applicant in contravention of 'Community Guidelines' and services contract – respondent did not provide applicant with a copy, nor information on specifics of complaints – respondent sent applicant same day message following last complaint received on 24 May 2025 – advised account access had been suspended pending an investigation – preliminary deactivation notice sent to applicant on 30 May 2025 – final notice confirming deactivation sent to applicant on 7 June 2025 – Commission considered whether deactivation compliant with *Fair Work (Digital Labour Platform Deactivation Code) Instrument 2024* (Code) under s.536LW(c) – s.8 of Code requires a digital labour platform operator provide a deactivation warning notice in writing to an employee-like worker before deactivating worker – respondent submitted message sent on 24 May 2025 constituted a warning notice – Commission rejected this suggestion – noted message did not provide sufficient information regarding the basis of the warning, did not forewarn applicant of risk of deactivation due to capacity or conduct, nor advise applicant he could seek assistance or support, or how to remedy the situation, as required by s.8(2) of Code – additionally, respondent's message failed to provide sufficient information for a reasonable person to understand the warning as required by s.8(3) of Code – respondent contended Note under s.8(3) applied, which provides a digital labour platform operator (Operator) is not required to disclose information about an individual in a deactivation warning if disclosure poses a safety or security risk – Commission rejected this assertion stating this does not enable an Operator to withhold information 'carte blanche' – noted deactivation

warning must reach the threshold of satisfying the requirements of s.8(3) regarding the provision of 'sufficient information' – found respondent non-compliant with s.8 of Code – respondent submitted, in the alternative, s.9 of the Code applied – s.9(1) provides for an exemption whereby the provisions of s.8 don't apply if, on reasonable grounds, the Operator believes the employee-like worker's conduct or capacity warrants a decision to immediately modify or suspend account access, or it is not reasonable to expect the Operator to allow the worker to continue to perform work through the platform – s.9(2) of Code provides that one or more reports or complaints regarding an employee-like worker's capacity or conduct may constitute reasonable grounds – Commission found exemption under s.9(1) did not apply as respondent did not establish reasonable grounds – found respondent's evidentiary basis 'poor', including reliance on 'brief and generally broad' complaints – found a lack of evidence of human involvement in decision making process – additionally, applicant was not afforded a proper opportunity to respond as he was inadequately informed of substance of complaints – Commission considered whether deactivation unfair under s.536LH(1) – observed respondent required to establish conduct relied upon in deactivation decision occurred [*Hotak*] – applicant contested version of events proffered by respondent – Commission preferred applicant's testimony and found respondent's evidence of 'low probative value' – found no valid reason for deactivation under s.536LH(1)(a) – considered other relevant matters under s.536LH(1)(c) – found respondent did not afford applicant procedural fairness – further, applicant had also been suspended then reactivated after one of the complaints which was later relied upon in final deactivation decision – noted applicant's length of service of nearly five years and completion of around 7,000 trips – held deactivation unfair – Commission ordered applicant be reactivated, requested parties confer and advise of amount payable for lost remuneration during period of deactivation under s.536LQ.

UDE2025/108
Lim C

Perth

[\[2025\] FWC 3338](#)
6 November 2025

Zheng v Guardian Community Early Learning Centres P/L

TERMINATION OF EMPLOYMENT – Merit – reinstatement – s.394 Fair Work Act 2009 – applicant employed with respondent as a casual early childhood educator from 2022, predominantly based in respondent's Mentone West Centre in Victoria – applicant terminated on 5 August 2025 based on failure in completing a Suitability Declaration – applicant submitted she advised Centre Manager and used workforce scheduling application 'Human Force' in May 2025 to advise of her unavailability from 3 July 2025 to 29 August 2025, due to her travelling overseas to China – respondent directed an external third party to liaise with all employees and requested completion of the Suitability Declaration due to a recent high-profile child safety issue within the Australian early childhood sector – respondent submitted it attempted to correspond with applicant on multiple occasions prior to termination, including on 15 July, 21 July, 23 July, 30 July and 4 August 2025 – respondent submitted in absence of receiving applicant's completed Suitability Declaration it began internally processing her termination, including removing the applicant from the 'Human Force' system, which triggered sending an automated email requesting the applicant complete an 'exit survey' – applicant submitted she lost access to her phone internet and emails due to a typhoon which affected the regional province of China where she was located, and she only regained access to her emails on 5 August 2025, upon travelling to an urban area unaffected by the typhoon – on 5 August 2025, applicant responded to automated email, stating she 'did not intend to ignore the messages' and 'had no intention of resigning or ending' her employment and was 'happy to complete any outstanding forms or requirements', given that she had regained access to her inbox – respondent maintained termination, since applicant was a casual employee and respondent did not have a need for further casual support, noted applicant also failed to complete the Suitability Declaration – Commission found applicant's dismissal took effect on 5 August 2025, when applicant received unambiguous correspondence from respondent advising that her employment had ended – Commission rejected respondent's proposition that termination occurred

earlier, noted 'mere receipt of email does not constitute reasonable opportunity to become aware of a dismissal,' especially since applicant was 'legitimately unable to access their email' [Ayub] – Commission confirmed that automated email requesting completion of response to exit survey did not use plain or unambiguous language to explicitly advise the applicant of her termination [Ayub] – Commission considered whether dismissal was harsh, unjust or unreasonable under s.387 – Commission noted while failure to comply with critical directives given to employees is a valid reason for dismissal, such as requiring employees to complete a Suitability Declaration, there was no evidence that applicant refused to complete the Suitability Declaration – Commission found respondent's decision to maintain termination despite applicant's communication that she had not ignored the directive and was prepared to complete a Suitability Declaration was unreasonable, and not a valid reason for termination under s.387(a) – Commission noted respondent's reason for dismissal was not well-founded in circumstances where respondent did not check with Centre Manager whether there was a reasonable explanation for applicant's failure to respond, nor lead enquires on applicant's status of 'unavailable' on Human Force app – Commission found no evidence produced which confirmed respondent sent correspondence on 15 July and 21 July 2025, observed email report generated only noted emails were sent, not that they had been received, opened or clicked on – Commission found applicant was not notified of reason for dismissal prior to dismissal under s.387(b) – found applicant was not given an opportunity to respond to the allegations prior to the decision of dismissal being made under s.387(c) – Commission satisfied dismissal was harsh, unjust and unreasonable – held applicant was unfairly dismissed – Commission considered remedy – ordered reinstatement to applicant's position immediately prior to dismissal on or by 17 November 2025 – noted no basis for breakdown in relationship of trust and confidence [Nguyen] – Commission also ordered continuity of employment and renumeration lost of \$11,940.29 in addition to appropriate superannuation contributions, being eleven weeks' pay minus a discount of 10% for applicant's failure to find alternative employment and mitigate loss of earnings.

U2025/12858
Redford C

Melbourne

[\[2025\] FWC 3202](#)
3 November 2025

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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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