

FWC Bulletin

15 January 2026 Volume 1/26 with selected Decision Summaries for the month ending Wednesday, 31 December 2025.

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Eligible protected action ballot agent review

10 December 2025

Deputy President Hampton as National Practice Lead for bargaining has issued a statement on our review of approved eligible protected action ballot agents.

This review is a requirement under the Secure Jobs, Better Pay Act changes, which took effect on 6 June 2023. Under these laws, we must review each approved eligible protected action ballot agent at least every three years to ensure they continue to meet the requirements for approval.

All eligible protected action ballot agents due for review within 2026 will be included in this process.

The review process will include opportunities for submissions from eligible protected action ballot agents, interested parties, and the public. Further details of the timetable and process will be announced in early 2026.

Read the [Deputy President's statement \(pdf\)](#)

For more information and updates as they become available, please see the [eligible protected action ballot agents](#) webpage or [subscribe](#) to our bargaining subscription service.

We are upgrading our Document Search

13 January 2026

We are upgrading our [Document Search](#) to use modern technology and make future improvements easier.

The new Document Search will go live on 31 January 2026 and you will be able to keep using it with no interruptions.

You will still have all the current search features, but the design might look a bit different.

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 Wednesday, 31 December 2025.

- 1** MODERN AWARDS – variation – gender-based undervaluation – ss.134, 157 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 initial decision in review ([\[2025\] FWCFB 74](#)) and found Children’s Services Employees (CSEs) covered by the *Children’s Services Award 2010* (CS Award) were subject of gender-based undervaluation, and for purpose of s.157(2)(a) of FW Act, an adjustment to those rates of pay was justified by ‘work value reasons’, as defined in s.157(2A) – in April decision, Full Bench also expressed provisional views as to how identified gender-based undervaluation should be rectified by way of variations to classifications and rates of pay in CS Award – member of Expert Panel conducted several conferences to gauge response of interested parties to provisional views and consensus on variations to be applied – on 29 August 2025, Australian Childcare Alliance (ACA) filed draft determination and submission which reflected consensus position reached between ACA, United Workers’ Union (UWU) and Australian Industry Group (Ai Group) in relation to provisional views, other than the phasing-in of minimum wage rate increases and operative date for first increase – consensus position supported by Australian Business Industrial and NSW Business Chamber Ltd (ABI) and the Community Child Care Association and Community Early Learning Australia (CCCA and CELA) – no parties opposed consensus position – hearing on 20 October 2025 dealt with contested issues of operative date and phasing-in of proposed increases – parties supported simplified classification structure and accompanying translation table and related arrangements set out in April decision, subject to some other amendments – Full Bench did not consider fifth amendment necessary – fifth amendment was in relation to cooks whose employers require them to hold or be working towards an early child education and care (ECEC) Certificate III qualification to enable them to assist as an educator ‘on the floor’ with children when needed – fifth amendment proposed a new minimum wages rates provision should be included in clause 14 of CS Award, with minimum wages rates table split into three sections for CSEs, Support Workers and ‘Support Worker – ECEC Qualified Cook’ – Full Bench considered fifth amendment would duplicate minimum wage rates which appear in new CSE classification structure, and acknowledged cooks should have a separate provision which identifies that they will be paid as a CSE and not as a support worker – Full Bench considered operative date and phasing-in, where there was no consensus position – provisional view of Full Bench in April decision was that there should be an initial increase of 5% operative from 1 August 2025, with minimum wage rate increases being phased in over a period of five years in annual increments – took into account size of increases (23% for Certificate III qualified CSE), reliance of ECEC sector on

Commonwealth funding, lack of Commonwealth commitment to further funding beyond end of ECEC Worker Retention Payment (WRP) scheme in November 2026, potential for price increases for ECEC services, and 15% wage increase currently funded under WRP scheme – acknowledged due to passage of time, initial operative date of 1 August 2025 not viable – Full Bench accepted ACA’s submission that period of three months is necessary to allow employers to make administrative arrangements to transfer employees from current to new classification structure – noted for a significant majority of employers there would be no actual cost associated with initial wage increases, since they will already be paying CSEs at least 15% above CS Award rates because of their participation in WRP scheme and associated ECEC Agreement, or would otherwise be already paying above award rates of pay pursuant to other enterprise agreements or individual arrangements – Full Bench found later operative date of 1 July 2026, as proposed by Ai Group was unnecessary – Full Bench determined initial operative date of 1 March 2026, as proposed by ACA as ‘appropriate’ within meaning of s.166(2) of FW Act – acknowledged all parties accepted there should be a phasing-in arrangement of some form, with issues in contention being length of phasing-in timetable and increases to apply at each stage – found UWU and Commonwealth proposals effectively ‘front load’ increases on basis of extent of industry participation in WRP scheme, which to date has funded a wage increase of 15% – noted this consideration did not take into account interests of minority of employers that have decided not to participate in WRP scheme and otherwise pay their CSEs at or close to CS Award rates – found UWU and Commonwealth proposals would place too heavy a burden on employers at early stages of phasing-in timetable – found ACA’s position, which involved a well thought out transition process broadly aligned with provisional view of Full Bench – noted ACA’s timetable for completion slightly compressed compared to five years that Full Bench had proposed, but saw no reason not to adopt it if ACA’s members regard it as appropriate and viable – no party disagreed with ACA’s methodology – Full Bench decided to adopt ACA’s position concerning operative date and phasing-in, with exception of operative dates for increases after 1 March 2026 – Full Bench decided that increases after 1 March 2026 should operate from 30 June in each year, rather than 1 July, for reasons given in Stage 2 Aged Care reasons for decision ([\[2023\] FWCFB 93](#)) and to maintain alignment established with Caring Skills benchmark rate in other modern awards – Full Bench satisfied variations to CS Award necessary to achieve modern awards objective – Full Bench acknowledged overall assessment that for modern awards safety net to be ‘fair and relevant’ (s.134(1)), modern award minimum wage rates must properly reflect work value and be free of assumptions based on gender – Full Bench took into account considerations specified in s.134(1) of FW Act which weighed in favour of variations – in relation to s.134(1)(a), using measure of ‘low paid’ as being two-thirds of median adult ordinary-time earnings for full-time employees, noted the ‘low paid threshold’ quantified in two ways: \$1,139.65 per week (using ABS Characteristics of Employment data for August 2024) or \$1,131.33 per week (using ABS Employee Earnings and Hours data for May 2023) – observed classifications of CSE Levels 1.1.-3.2 have rate of pay that falls below these measures – given wage rate adjustments would have result of lifting almost half of current classifications in CS Award above low paid threshold, consideration weighed in favour of variations – in relation to s.134(1)(ab), found variations would 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 – in relation to s.134(1)(c), recognised implementing minimum rates of pay which fairly reflect work value may attract more persons, especially women, to ECEC sector over longer term and increase workforce participation, and likely to encourage existing CSEs to remain in sector – in relation to s.134(1)(d), considered simplified classification structure, which recognised the caring skills that CSEs are required to exercise and their relevant underpinning qualifications promotes flexible modern work practices and efficient productive performance of work – Full Bench considered variations consistent with achievement of minimum wages objective in s.284(1) of FW Act – in respect of considerations in ss.284(1)(a), (aa), (b) and (c), Full Bench made same findings as in relation to ss.134(1)(h), (ab), (c), and (a) respectively – deemed s.284(1)(e) not relevant – determination varying CS Award to implement revised classification structures, first phase of minimum wage rate increases and consequential variations published together with decision.

Gender-based undervaluation – priority awards review – *Children’s Services Award 2010*

AM2024/23
Hatcher J
Asbury VP
O’Neill DP
Slevin DP
Grayson DP

Sydney

[\[2025\] FWCFB 283](#)
10 December 2025

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- 2** MODERN AWARDS – variation – gender-based undervaluation – ss.134, 157 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 initial decision ([\[2025\] FWCFB 74](#)) and found the classifications and minimum wage rates prescribed by the *Health Professionals and Support Services Award 2020* (HPSS Award) for dental assistants, pathology collectors and health professionals had been subject of gender-based undervaluation and for purpose of s.157(2)(a) of FW Act, an adjustment to those rates of pay was justified by ‘work value reasons’, as defined in s.157(2A) – in April decision, Full Bench also expressed provisional views as to how identified gender-based undervaluation should be rectified by way of variations to classifications and rates of pay in HPSS Award – member of Expert Panel conducted several conferences to gauge response of interested parties to provisional views and consensus on variations to be applied – staff of Commission published draft determination which would give effect to provisional views concerning dental assistants and pathology collectors, however no consensus was achieved, but there was degree of narrowing of issues in contention – hearing conducted in relation to dental assistants on 21-23 October 2025 and in relation to pathology collectors and health professionals on 12-13 and 20 November 2025 – in relation to dental assistants, issues in contention concerned new classifications and rates of pay to be adopted to rectify identified gender-based undervaluation, and the operative date and phasing in of minimum wage rate adjustments involved – Full Bench considered dental assistants – evidence and submissions were filed by the Australian Council of Trade Unions
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(ACTU), Health Services Union (HSU), United Workers' Union (UWU), Dental Assistants Professional Association (DAPA), Dental Service Business Council (DSBC) and Australian Dental Association (ADA) – parties' submissions raised three main issues in response to Full Bench's provisional view: (1) whether classification structure should be amended to provide a further level between Level 1 and Level 5 for progression of unqualified dental assistants, and if so, which level would be appropriate; (2) appropriate qualifications and experience for progression between levels; and (3) operative date and phasing in arrangements for changes proposed – Full Bench considered classification structure – did not intend to adopt classification proposals of DSBC and ADA that proposed two intermediate classifications between Level 1 and 5, where dental assistants would move through 6 or 7 classification levels – Full Bench found proposal fundamentally inconsistent with work value findings in April decision – Full Bench had determined in April decision that an unqualified dental assistant should be placed above Level 4 in existing structure (at least Level 5) and a Certificate III qualified dental assistant should be placed above this (at least Level 6) – Full Bench considered for progression by an unqualified dental assistant to Level 6, four years' industry experience should be established as benchmark for equivalency with a Certificate III qualification – Full Bench to leave to employer's discretion in respect to Level 7, as to whether an unqualified or Certificate III-qualified dental assistant has experience equivalent to Certificate IV qualification – noted parties had differing positions on operative date and phasing-in of minimum wage rate increases – in order to give appropriate balance to competing relevant considerations, Full Bench considered increases should be implemented in two stages – first stage to involve initial increase from 1 April 2026, dental assistants to translate from current levels to new levels in new classification structure – rates of pay at higher levels to be phased in such that in first stage, increases to be around 4%, with higher percentage increases to apply for employees translating from Level 1 to Level 3 (7.95%) and from Level 2 to Level 6 (9.26%) – observed Level 1 is current entry level and applies for three months only, meaning increase for employees at level only transitory – higher increase from Level 2 to Level 6 only to apply to dental assistants with more than four years' experience – evidence indicated dental assistants with four years' experience tend to be paid above-award rates for attraction and retention reasons, which will mitigate practical effect of increases for employees – transitional rates to be reflected in amendments to clause 16.2 of HPSS Award by adding table of rates that apply to dental assistants from 1 April 2026 – table to operate until 1 January 2027 when full translation to take effect – second stage to involve payment of remaining amount of total increases and to take effect from 1 January 2027 – Full Bench considered minimum wages objective – observed for award safety net to be 'fair and relevant', minimum wage rates must properly reflect work value and their determination must be free of assumptions based on gender – Full Bench took into account considerations specified in s.134(1) of FW Act which weighed in favour of variations – in relation to s.134(1)(a), using measure of 'low paid' as being two-thirds of median adult ordinary-time earnings for full time employees, noted the 'low paid threshold' quantified in two ways: \$1,164.67 per week (using ABS Characteristics of Employment (CoE) data for August 2025) or \$1,131.33 per week (using ABS Employee Earnings and Hours (EEH) data for May 2023) – noted dental assistants (Levels 1 to 5) currently have weekly minimum rate of pay that falls below both measures – given wage rate

adjustment would have result of lifting some dental assistants to classifications in HPSS Award up to or above low paid threshold (Levels 6 and 7), found consideration weighed in favour of variations – in relation to s.134(1)(ab), observed variations would rectify gender-based undervaluation of work in female-dominated occupation and aid in achieving gender equality, ensuring equal remuneration for work of equal value and eliminating gender-based undervaluation of work – in relation to s.134(1)(c), noted there was some evidence that above award payments are already used as means of achieving recruitment and retention in industry, however possible variations may attract more persons, especially women to occupation of dental assistant and increase workforce participation – Full Bench also considered variations consistent with achievement of minimum wages objective in s.284(1) of FW Act – in respect of considerations in ss.284(1)(a), (aa), (b) and (c), Full Bench made same findings as in relation to ss.134(1)(h), (ab), (c) and (a) – found s.284(1)(e) not relevant to matter – Full Bench considered pathology collectors and health professionals – in April decision, Full Bench concluded that gender-based undervaluation of work of pathology collectors should be rectified by reclassifying them within existing structure for Support Services employees (as with dental assistants) – considered experienced pathology collector belonged most appropriately in Level 7 – Full Bench expressed provisional view in April decision – observed evidence and submissions in current stage of proceedings had not persuaded Full Bench to depart from provisional view – did not consider Australian Pathology had made out a case that interests of pathology industry should be given primacy over rest of that part of health sector covered by HPSS Award – noted no other employer party with an interest in HPSS Award supported position that no action should be taken to rectify gender-based undervaluation – acknowledged cost to employers of implementing provisional view with respect to pathology collectors was entirely insufficient to justify position that no action should be taken to rectify gender-based undervaluation of their work – recognised although minimum wage rates increases proposed for health professionals are clearly substantial, did not consider that second Browne Report provided a reliable basis upon which to estimate their cost impact in pathology industry – found revenue position for pathology industry generally positive, as evident by IBISWorld Report and position had improved since April decision with the Commonwealth commencing, from 1 July 2025, indexation of the Medicare rebate for about one-third of pathology services – considered increases should be phased-in over maximum of five approximately equal stages, 12 months apart – implementation of new structure and first increase to operate from 30 June 2026, and remaining increases to operate from 30 June in each of 2027, 2028, 2029 and 2030 – Full Bench considered modern awards objective and minimum wages objective – acknowledged overall assessment that for modern awards safety net to be ‘fair and relevant’ (s.134(1)), and for minimum wage safety net to be ‘fair’ (s.284(1)), modern award minimum wage rates must properly reflect work value and be free of assumptions based on gender – Full Bench took into account considerations specified in s.134(1) of FW Act which weighed in favour of variations – in relation to s.134(1)(a), using measure of ‘low paid’ using CoE and EEH data, noted pathology collectors currently classified as Support Services employees at Level 5 and below, have minimum weekly rates of pay below both measures of low paid threshold – observed variations would significantly increase incomes of pathology collectors who are award-reliant and for those classified at Levels 6 and 7, would place them

approximately at or above low paid threshold, which weighed significantly in favour of variations concerning pathology collectors – noted ‘low paid’ consideration has less relevance to health professionals, but currently minimum weekly rates for entry-level professionals with an AQF Level 5 or 6 qualification (Level 1, pay point 1) is below low paid threshold on CoE measure, which also weighed in favour of variations for health professionals – in relation to s.134(1)(ab), observed variation would rectify gender-based undervaluation of work in female-dominated occupations and aid in achieving gender equality, ensuring equal remuneration for work of equal value and eliminating gender based-undervaluation of work – Full Bench also considered variations consistent with achievement of minimum wages objective in s.284(1) of FW Act – in respect of considerations in ss.284(1)(a), (aa), (b) and (c), made same findings in relation to ss.134(1)(h), (ab), (c) and (a) – s.284(1)(e) not considered relevant to matter – variations concerning pathology collectors to take effect on 1 April 2026 and to be included in determination varying HPSS Award in respect of dental assistants operating from same date – given first stage variations concerning health professionals to take effect at later date and involve greater degree of complexity, draft determination to be published for comment prior to making final variation determination – draft determination to be published during January 2026 together with statement which explains in greater detail its intended operation – parties to have 28 days from date of determination to file any submissions concerning any perceived drafting or other technical issues in draft determination.

Gender-based undervaluation – priority awards review – *Health Professional and Support Services Award 2020*

AM2024/20
Hatcher J
Asbury VP
O’Neill DP
Slevin DP
Grayson DP

Sydney

[\[2025\] FWCFB 297](#)
24 December 2025

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- 3** TERMINATION OF EMPLOYMENT – resignation – s.394, 400, 604 Fair Work Act 2009 – permission to appeal – appeal – Full Bench – appellant lodged appeal against first instance decision of Commission made on 31 March 2025 – appellant was employed as a stevedore for respondent – on 25 September 2024, appellant returned to work after approximately 10 weeks leave and was told during shift that due to a downturn in work, the Maritime Union of Australia (MUA) had agreed with respondent that all stevedores would have their hours reduced – appellant claimed the news caused him stress and exacerbated an existing psychological condition – on 26 September 2024 at 4.31am, appellant sent an email to a generic email address for the respondent’s Human Resources (HR) department which stated that he resigned that day, he then fell asleep – later that day at 11.02am, the HR manager sent the appellant an email confirming receipt of his resignation and advised it would be the appellant’s last day of employment – at 11.24am, appellant sent HR department an email requesting that his previous email be disregarded, since he ‘wasn’t thinking straight due to stress’ and that he would attend later for the night shift – at 6.09pm, HR Manager confirmed appellant’s resignation had been ‘accepted’ and processed through payroll – appellant alleged he was terminated by respondent, since respondent treated resignation as termination rather than
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clarifying that he genuinely intended to resign – respondent raised jurisdictional objection that appellant was not dismissed – Commission at first instance found appellant resigned on 26 September 2024, upheld jurisdictional objection and dismissed application – appellant lodged appeal against first instance decision – Full Bench satisfied in public interest for appellant to be granted permission to appeal under s.400, since appeal raises important question of proper application of s.386 to cases where an applicant has prima facie resigned – appellant raised two grounds of appeal: (1) Commission misapplied Full Bench precedent, by concluding that although appellant was in a state of ‘mental confusion’ when he sent resignation email to respondent, and that his state of mental confusion ‘was a special circumstance’, respondent was entitled to accept resignation because it was not fully aware of that special circumstance; and (2) Commission made significant factual errors, such that it mistook facts in *House v The King* in concluding Commission was not persuaded that respondent was, or ought to have been aware of ‘special circumstances’ surrounding appellant’s resignation – Full Bench considered grounds of appeal – considered ground (1), in relation to whether Commission correctly applied principles set in *Tavassoli* to circumstances of appellant’s case – observed question of whether an ostensible resignation is ineffective, arises only where there are ‘special circumstances’ in connection with resignation that employer should reasonably have apprehended [*Tavassoli*] – observed Commission at first instance formulated test as requiring that there were circumstances that would cause a reasonable person in respondent’s position to question whether appellant was conveying a real intention to resign, and respondent was ought to have been aware of those circumstances – Commission found at first instance that resignation was submitted when appellant was in a state of mental confusion and this was a ‘special circumstance’ – acknowledged Commission referred to phrase in *Tavassoli*, ‘could not reasonably be understood to be conveying a real intention to resign’, and said it raised question, ‘understood by whom?’ – observed Commission believed answer to question was a ‘reasonable person’ in position of the parties – Full Bench satisfied Commission was correct in formulating question for determination in that way – noted Commission went further and determined question on facts and circumstances at point in time respondent received and processed the resignation – observed as a result of this approach, Commission did not consider evidence of facts that were known, or those a reasonable person in position of parties would have understood, in deciding whether appellant’s ostensible resignation was effective – in contrast, cases referred to in *Tavassoli* do not establish that consideration of whether an ostensible resignation is attended by special circumstances, is limited to facts that were known, or would reasonably have been known by respondent, before resignation was accepted – observed courts and tribunals have not confined their analysis of ‘the objective position’ to precise time a resignation takes effect, and no requirement that question approached on that basis – observed events occurring after an ostensible resignation can be relied upon to establish a resignation was not voluntary because it was attended by special circumstances [*Grout*] – Full Bench satisfied Commission made an appealable error, when it confined inquiry as to whether respondent was, or ought to have been aware of the special circumstance applying to appellant, to the time respondent received and processed the resignation – noted Commission failed to consider whether respondent was or ought to have been aware of special circumstances, because of events following its

acceptance of the resignation – observed Commission’s approach not to resolve evidentiary conflicts about appellant’s mental health on understanding it had no bearing on respondent’s action in accepting appellant’s resignation, due to resignation already being accepted was an erroneous approach – Full Bench upheld ground 1 and determined not necessary to consider ground 2 – permission to appeal granted – decision quashed – matter to be redetermined by Commission as to whether appellant was dismissed.

Appeal by Gourlay against decision of Sloan C of 31 March 2025 [[\[2025\] FWC 888](#)]
Re: Sydney International Container Terminals P/L t/a Hutchison Ports Sydney

C2025/3138
Asbury VP
Wright DP
Roberts DP

Brisbane

[\[2025\] FWC FB 202](#)
18 December 2025

- 4** CONDITIONS OF EMPLOYMENT – stand down – protected action – ss.524, 526, 604 Fair Work Act 2009 – appeal – Full Bench – appeal concerned ANMF member registered nurse (Ms Razelle Coombes) who was stood down from work because she was participating in protected industrial action (PIA) – PIA included partial work ban – partial work ban involved nurses refusing to be redeployed from ward or floor they normally work on to another ward or floor – Ms Coombes normally worked on Ward 4 – on relevant day respondent asked Ms Coombes to work on Ward 2 as Ward 4 did not require rostered number of nurses due to decreased number of patients – Ms Coombes refused to be redeployed due to ongoing PIA – respondent stood down Ms Coombes under s.524 – first instance dispute concerned whether stand down permitted – at first instance, Commission held stand down was within scope of s.524(1)(a) as Ms Coombes could not be usefully employed because of PIA being refusal to be redeployed – first instance application dismissed – appellant challenged dismissal – single ground of appeal – contended Commission erred in finding s.524(1)(a) criterion existed in circumstances when absence of useful work on Ward 4 was not caused by PIA and in circumstances in which there was useful work on another ward or floor – Full Bench granted permission to appeal – noted question of significance concerning interpretation and application of s.524 – Full Bench considered purpose and operation of s.524 – observed an employer’s entitlement to stand down employees who cannot be usefully employed as a result of industrial action or breakdown or stoppage has been feature of industrial awards for many years – stand down only authorised by s.524(1) in limited circumstances – observed s.524(1)(a) stand down where employee cannot be usefully employed because of industrial action primarily directed at situation where industrial action engaged in by other employees of enterprise or a different enterprise, as opposed to stood down employee – appellant accepted s.524(1)(a) can operate in circumstances where employee engages in industrial action which causes no useful work for that employee to perform – Full Bench considered language of s.524(1)(a), stating two phrases critical – first being phrase ‘cannot be usefully employed’ – refers to situation where no useful work available for employee to perform in accordance with employment contract – second being phrase ‘because of’ – this implies relationship of cause and effect – consequently industrial action (or other accepted reason) must have occurred and had consequence there was no useful work for stood down
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employee to perform [*FMP Group*] – Full Bench found that did not occur with Ms Coombes – found Ms Coombes’ refusal to perform work in Ward 2 due to PIA did not affect availability of useful work in that ward – Full Bench recognised conclusion that s.524(1)(a) not available in circumstances where employee refuses to perform available work because they themselves are participating in industrial action, might appear surprising – reasoned s.524 addresses circumstance in which no useful work available to perform rather than circumstance in which there is available work, which employee refuses to perform – held Commission erred at first instance in finding Ms Coombes’ refusal to be redeployed due to PIA created ‘causal link to the stand down’ – Ms Coombes did not take industrial action which caused no useful work to be performed – held there was useful work Ms Coombes could have performed that she simply refused to perform – held in circumstances respondent not entitled to stand Ms Coombes down under s.524(1)(a) – Full Bench redetermined first instance application – suggested determination that s.524(1)(a) not appropriate did not mean order for payment sought by appellant at first instance would be made – Commission must take into account fairness between parties in dealing with stand down dispute by arbitration (s.526(4)) – appeal did not challenge first instance finding that Ms Coombes could have been directed to work on a different floor or ward consistent with employment contract – also no challenge to finding there was no useful work on Ms Coombes’ normal ward that night – on redetermination, Full Bench found Ms Coombes had right to participate in PIA – s.524(1) not available in this circumstance – because of redeployment refusal, respondent not required to permit Ms Coombes to perform work and she would not ordinarily be entitled to payment unless respondent accepted part performance – Full Bench recognised s.526 arbitration not limited to determination of legal rights – held taking fairness between parties into account, not fair or appropriate for order for monetary payment to Ms Coombes in all the circumstances – concluded permission to appeal granted – appeal dismissed.

Appeal by Australian Nursing and Midwifery Federation against decision of Yilmaz C dated 13 May 2025 [[\[2025\] FWC 1331](#)] Re: St Vincent’s Private Hospitals Ltd T/A St Vincent’s Private Hospitals

C2025/5059
Gibian VP
Millhouse DP
Hampton DP

Sydney

[\[2025\] FWC FB 274](#)
3 December 2025

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- 5** CONDITIONS OF EMPLOYMENT – unfair deactivation – remedy – ss.536LF, 536LH, 536LU Fair Work Act 2009 – since March 2023, applicant worked for respondent as delivery person via digital labour platform, accessed through Amazon Flex App (App) – on 4 April 2025, whilst making a delivery, applicant entered private residence to leave a package – following delivery, respondent received complaint from customer that applicant entered their private residence – on 7 April 2025, respondent suspended applicant’s access to App – on 8 April 2025, respondent notified applicant that his access to App would be permanently terminated – in preliminary decision in matter, Full Bench determined applicant was deactivated on 9 April 2025 ([\[2025\] FWC FB 182](#)) – applicant submitted respondent failed to follow *Fair Work (Digital Labour Platform Deactivation Code) Instrument 2024* (DLPD Code) and that his deactivation was unfair – applicant claimed he
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was authorised to enter customer's property to deliver package by a household member who said 'yeah, drop it inside' – respondent submitted jurisdictional objection that deactivation was consistent with DLPD Code and deactivation was not unfair due to applicant's serious misconduct – Commission considered whether applicant's deactivation was consistent with DLPD Code – in relation to s.13(4) to (6), found respondent did not provide applicant with opportunity to have discussions with a representative of respondent – in relation to s.13(7) to (8), not satisfied a human representative considered applicant's response – found respondent failed to make further inquiries, including whether a household member was at home and had authorised applicant to enter house – concluded deactivation was not consistent with DLPD Code under s.536LF(c) – Commission considered whether deactivation was unfair under s.536LH – in relation to valid reason under s.536LH(1)(a), found not complying with term of service requirement did not provide a valid reason for dismissal – observed not every breach of a requirement or workplace policy constitutes valid reason [*Virgin*] – found applicant was faced with complex situation where number of respondent's requirements conflicted and it was not clear which requirement should be prioritised – acknowledged applicant could not have left package on doorstep, since this would have breached a number of requirements – doorstep was visible from road and respondent has requirement that packages must not be left in an unsecure location – it was windy outside and the lightweight package could have blown away, and respondent has requirement that packages must not be left in a place exposed to inclement weather – noted applicant heard voices inside premises and reasonably assumed that household member who instructed him to drop package inside was the customer – requirement in Contractor Terms of Service that a delivery person 'deliver packages to customers on time and in accordance with any customer preferences and instructions in the App', which applicant believed he followed – noted if applicant refused request of dropping package a few steps inside door, he may have been perceived as being rude and in breach of requirement that delivery persons 'behave respectfully and professionally' when providing services – observed if respondent wants requirement not to enter a home under any circumstances to be prioritised above other requirements, it needs to be made clear – found applicant did not substantially or wilfully breach requirement, noting front door was open and he entered a few steps inside after receiving authority from household member – found no evidence applicant was being reckless in relation to health and safety or that there was a health and safety risk – did not consider applicant's delivery history or warnings made conduct on 4 April 2025 a valid reason for deactivation – did not consider applicant had previously been warned about unauthorised entry – not satisfied applicant's conduct of sufficient gravity or seriousness to justify valid reason for deactivation – in relation to whether relevant processes in DLPD Code were followed under s.536LH(1)(b), found respondent did not follow DLPD Code – however, observed some of the processes in DLPD Code were followed including issuing of preliminary deactivation notice – noted if respondent had allowed applicant a proper chance to respond, including a discussion with a representative of respondent, it would have become apparent to respondent that applicant acted reasonably and there was no valid reason for deactivation – in relation to other relevant matters under s.536LH(1)(c), found applicant's dashboard rating of 'fantastic', lack of formal warnings and delivery history weighed in favour of finding deactivation was disproportionate and unfair in

circumstances – observed deactivation had substantial detrimental impact on applicant’s financial and emotional perspective – held applicant’s deactivation was unfair – Commission considered remedy – not satisfied of respondent’s argument that there had been a breach of trust and confidence with applicant – noted applicant valued his work with respondent – observed applicant heard respondent’s concern and expressed he would behave differently in future – reactivation ordered – order to restore lost pay to be made after parties have been given opportunity to confer in relation to quantum of order.

Bandameeda v Amazon Commercial Services P/L

UDE2025/62

Allison C

Melbourne

[\[2025\] FWC 3842](#)

16 December 2025

Other Fair Work Commission decisions of note

Applications by Gillies

REGISTERED ORGANISATIONS – certificate – ss.323MD, 323MC Fair Work (Registered Organisations) Act 2009; s.177A Fair Work Act 2009 – Melita Gillies (applicant) applied to Commission for certificates under ss.323MC and 323MD of the *Fair Work (Registered Organisations) Act 2009* (Cth) (RO Act) and s.177A of the *Fair Work Act 2009* (FW Act) to hold office in an organisation under the RO Act and be a representative for a proposed enterprise agreement – applicant is a ‘removed person’ by reason of previously holding office at the Construction and General Division of the Construction, Forestry and Maritime Employees Union (CFMEU) – applicant required to apply following commencement of Part 2A of RO Act, which placed all branches of the Construction and General Division of CFMEU under administration upon determination of administration scheme and appointment of Administrator – a ‘removed person’ is prohibited from becoming a candidate for or being appointed to an office in an organisation or a branch of an organisation, starting to be employed in, or engaged by, an organisation or a branch, division or part of an organisation and being a bargaining representative in relation to a proposed enterprise agreement – consequences are lifted if Commission grants a relevant certificate to the person – since 2006, applicant has held positions of delegate, organiser, leader organiser, EBA organiser and Manager of CFMEU EBA Team – applicant served on board of directors of Brite Service, served as a councillor on City Council, was a member of the Unitarian Church and Australia Cuba Friendship Society – Administrator offered voluntary redundancy packages to all staff across branch in 2025 – applicant accepted redundancy in May 2025 – applicant has not secured alternative employment – Administrator and Fair Work Ombudsman (FWO) indicated they did not wish to be heard in relation to the applicant’s application – Administrator and FWO did not suggest if applicant was fit and proper to hold office – applicant filed statutory declaration in support of application – Commission satisfied that applicant was a ‘removed person’ for purposes of s.323MA(1)(a)(i) of RO Act and s.177A(1)(a)(i) of FW Act – to issue a certificate under s.323MD, Commission must be satisfied that ‘the removed person is a fit and proper person to be employed or engaged by an organisation’ – Commission noted section of RO Act does not specify any matters to which Commission must have regard to in deciding whether a removed person is a fit and proper person to be employed or engaged by an organisation – Commission considered *Lowth* to determine a fit and proper person – Commission determined applicant was a removed person purely as a result of the determination being made – nothing suggested applicant was removed due to conduct on her own part – applicant declared they have never been convicted of offences involving fraud or dishonesty, intentional use of violence against another person or intentional damage or destruction of property – for purposes of ss.323MC(3)(b) and 177A(8)(b), consideration favoured applicant to be deemed a fit and proper person – for purposes of ss.323MC(3)(c) and 177A(8)(c), Commission determined there was nothing to suggest that applicant is other than of general good character – Commission

considered work history to determine good character – for purposes of s.323MC(3)(d), Commission determined there is nothing to suggest applicant is not fit to be involved in the management of organisations – for purposes of ss.323MC(4) and 177A(9), Commission determined there is nothing to suggest that there is any other reason that applicant is not a fit and proper person to hold office in an organisation or be a bargaining representative – Commission determined applicant a fit and proper person to hold office in a registered organisation for purposes of s.323MC(2), to be employed or engaged by an organisation for purposes of s.323MD(2), and to be a bargaining representative for a proposed enterprise agreement for the purposes of s.177A(7) – Commission not prohibited from granting a certificate by s.323MC(5) of RO Act, s.323MD(3) of RO Act and s.177A(10) of FW Act.

R2025/178 and Ors
Gibian VP

Sydney

[\[2025\] FWC 3886](#)
18 December 2025

Burns v M & R Clayton P/L

TERMINATION OF EMPLOYMENT – Merit – resignation – ss.394, 386 Fair Work Act 2009 – applicant employed from 2019 on part-time basis as receptionist – respondent business is a podiatry clinic in Canberra – on 16 July 2025, respondent told applicant to go home for afternoon, as no patients were scheduled, applicant was also advised that she would not be paid and her hours would be cut – applicant was distressed, told respondent they ‘may as well quit’ – email exchange followed over subsequent days where respondent and applicant differed on whether applicant resigned – applicant requested clarification on employment – when applicant next attended workplace respondent informed applicant that she had resigned and she was asked to leave – applicant told respondent she had not formally resigned and had right to work – applicant lodged application for unfair dismissal remedy under s.394 – respondent raised jurisdictional objection on ground applicant voluntarily resigned and was not dismissed within meaning of s.386 – Commission examined what constitutes ‘dismissed’ under s.386(1) – Commission considered two things must be established by employee when seeking to establish employer should not have accepted resignation: first, that there were circumstances that would cause reasonable person in employer’s position to question whether employee conveyed real intention to resign; and second, employer was or ought to have been aware of those circumstances – question of whether employee had no effective choice but to resign – Commission observed there may be dismissal where employee has given resignation in ‘heat of the moment’ or under duress such that employee could not reasonably be understood to be intending to resign [*Bupa*] – Commission found applicant did not genuinely intend to resign – applicant attempted to clarify with respondent and clearly stated she did not want to resign – Commission found termination of employment at initiative of employer – Commission considered whether dismissal was harsh, unjust or unreasonable – Commission found valid reason under s.387(a) not relevant in this instance, since applicant did not intend to resign and dismissal not due to applicant’s conduct or capacity – found s.387(b)-(e) not relevant – considered s.387(f)-(g), as respondent was small business with no human resources expertise – considered no other matters relevant under s.387(h) – Commission found applicant’s dismissal was harsh and therefore unfair because applicant did not intend to resign – remedy considered – per s.390(3), held reinstatement not appropriate and compensation appropriate – ordered respondent pay applicant five weeks’ pay (\$4,090.50 gross less taxation) under s.392.

U2025/12454
Dean DP

Canberra

[\[2025\] FWC 3667](#)
1 December 2025

Wilson v Care Park P/L

TERMINATION OF EMPLOYMENT – Merit – compensation – ss.394 Fair Work Act 2009 – applicant commenced employment with respondent on 15 January 2024 as a parking patrol officer, on a permanent full time basis – applicant was dismissed on 5

June 2025 (as determined in preliminary decision [\[2025\] FWC 2996](#)) – applicant was injured at work when he was hit by a motor vehicle while issuing a parking ticket on 15 November 2024 – no fractures identified, but torn meniscus in applicant’s left knee found – applicant made a workers compensation claim and started receiving workers compensation payments – applicant submitted a number of certificates of capacity between 22 November 2024 and 31 January 2025 which indicated he had no capacity to perform any work – applicant was issued with a Police Infringement Notice on 30 December 2024 in relation to incident on 15 November 2024, for causing a traffic hazard as a pedestrian – respondent advised applicant on 11 February 2025 that they disputed liability for his weekly workers compensation payments and elected to proceed to hearing – Tasmanian Civil & Administrative Tribunal (TASCAT) issued an order on 26 February 2025 after the hearing, finding there was a reasonably arguable case for respondent to dispute liability and ordered that no weekly compensation be paid to applicant – after not being contacted by respondent regarding cessation of his workers compensation payments, applicant contacted respondent on 6 March 2025 seeking clarification on his employment status and payment of his entitlements if he is no longer employed – respondent replied on 7 March 2025 noting they were happy to accept applicant’s resignation, but provided no further clarification regarding his employment status – applicant subsequently did not respond and received no further communications – applicant started looking for alternative employment as he was left with no income – on 23 June 2025, applicant identified two emails from respondent in his junk email folder dated 5 June 2025 and 18 June 2025, the emails noted his absence and the outcome of the workers compensation claim, as well as the applicant’s inability to fulfil his duties with no foreseeable return to work, consequently terminating his employment and requesting he return all company property – respondent contended that applicant abandoned his employment and made no effort to engage with respondent after 6 March 2025 – Commission observed after cessation of workers compensation payments on 26 February 2025 and applicant’s 6 March 2025 query about his employment, the respondent ought to have taken steps to confirm the status of applicant’s employment and required him to provide relevant medical information regarding his fitness for work, and failure to do so left applicant in a state of uncertainty as to where he stood and reflected poorly on respondent – Commission observed applicant may also be criticised for his inaction after 7 March 2025, but accepted applicant was anxious and focused on clearing his name in relation to the court proceeding arising from the infringement notice, which was not resolved until the case was dismissed on 23 June 2025 – Commission noted applicant took no other action in the interim period between 7 March and 5 June 2025 that indicated he no longer intended to be bound by his employment contract – observed had applicant failed to respond to repeated contact from respondent seeking updates on his condition and fitness for work, the Commission would likely hold a different view – Commission found applicant did not abandon his employment, noting critical to that finding was respondent’s failure to properly respond to applicant’s 6 March 2025 email, or take steps prior to 5 June 2025 dismissal – Commission found there was not a valid reason for applicant’s dismissal under s.387(a) – Commission found applicant was not notified of a valid reason for his dismissal under s.387(b), or any reason, prior to the decision being made, but was simply notified by email of his dismissal on 5 June 2025 without any prior notice that respondent was considering that step – Commission noted applicant was not provided with an opportunity to respond to reasons for his dismissal under s.387(c), prior to that decision being communicated to him via email dated 5 June 2025 – Commission noted and considered other relevant matters under s.387(h), including that dismissal was communicated via an unsigned email and not by letter, dismissal purported to be a summary dismissal but provided no justification for summary dismissal, there was no offer to discuss the termination, and there was no reference to any support available to the applicant if he was distressed by the dismissal – Commission found dismissal was harsh, unjust, unreasonable and therefore unfair because there was no valid reason for dismissal and the process followed by respondent was procedurally unfair – Commission considered remedy – found reinstatement inappropriate, noting both the applicant and respondent agreed on this point – since termination, applicant has only earned \$300 for playing two ‘gigs’ in November 2025, but has received aged pension since June 2025 – noting applicant remains unemployed, Commission considered that an order for payment of compensation was appropriate – respondent did not contend

or file any material that would support a finding that an order for compensation would have an effect on the viability of its enterprise, subsequently Commission found that an order for compensation is unlikely to have an effect on respondent's viability under s.392(2)(a) – applicant's employment with respondent was from 15 January 2024 to 5 June 2025, being a period of approximately 17 months, noting that applicant did not return to work after his injury on 15 November 2024 – Commission considered applicant's length of service to be relatively short and did not find an adjustment to compensation otherwise calculated under s.392(2)(b) – applicant contended that had he not been dismissed, he expected to remain employed by respondent for the foreseeable future, although he significantly discounted the amount sought due to the possibility of him needing to support his wife who had received a cancer diagnosis – Commission noted applicant was medically certified as unfit to undertake any of his normal duties from 15 November 2024 up to 31 January 2025 and was at no stage medically cleared to return to work, further applicant was 70 years of age and may be required to provide care for his wife – Commission concluded applicant would have remained employed beyond a period of 12 weeks as this is a reasonable period of time in which an independent medical assessment (IME) could have been arranged for the applicant and conducted – found applicant's weekly earnings prior to his dismissal was \$902.88 excluding superannuation, therefore his anticipated earnings for twelve-week period is \$10,834.56 under s.392(2)(c) – applicant stated he made some attempts to obtain employment in aged care but these efforts have been unsuccessful, because he did not have NDIS accreditation, noting he has also sourced limited work playing 'gigs' as a musician – Commission observed applicant had not been particularly diligent in attempting to mitigate his losses, as it was only recently that applicant had taken substantive steps to secure required accreditation – Commission not satisfied that applicant had taken reasonable steps to mitigate his loss under s.392(2)(d) and applied a 25% reduction to compensation calculated – Commission accepted applicant did not receive income in the 12-week period following his dismissal, and found it not appropriate to make any deduction from the compensation calculated under s.392(2)(e) – Commission found it is not likely that the applicant would receive any income in the period between the making of the order for compensation and the payment of compensation under s.392(2)(f) – no other relevant matters were raised by the parties under s.392(2)(g) – applying *Sprigg* formula, Commission estimated remuneration applicant would have received, or would have been likely to have received, if respondent had not terminated his employment, to be \$10,834.56, on basis that it is likely applicant would have remained in employment for a further period of twelve weeks – applying 25% deduction regarding how applicant had not taken reasonable steps to mitigate his losses, amount of compensation reduced to \$8,125.92 – Commission found it not appropriate to deduct an amount for contingencies – Commission considered impact of taxation but have elected to settle a gross amount of \$8,125.92 subject to normal taxation – Commission satisfied that amount of compensation determined takes into account all circumstances of case as required by s.392(2) – Commission satisfied there was no misconduct that contributed to dismissal, therefore no reduction on account of misconduct is appropriate under s.392(3) – Commission found amount of compensation fell below the lesser of 6 month's pay and high income threshold under ss.392(5) and (6) – order made for compensation of \$8,125.92 gross, less taxation, in lieu of reinstatement.

U2025/10842

Masson DP

Melbourne

[\[2025\] FWC 3683](#)

2 December 2025

Khouri v Coulson Aviation (Australia) P/L

TERMINATION OF EMPLOYMENT – Merit – reinstatement – ss.387, 394 Fair Work Act 2009 – applicant operated helicopter when serious incident occurred on 10 March 2025 – applicant stood down – applicant received a termination letter on 14 May 2025 in which respondent stated his employment had been terminated with immediate effect and that reason for dismissal was 'significant damage to an RFS-owned aircraft caused by your actions', and associated reputational risk to respondent and its customer – respondent contended during proceedings reason for dismissal

was applicant's failure to engage constructively in safety investigation process and to accept that incident was caused by pilot error – Commission considered applicant presented as an honest, open and candid witness who genuinely tried to assist respondent to understand events and causes of incident – considered whether respondent had a valid reason for dismissal under s.387(a) – found respondent comprehensively failed to prove there was not appropriate engagement with safety investigation, or that anything done when flight happened exceeded that outlined in report – considered respondent's failure to call four potential witnesses to give evidence inferred evidence of such persons would not have assisted its case – found respondent's evidence regarding valid reason constituted pure hearsay evidence that could be afforded little weight – respondent's evidence included opinion that applicant had not engaged 'positively' in safety process – Commission found applicant's evidence established a clear and continued engagement with investigation process – found report acknowledged possible existence of various contributing factors relating to incident and that applicant's response to loss of lift was consistent with a typical recovery procedure – Commission noted no reference in report to applicant's engagement in investigation, his alleged attitude, or any refusal to accept a particular conclusion as to causes of incident – found absence of valid reason weighed in favour of finding that dismissal was harsh, unjust or unreasonable – noted respondent relied on evidence of director of flight operations who had not spoken directly to applicant at any stage before decision to dismiss, nor expressed to applicant any concern that he was not engaging appropriately in investigation, nor expressed to applicant that his employment was at risk if he did not accept a particular view of the cause – found that applicant was not notified of any reason for dismissal under s.387(b) – acknowledged applicant had no opportunity to respond to any of reasons variously relied upon by respondent under s.387(c) – found no procedural fairness was awarded to applicant – in relation to other relevant matters under s.387(h), accepted field in which applicant works is limited and applicant unlikely to find similar alternative position within reasonable period of time – found dismissal of applicant was harsh, unjust and unreasonable – considered how respondent strongly opposed applicant's reinstatement – found respondent did not establish a sound and rational basis for its assertion that it had lost trust and confidence in applicant – found no conduct involving participation in investigation that constituted a valid reason for dismissal and considered how recommendations in report anticipated applicant's return to work – found reinstatement not inappropriate – ordered applicant be reinstated, paid lost remuneration from dismissal until date of reinstatement, and continuity of applicant's employment to be maintained.

U2025/9320

Cross DP

Sydney

[\[2025\] FWC 2819](#)

19 December 2025

Ali v Lindsay Australia P/L

TERMINATION OF EMPLOYMENT – extension of time – representative error – s.394 Fair Work Act 2009 – applicant's employment was terminated on 14 October 2025 – applicant lodged unfair dismissal application on 6 November 2025 – application filed two days outside of 21-day statutory timeframe – applicant submitted representative error as reason for application being filed outside timeframe – applicant was represented by the Transport Workers' Union (TWU) – Commission considered whether exceptional circumstances existed in order to justify extension of time in filing application – Commission noted Full Bench authority in *Jordan and MacLeod*, where a failure on the part of the applicants to take steps to enquire about status of their application weighed against a finding of exceptional circumstances – Commission also referred to *Robinson*, where applicant in that matter had promptly sought legal advice and immediately instructed his representative to lodge an application, Full Bench found applicant was blameless for delay in lodgement of application – Commission found that applicant's representative assisted applicant with show cause process from 10 October 2025 – applicant attended his representative's office in person on day he was dismissed and informed them that he wanted to dispute the termination – applicant's representative told him they would file an unfair dismissal application for him – applicant said that he trusted that this would happen –

applicant's representative lost track of application as he was new to job and did not have a lot of experience in preparing unfair dismissal applications – applicant's representative identified that he had not filed the application on 6 November 2025 and upon becoming aware that he had not filed the application, filed it immediately that same day – Commission noted there was no evidence to suggest that applicant's representative did not have all of the information required from the applicant on 14 October 2025 to lodge application – Commission noted applicant's representative contacted applicant on 6 November 2025 to advise that application had not been filed and that it would be filed late, however there was no contact between the two from 14 October 2025 until 6 November 2025 – Commission was of view that it was not necessary for applicant to contact his representative after 14 October 2025, as he gave clear instructions that he wanted to dispute the termination and the applicant's representative committed to file the application – Commission found it was reasonable for applicant to defer to his representative's expertise, leave the matter in their hands and trust that they would file his application on time as a registered organisation with a lengthy history of representing members – Commission found it was not necessary for applicant to check whether application had been lodged, noting the context of a relatively short delay – Commission observed it would be unreasonable to impose a further responsibility upon applicant beyond his action of providing clear instructions to his representative to lodge his application [*Robinson*] – Commission found the only reason for delay was representative error by applicant's representative and that applicant was blameless for delay in filing application, and did not contribute to delay through his conduct which weighed in favour of a finding of exceptional circumstances – Commission satisfied exceptional circumstances existed [*Nulty*] – found it appropriate to extend period for application to be made to 6 November 2025 – matter to be listed for directions and conciliation.

U2025/17662

Wright DP

Sydney

[\[2025\] FWC 3838](#)

17 December 2025

Jelmac Australia P/L t/a Jelmac Directional Drilling

TERMINATION OF EMPLOYMENT – costs – ss.400A, 611 Fair Work Act 2009 – on 7 April 2025, Commission issued decision ([\[2025\] FWC 981](#)) which dismissed unfair dismissal application lodged by Ms Erinn McGowan due to failure to comply with directions and attend a conference or hearing held by Commission – on 17 April 2025, Jelmac Australia P/L (costs applicant) applied for costs against Ms McGowan (costs respondent) pursuant to ss.400A and 611 of FW Act – costs applicant submitted costs respondent's unreasonable acts or omissions in connection with conduct or continuation of her unfair dismissal application caused costs applicant to incur costs, costs respondent was put on notice that costs applicant would be vigorously opposing her unfair dismissal application and would be seeking recovery of their costs, and costs respondent's unfair dismissal application was made vexatiously with no reasonable prospect of success – Commission noted in s.611 parties bear their own costs save for two exceptions where Commission can order costs – Commission considered first exception of ordering costs empowered under s.611(2), where Commission must be satisfied that party made application vexatiously or without reasonable cause, or it should have been made apparent that application had no reasonable prospect of success [*Church; Baker*] – Commission not satisfied that it was apparent to costs respondent that her application had no reasonable prospects of success, given both parties disputed other parties' versions of events – Commission noted cost respondent's submissions evidenced she believed she had some prospect of success and in order to find that an application has no reasonable prospects of success, the application must be 'so manifestly untenable or groundless or so lacking in substance as to be not reasonably arguable' [*Ryman*] – Commission considered s.400A, where Commission must be satisfied that party's unreasonable acts or omissions in connection with their conduct or continuation of the matter empowers the Commission to award costs – Commission persuaded that costs respondent engaged in unreasonable acts or omissions in connection with the continuation of the application that caused costs applicant to incur additional costs [*Gugiatti*] – satisfied costs respondent's repeated failure to attend multiple hearings and comply with

directions was unreasonable, including fact she omitted to provide credible explanations for her absence, and non-compliance with directions caused costs applicant to incur additional costs – Commission did not accept all items in costs applicant’s itemised schedule of costs as being incurred as direct consequence of costs respondent’s acts or omissions – noted legal costs and disbursements incurred by costs applicant in relation to 4 March 2025 hearing would have been incurred by them in ordinary course of advancing their defence to the costs respondents’ substantive claim – found costs associated with costs application totalling \$5,265 arose as direct consequence of costs respondent’s acts and omissions – Commission ordered costs for amount of \$16,882 payable within 21 days of date of order by costs respondent to costs applicant.

C2025/4793
Panopoulos C

Melbourne

[\[2025\] FWC 1959](#)
24 December 2025

Daly v Very Helpful Chats P/L

TERMINATION OF EMPLOYMENT – Merit – compensation – s.394 Fair Work Act 2009 – applicant was employed by respondent as a senior psychologist – respondent is a telehealth psychology practice and operates entirely online – on 30 May 2025, respondent terminated applicant’s employment due to engaging in serious misconduct – respondent claimed applicant had engaged in dishonesty and breach of trust by having made repeated and materially false statements regarding a supervisee’s performance and conduct – Psychologist A was a relatively junior staff member of respondent and it was decided that applicant would take on a supervisory role in respect to Psychologist A, including providing them with feedback about their reports – Commission considered that evidence before it did not support a finding that applicant engaged in conduct capable of being described as dishonest or a breach of trust or conduct to justify the termination of the applicant’s employment – Commission accepted that inconsistency in tone and content, at least in material in evidence, was quite pronounced, but there may be a range of reasons for this, including that having been tasked with supervising and coaching Psychologist A, applicant seemed to have adopted a supportive and affirmatory approach, which applicant probably considered would be more likely to help Psychologist A improve – respondent claimed that applicant had also engaged in seriously inappropriate behaviour by questioning the legitimacy of a staff member’s LGBTQIA+ identities based on personal assumptions and associated false claims – Commission considered that applicant’s conduct did not rise to level of misconduct justifying termination of their employment – Commission however noted that a comment about another person’s sexuality made to others without that person’s consent can in many circumstances be a significant breach of that person’s privacy, can be damaging, and will rarely be appropriate subject matter for comment in the workplace – Commission observed that while it did not consider the comment was made maliciously, it nevertheless impacted negatively upon the affected staff member who said that they sought psychological support to address the damage the comment did to their professional confidence – Commission noted that applicant was given several opportunities in their evidence to express remorse for their comment or the impact that it had on the staff member and unfortunately did not take that opportunity, and that applicant let themselves down by making this comment about their work colleague – respondent claimed applicant engaged in wilful or deliberate conduct inconsistent with their role and contractual obligations – Commission did not consider that applicant had engaged in wilful or deliberate conduct inconsistent with their role and contractual obligations – Commission observed that evidence as to these matters was very thin and on the evidence before Commission, applicant’s interactions with people was not aggressive, inappropriate or dishonest – Commission found that respondent had not established that applicant had engaged in serious misconduct – not satisfied there was valid reason for dismissal under s.387(a) – in relation to s.387(b), Commission found applicant was not notified of reason for their dismissal before decision was made to terminate their employment – Commission found that because applicant was not notified of reason for their dismissal before decision was made, they were not properly given an opportunity to respond to it under s.387(c) –

Commission found that termination of applicant's employment was summary, and relatively abrupt, Commission found this to be a case where it is appropriate to take into account the effect of the nature of the termination on the applicant, sudden as it was, and its impact on their personal and economic circumstances – Commission found that applicant's dismissal was unfair and that reinstatement would not be appropriate – Commission ordered compensation to be paid by respondent to applicant in amount of \$8,478.090 less taxation as required by law, plus superannuation contribution into applicant's nominated fund of \$1,017.58.

U2025/10355
Redford C

Melbourne

[\[2025\] FWC 2675](#)
28 November 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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