FWC Bulletin

12 February 2026 Volume 2/26 with selected Decision Summaries for the month ending Saturday, 31 January 2026.

Contents

Eligible Protected action ballot agent review – February 2026

30 January 2026

Deputy President Hampton as National Practice Lead for Bargaining has issued a statement to formally start 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.

As part of the review, we are accepting submissions from eligible protected action ballot agents, interested parties, and the public. The submission period will close on 16 March 2026. For more information on the review and making submissions, please see the eligible protected action ballot agents webpage, or subscribe to our bargaining subscription service.

Read the Deputy President's statement (pdf).

Decisions of the Fair Work Commission

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

Summaries of selected decisions signed and filed during the month ending Saturday, 31 January 2026.

1 MODERN AWARDS – variation – delegates' rights term – s.160, Schedule 1 clause 95 Fair Work Act 2009 – Full Bench – Full Bench issued Statement and Direction ([2025] FWCFB 293) in matters on 23 December 2025 – *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) (Closing Loopholes Act) amended the FW Act to provide in s.350C for certain rights for workplace delegates and in s.350A for protection of workplace delegates in exercise of those rights – Closing Loopholes Act also added s.149E, which requires modern awards must include a delegates' rights term for workplace delegates covered by award – s.12 was amended to define 'delegates' rights term' and clause 95 was added to Schedule 1 of FW Act to allow Commission to vary certain modern awards – on 28 June 2024, Full Bench of Commission issued a Statement ([2024] FWC 1699) which indicated that a majority decided to vary all modern awards to include a delegates' rights term in the form set out in an attachment to that Statement (standard term) – determinations varying all 155 modern awards to include the standard term were issued that same day and commenced operation on 1 July 2024 – on 18 September 2024, proceedings were initiated in the Federal Court of Australia by the Construction, Forestry and Maritime Employees Union (CFMEU), the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU), and the Mining and Energy Union (MEU) – the CFMEU, CEPU and MEU sought writs of certiorari to quash orders of the Commission with respect to the standard term inserted into 9 modern awards and consequential writs of mandamus – on 17 December 2025, the Full Court delivered its decision [*Construction, Forestry and Maritime Employees Union v Australian Industry Group* [2025] FCAFC 187] – Full Court determined that in varying the 9 modern awards to include the standard term, the Full Bench had misunderstood the statutory task set out in clause 95 of Schedule 1 of FW Act and impermissibly limited the rights conferred by s.350C in three respects: (1) Commission confined scope of rights of workplace delegates to represent members of the relevant employee organisation and any other persons eligible to be such members; it confined those rights to representation only of such persons if they are employed by the employer of the delegate; workplace delegates' rights conferred by s.350C are not so confined; delegates' rights term must proceed on basis that workplace delegate is entitled to represent industrial interests of all members of organisation and persons eligible to be members who work in enterprise or regulated business in which delegate works, regardless of whether they are employees of delegate's employer – (2) Commission confined rights of workplace delegates to communicate with members and those eligible to be members; delegates' rights terms as they stand only authorise communications 'for purpose of representing' industrial interests

of such person; s.350C(3) entitles workplace delegate to communicate with those persons 'in relation to' those industrial interests, which is different to and wider than phrase used in delegates' rights term; term needed to adhere to wording of s.350C(3)(a) – (3) clauses 29A.9(a)(i) and 29A.9(a)(iii) limit scope of workplace delegates' rights that are otherwise provided for by delegates' rights term – Full Court ordered writs of certiorari be issued to quash determinations made by majority of Full Bench varying 9 modern awards to include a delegates' rights term – writs of mandamus were also issued requiring Commission to exercise its function under clause 95 of Schedule 1 of FW Act – Commission further dealt with proceedings in matter with respect to the 9 modern awards subject of Full Court decision in order to comply with writs of mandamus – Commission also initiated proceedings on own initiative under s.160 of FW Act to consider varying all other modern awards to address ambiguity, uncertainty or error arising from jurisdictional errors in standard term identified by Full Court – Full Bench expressed provisional view that all modern awards should be varied to include a delegates' rights term (reproduced as 'Attachment 2' to decision) – proposed term involved redrafting standard term to address the three errors identified in Full Court decision – Statement also expressed provisional views that with respect to the 9 modern awards that such variations would come into operation and take effect from 1 July 2024, and in relation to the 146 other modern awards any determination varying those modern awards would also take effect from 1 July 2024 – interested parties were directed to provide any submissions concerning provisional views – Full Bench acknowledged narrow purpose of proceedings, being to comply with orders issued by Full Court with respect to 9 modern awards subject of Full Court decision and to rectify jurisdictional errors in standard term identified by Full Court in remaining 146 modern awards – noted expedited process had been adopted to ensure all modern awards contain a delegates' rights term as required by s.149E and clause 95 of Schedule 1 of FW Act that accords with law as stated in Full Court decision – Full Bench considered the three jurisdictional errors identified in Full Court decision – (1) in relation to first error, no party opposed proposed change of replacing definition of 'eligible employees' in standard term with proposed new definition of 'eligible workers' in clause XX.2 and replacement of 'eligible employees' with 'eligible workers' in clause XX.5 – Australian Chamber of Commerce and Industry (ACCI), Council of Small Business Organisations Australia (COSBOA) and Australian Resources and Energy Employer Association (AREEA) opposed proposed new definition of 'workplace delegate' and submitted definition should simply refer to s.350C(1) of FW Act – Full Bench noted modern awards already contain definition of 'workplace delegate' at clause 2 which assigns term the meaning given to it by s.350C(1) of FW Act and adopting statutory definition would ensure definition does not operate to limit or detract from rights conferred by s.350C – Full Bench considered multiple definitions unnecessary and potentially confusing and decided to delete clause XX.2(d) from proposed term – in relation to XX.5, CFMEU submitted that reference to a 'policy of the employer' in clause XX.5(f) may constitute an impermissible limitation on a workplace delegates' right to represent all eligible workers in an enterprise – Full Bench accepted submission and noted words 'policy of the employer' would be replaced by 'workplace policy' – however, Full Bench rejected CFMEU's additional submission that clauses XX.5 and XX.6 should be amended to include a provision which confers on eligible workers a corresponding right to be represented by a

workplace delegate, since not authorised by clause 95 of Schedule 1 as it is not a delegates' rights term as defined in s.12, and s.350C only confers rights upon workplace delegates and not upon workers who might be represented by a workplace delegate – ACCI and Master Builders Australia (MBA) submitted with respect to replacement of 'eligible employees' with 'eligible workers' in clause XX.8 in relation to paid time for delegates' training, might result in unintended consequence of expanding number of workplace delegates who may be entitled to such paid training time, and submitted clause XX.8(b) should only operate by reference to eligible workers who are employed by employer of delegate – Full Bench acknowledged altering provisions may have effect of expanding scope of obligation in clause XX.8 in enterprises with larger numbers of workers, however noted clauses intended to confer a paid training time entitlement for delegates which corresponds to number of persons which delegates might be required to represent – acknowledged once it is understood that representation rights of delegates extend beyond direct employees of delegates' employer and includes all workers in relevant enterprise, then formula must be adjusted to operate with respect to 'eligible workers', not just 'eligible employees' – (2) in relation to second error, all parties accepted error would be addressed by replacing words 'for the purpose of' in clause XX.6 with 'in relation to' – (3) in relation to third error, parties provided a number of submissions that clause XX.9 should be removed altogether or redrafted – Full Bench decided to modify clause XX.9(b), by adding additional words 'when exercising any entitlements under clause XX' – in relation to operative date with respect to 146 modern awards, only MCA challenged Full Bench provisional view that variations should take effect from 1 July 2024 – MCA submitted there were no exceptional circumstances which justified retrospectivity and proposed draft term would impose rights and obligations additional to those in standard clause, and could expose parties to liability for breaches of provisions of which they had no knowledge – Full Bench did not accept MCA's submission and noted Commission has not discharged its obligation under s.95 of Schedule 1 to vary modern awards to include a delegates' rights term by 30 June 2024 according to law – Full Bench considered variations to 146 modern awards under s.160 should be given proposed retrospective effect in order to achieve compliance with FW Act – Full Bench held all modern awards to be varied to include a delegates' rights term in form contained in 'Attachment 3' to decision – clause XX.10 to be included in 38 modern awards which contain provision – typographical error in definition of 'employee organisation' in each award to be corrected – determinations varying all modern awards published together with decision.

Variation of modern awards to include a delegates' rights term

AM2024/6 and Ors
Hatcher J
Gibian VP
Matheson C

Sydney

[2026] FWCFB 5
23 January 2026

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2 GENERAL PROTECTIONS – costs – ss.365, 604 Fair Work Act 2009 – permission to appeal – appeal – Full Bench – appellant sought permission to appeal first instance decision of Commission which dismissed his application for an order for costs – on 13 January 2025, appellant's employment came to an end – appellant made

s.365 general protections application to deal with a dismissal dispute involving multiple respondents – respondents raised jurisdictional objection that appellant was not dismissed and abandoned his employment – at jurisdictional hearing on 18 March 2025, Commission expressed provisional view that evidence received made it difficult for respondents to succeed in their abandonment of employment argument – following adjournment of hearing, counsel for respondents withdrew their jurisdictional objection – on 24 March 2025, Commission issued certificate under s.368 – on 7 April 2025, appellant made costs application – on 19 May 2025, Commission issued first instance decision dismissing appellant's costs application, which was determined on the papers – appellant raised 10 grounds of appeal – Full Bench granted permission to appeal, given appeal raised issues with respect to operation of costs provisions of Act and in respect of question of whether Commission must conduct an oral hearing in order to afford procedural fairness – Full Bench considered appeal grounds in relation to prospects of success of jurisdictional objection – appellant claimed Commission failed to consider whether respondents' jurisdictional objection was hopeless from outset and failed to take into account various matters or evidence to establish that it was doomed to fail or otherwise improperly advanced – Full Bench did not accept that Commission failed to consider contention that respondents' jurisdictional objection had no reasonable prospects, since submission was addressed in first instance decision – found it was open to Commission to find it was arguable that appellant did not want to return to work and wanted to negotiate a settlement – Full Bench considered appeal grounds in relation to procedural fairness – appellant claimed he was denied procedural fairness due to Commission refusing his written request for an oral hearing in relation to costs application – found Commission provided an opportunity for parties to make written submissions, which they did – noted initial correspondence which included directions did not indicate whether application would be determined by way of oral hearing or on the papers – Full Bench acknowledged Commission could have directed that matter be dealt with on the papers subject to further direction to the contrary, implicitly providing parties with opportunity to seek direction to the contrary if they wished to, however directions were silent on that point – found both parties provided their views as to whether an oral hearing should be held and Commission took their views into account before deciding that question – acknowledged Commission ultimately decided to determine costs application on the papers, having regard to written materials submitted by parties – found no failure of procedural fairness to appellant, given that appellant did not seek leave to file evidence or further written submissions, or apply for further directions following Commission's decision to determine matter on the papers – Full Bench satisfied Commission provided adequate reasons in first instance decision to dismiss costs application – Full Bench accepted if a respondent puts an applicant to cost of defending a jurisdictional objection that was not reasonably arguable, the discretion to make a costs order may be enlivened under ss.375B(1) or 611(2), and respondents should be mindful of this when deciding to raise jurisdictional objections – noted parties should be encouraged to properly consider provisional views expressed by a Member of Commission, and should be encouraged to withdraw a jurisdictional objection in such circumstances – observed mere fact a jurisdictional objection has been withdrawn does not necessitate conclusion that objection lacked reasonable prospects of success when made – permission

to appeal granted – appeal dismissed.

Appeal by Roberts against decision of Simpson C of 19 May 2025 [[2025] FWC 1380]
Re: Quantum-Systems P/L and Ors

C2025/5247
Gibian VP
Saunders DP
Butler DP

Sydney

[2026] FWCFB 4
7 January 2026

3 TERMINATION OF EMPLOYMENT – Merit – compensation – ss.387, 394 Fair Work Act 2009 – applicant commenced employment with respondent in January 2023 as a teacher – while on unpaid leave from his position, applicant worked as a teacher in the United Arab Emirates between August 2023 and March 2024 – on 21 February 2024, applicant received notice of seven allegations made against him by respondent – allegations in relation to inappropriate behaviour and reportable conduct, including messaging and engaging in conversations with students via social media and attending sports events with students not considered school organised events – allegations included the following – (1) applicant initiated contact with student via Instagram – (2) applicant participated in a group chat via Instagram with students – (3) applicant engaged in conversations via Instagram with student – (4) applicant attended strength and sports recovery centre with students, taking a photo of them in an ice bath using the app BeReal – (5) applicant drove students from school to watch another student play AFL – (6) applicant drove students from school to and from netball training – (7) applicant sat close with student at lunch, moved closer when student moved over and went through students' school bag without permission – matter was referred to ACT Public Sector Standard Commissioner for investigation – applicant responded and agreed to engaging in alleged conduct – applicant gave context to allegations – applicant ran a private program 'Girls in Sport' which provided opportunities for young women to participate in gym sessions, recovery sessions and additional training – applicant also part of netball association and coach – applicant ultimately terminated by respondent on 29 August 2024 – Commission considered whether dismissal was harsh, unjust or unreasonable under s.387 – Commission found valid reason for applicant's dismissal under s.387(a) – applicant acknowledged and accepted that he crossed teacher-student boundaries – noted no allegations made against applicant involving sexual behaviour or sexual misconduct – applicant found to have engaged in undeclared, improper communications which constituted a breach of his professional boundaries – accepted respondent's submissions that it is 'common sense' that applicant's behaviour was inappropriate regardless of what Code of Conduct provides – Commission found applicant was notified of reason for dismissal under s.387(b) and given opportunity to respond under s.387(c) – Commission considered other relevant matters under s.387(h) – Commission noted applicant acknowledged his conduct was inappropriate and warranted sanction, but disproportionate to facts and overall circumstances – found applicant did not engage in conduct of a sexual nature and no allegation of such – some students known to applicant for some time prior to becoming his students – observed connection and contact, through outside sporting activities was undertaken with knowledge and/or consent of students' parents – accepted parents evidence that it was common practice for coaches to provide transport to players with parental permission –

applicant undertook courses at own expense regarding professional conduct and obligations, and expressed remorse as to his conduct – observed applicant's dismissal could lead to cancellation of his professional registration – acknowledged applicant's inability to teach again would be a harsh and disproportionate consequence – applicant remained employed at another of the respondent's schools and was not suspended during investigation until termination, suggesting misconduct was not serious – having weighed all matters requiring consideration, Commission found applicant's dismissal was harsh because of the matters considered under s.387(h) – Commission considered remedy – acknowledged reinstatement would not be appropriate – Commission ordered compensation be paid to applicant in amount of five months base salary.

Gibson v Australian Capital Territory (represented by ACT Education Directorate)

U2024/10441 [2026] FWC 137
Dean DP Canberra 16 January 2026

4 ENTERPRISE AGREEMENTS – better off overall test – agreement approved with amendments – ss.185, 186, 191A Fair Work Act 2009 – ALDI made three applications for approval of the *ALDI Stapylton Agreement 2025*, *ALDI Prestons Agreement 2024* and *ALDI Jandakot Agreement 2025* (Agreements) – on 20 October 2025, Commission issued earlier decision ([2025] FWC 3130) which found that each Agreement failed to meet the better off overall test (BOOT) under s.186(2)(d) – Commission found part-time warehouse employees would not be better off overall if Agreements applied to them compared to the *Storage Services and Wholesale Award 2020* (Award), due to uncertainty associated with employment arrangements for part-time warehouse employees – Commission expressed view in earlier decision that Agreements could still be approved, as BOOT concern could be addressed by specifying amendments to each Agreement pursuant to s.191A of FW Act – s.191A provides that if Commission has a concern that Agreement does not meet BOOT, it may approve Agreement if satisfied an amendment is necessary to address concern – concern raised in earlier decision was that hourly rate part-time warehouse employees would not be better off overall due to unpredictable nature of their hours of work – hours provisions in Agreements made work hours for those employees unpredictable due to requirement that employees be available to work on any day of the week, and lack of requirement to inform employees in advance of time they were required to be at work on any given day – directions were issued requiring ALDI inform employees of Commission's intention to specify an amendment to Agreements and provide them opportunity to provide views – in relation to construction of s.191A, ALDI contended purpose and context of s.191A is to facilitate approval of Agreements made between employers and employees, and not to determine content of those Agreements – ALDI stated s.191A was introduced to reduce delays and simplify approval process and not to allow Commission to impose amendments that fundamentally alter Agreements – Australian Council of Trade Unions (ACTU), supported by the Shop, Distributive and Allied Employees' Association (SDA) and United Workers' Union (UWU) submitted that s.191A was a beneficial provision designed to enable approval of enterprise agreements while addressing concerns related to BOOT, and that Commission's power to amend an Agreement arises only when there is concern that Agreement

does not meet BOOT – ACTU submitted, contrary to ALDI's submission, that s.191A should not be interpreted narrowly – Commission found ALDI's approach construed s.191A too narrowly, since ALDI contended that discretion to make a specified amendment under s.191A(2) can only be exercised where employer and employees who made the Agreement consent – found ALDI's reliance on objects of Act to promote enterprise-level collective bargaining and facilitate approval of Agreements made between employers and employees did not lead to conclusion that intention was that discretion be limited to circumstances where all parties consent [*Marmara*] – observed basic rule for approval in s.186(1) that Agreement made by parties can only be approved by Commission if Commission satisfied that requirements in ss.186 and 187 are met [*Marmara*] – noted s.191A permits a departure to basic rule allowing an Agreement to be approved where Commission is concerned that BOOT requirement is not met, since it permits Commission to approve Agreement by specifying an amendment to Agreement that meets concern – observed s.191A does not require parties who made Agreement consent to the amendment, it does require Commission to seek views of parties, but that is as far as it goes – Commission rejected ALDI's contention that Commission not empowered to alter content of an Agreement made by parties without their consent – noted s.191A is similar to s.190, but is more confined in scope – acknowledged while provisions are similar in that they permit approval of Agreements where basic rule in s.186(1) is not met, the provisions are also different – s.190 allows undertakings to address a broader range of concerns than s.191A, and it is not confined, like s.191A to addressing a concern that BOOT is not met – s.190 allows employer to make undertaking to meet concern; it requires Commission be satisfied there is no financial detriment to employees arising from undertaking and that it does not result in substantial changes to Agreement; it requires Commission seek views of bargaining representatives for Agreement; and if there is no consent Commission must decide to accept undertaking – whereas, s.191A only applies to concern about requirement in s.186(2)(d) regarding BOOT; it allows Commission to approve Agreement if it is satisfied that a specified amendment is necessary to address concern; it requires Commission seek views of employer, employees and bargaining representatives, however makes no mention that specified amendment must not result in substantial changes to Agreement – accepted that if Commission specifies an amendment, it should be confined to addressing concern expressed in earlier decision that Agreements did not meet BOOT – in earlier decision, Commission indicated that it intended to exercise discretion in s.191A to specify an amendment to each of Agreements to provide that ALDI agree in writing with each of its hourly rate part-time employees a regular pattern of work by specifying the hours worked each day, which days of week employee will work, and actual start and finishing times on each day – Commission sought views of employer, employees and bargaining representatives under s.191A(3) – ALDI opposed proposed amendments and argued amendments would significantly change the employment arrangements in Agreements and impose restrictions on flexibility central to its operations; amendments would be impractical and uncertain; and amendments would impose arrangements that employees had not approved and company had not agreed to during bargaining – whereas, SDA supported proposed amendment, since it would address BOOT concern identified by Commission and allow predictability and stability for employees, allowing them to plan

their lives outside of work – Commission considered views and evidence of parties and found that Agreements should be approved and concern should be addressed by specified amendment – Commission preferred views of employees and employee bargaining representatives in relation to uncertainty associated with hours provision for part-time warehouse employees – not satisfied by ALDI's submission that specified amendment is fundamental departure from Agreement or would provide operational difficulties – noted the amendments only apply to 1,256 employees of total of 6,483 employees, which is less than 20% of the workforces – noted should disputes arise, each Agreement has a dispute resolution procedure that can be accessed by either party that provides for access to conciliation and arbitration by Commission – Commission held approval of Agreements under ss.186 and 191A, despite concern BOOT not met – separate approval decisions issued for each Agreement.

Aldi Foods P/L as General Partner of Aldi Stores (A Limited Partnership) t/a Aldi Stores

AG2024/4407 and Ors [2026] FWC 2
Slevin DP Sydney 2 January 2026

5 ANTI-BULLYING – interim orders – ss.589, 789FC, 789FF Fair Work Act 2009 – applicant made application for orders to stop bullying against Shree Sanatan Dharm Sabha of NSW Inc (employer) and Mr Singh (president of employer) – employer runs temple in Austral NSW – applicant is head priest of temple – applicant alleged he was subjected to bullying by Mr Singh – Mr Singh denied allegations and contended conduct complained of amounted to reasonable management action – following adjournment of hearing before Commission, parties requested that an interim decision under s.589(2) and consent interim orders be made – orders sought by parties included limiting communications between parties to work related matters, employer to provide written clarification of applicant's duties, rostering protocols be put in place, protection of application from victimisation, and that orders operate for 9 months – Commission considered Full Bench authority in *Wills v Grant* – Full Bench agreed with reasoning in *Mayson v Mylan* that s.589(2) is not an independent source of power to issue interim orders, as s.595 makes clear that Commission may deal with a dispute only if it is 'expressly authorised to do so under or in accordance with another provision' of the Act – Full Bench found that in an anti-bullying application, s.789FF confers jurisdiction on Commission to make an anti-bullying order if, and only if, it is satisfied that a worker has been bullied at work and there is a risk that the worker will continue to be bullied at work – Full Bench concluded that s.589(2) did not act independently of s.789FF to permit Commission to make an interim anti-bullying order – Full Bench found order under s.789FF, interim or otherwise, can only be made if preconditions in s.789FF(b) are met (i.e. satisfied applicant has been bullied at work and there is a risk that bullying will continue) – Commission noted it did not reach requisite state of satisfaction regarding those matters and would not make an interim bullying order – however, acknowledged it does not mean Commission cannot make orders sought – recognised operation of s.589 is procedural in nature [*Wills*] – observed effect of orders sought by parties was to adjourn proceedings for 9 months to allow matters raised in application to be addressed, and orders sought specify steps parties intend to take to address those

matters – acknowledged s.589(1) provides Commission may make decisions as to how, when and where a matter is to be dealt with – Commission considered interim orders sought by parties were capable of being made at this stage of proceedings, and would facilitate effective and efficient exercise of Commission's power to make bullying orders – observed matter filed in April 2025; subject to number of conferences and report backs; applicant had been off work for a period of time due to illness; employer engaged independent consultant to investigate allegations; report from investigator made number of recommendations accepted by employer and are to be implemented; employer run by volunteers; applicant only employee; and parties have agreed on a means to deal with application that addresses underlying concerns raised by applicant and seek reasonable timeframe to address those concerns, and to allow employment relationship to return to harmonious state – Commission considered orders consistent with ss.577 and 587 of Act that Commission's functions be exercised in fair and just manner, promote harmonious and cooperative workplace relations and take into account equity, good conscience and merits of matter – Commission concluded matter to remain open and parties have leave to approach Commission should further assistance be required, if matters not resolved after 9 months – consent interim orders issued.

Application by Upadhyay

AB2025/292		[2026] FWC 67
Slevin DP	Sydney	12 January 2026

Other Fair Work Commission decisions of note

Depp v Oz Seaside Hair and Beauty P/L

TERMINATION OF EMPLOYMENT – Small Business Fair Dismissal Code – minimum employment period – compensation – ss.383, 388, 394 Fair Work Act 2009 – applicant formerly employed as a casual senior stylist – commenced employment with previous owner in January 2024 – respondent purchased business – commenced employment with respondent in December 2024 – applicant issued with formal casual employment contract – two incidents occurred in June 2025 which led to applicant's dismissal: (1) applicant and salon manager had an argument regarding rebooking of client; and (2) applicant involved in swearing and unprofessional conduct in front of clients – respondent also submitted third reason for dismissal was in relation to applicant not signing new employment contract, which left respondent with no clear agreement or structure moving forward – applicant explained she had not signed contract because of restraint of trade clause she wanted changed – applicant made application for unfair dismissal remedy – respondent raised jurisdictional objections that it is a small business and complied with the Small Business Fair Dismissal Code (Code), and applicant did not meet minimum employment period of 12 months – Commission satisfied applicant was a transferring employee – arrangement for transfer of assets constituted transfer of business – observed applicant was a regular casual employee and had a reasonable expectation of continuing employment on a regular and systematic basis – found applicant met 12 month minimum employment period – Commission found no reasonable basis for belief that applicant had committed serious misconduct and dismissal not in accordance with Code – Commission considered whether dismissal was harsh, unjust or unreasonable under s.387 – (1) found not all swearing amounts to valid reason for dismissal and words spoken by applicant ('I hope karma gets you like the cunt you are') was profane, but not threatening – found applicant's swearing was an appeal to karmic intervention rather than threat of anything applicant intended to do – (2) found applicant's

conduct did not amount to valid reason for dismissal – observed swearing and arguing with salon manager was unprofessional and not appropriate way to manage workplace grievance – noted applicant only alleged to have engaged in inappropriate behaviour on two shifts – no evidence that applicant threatened anyone, as opposed to expressing frustration – observed appropriate response from respondent would have been to issue applicant with written warning – Commission found not signing contract was not a valid reason for dismissal – Commission held no valid reason for dismissal under s.387(a) – found applicant not provided with opportunity to respond to reasons for dismissal under s.387(c), given applicant was later summarily dismissed after telephone conversation with respondent took place – in relation to ss.387(f) and 387(g), found respondent did not follow standard process in effecting the dismissal likely due to size of business and having no dedicated human resource manager/management specialists – in relation to other matters under s.387(h), Commission found respondent's characterisation of applicant's behaviour as 'serious misconduct' was harsh – Commission held dismissal was harsh, unjust or unreasonable – remedy considered – reinstatement not sought by applicant – compensation considered [*Sprigg*] – respondent ordered to pay applicant $1,732.00 gross plus superannuation.

U2025/10618 [2026] FWC 189
Lake DP Brisbane 29 January 2026

Manzoor v Loan Base P/L

TERMINATION OF EMPLOYMENT – costs – ss.400A, 611 Fair Work Act 2009 – on 12 September 2025, Mr Sahid Manzoor discontinued his unfair dismissal application against Loan Base P/L – Loan Base P/L (costs applicant) put Mr Manzoor (costs respondent) on notice regarding seeking recovery of costs – on 26 September 2025, costs applicant applied for costs order against costs respondent pursuant to ss.400A and 611 of FW Act – costs applicant submitted costs respondent's application was made without reasonable cause, was a clear case of serious misconduct, and dismissal was made in accordance with the Small Business Fair Dismissal Code – observed Commission's power to order costs is discretionary, exercised in caution and only in a clear case, noting s.611 requires parties to bear their own costs save for two exceptions – Commission considered exception of ordering costs empowered under s.611(2), where Commission must be satisfied that party made application without reasonable cause, being 'groundless' or 'so obviously untenable that it cannot succeed' or it should have been made apparent that application had no reasonable prospects of success [*Keep; Church*] – Commission not satisfied application was made without reasonable cause as both parties led disputed evidence regarding merits of serious misconduct – Commission satisfied costs respondent's belief that costs applicant was aware of underperformance and referral agreement did not make costs respondent's application either untenable or groundless – Commission not satisfied that it should have been reasonably apparent that application had no reasonable prospects of success based on facts known to costs respondent at time of instituting proceeding [*Deane*] – Commission considered s.400A, where must be satisfied that party engaged in unreasonable act or omission related to conduct or continuation of a matter, and act or omission caused other party to incur costs to enliven discretionary power to order costs [*Gugiatti*] – Commission noted discretion to award costs will not be ordered if apparent that both parties acted reasonably in commencing and defending proceedings until litigation was settled or further prosecution became futile [*Livingstones*] – costs applicant submitted costs respondent's unreasonable acts in connection with his conduct of filing and continuing application despite documentary evidence of serious misconduct, lack of reasonable prospects, and rejection of settlement offer, caused costs applicant to incur costs – Commission rejected cost's applicant's argument – observed s.400A does not go to whether it was reasonable to have instituted a matter in first place, it instead requires a finding of unreasonable acts or omissions in connection with 'conduct or continuation' of matter already instituted – Commission not satisfied of costs incurred by costs respondent's continuation of proceedings following disciplinary meeting, as both parties led

contested evidence which was ultimately not considered prior to costs respondent's discontinuance – Commission also rejected costs applicant's argument that costs respondent continued proceedings after Commission's recommendation to withdraw, since argument overstated leave given at conclusion of proceedings for costs respondent to discontinue proceedings prior to final submissions, and ignored fact costs respondent actually discontinued proceedings after leave was issued – Commission also rejected costs applicant's argument that costs respondent's rejection of settlement offer led to further costs incurred, given costs application did not succeed, therefore costs respondent could not have acted unreasonably by rejecting settlement offer – costs application dismissed.

U2025/5931 [2026] FWC 54
Slevin DP Sydney 9 January 2026

Oram v BHP Coal P/L

TERMINATION OF EMPLOYMENT – Misconduct – ss.387, 394 Fair Work Act 2009 – applicant employed as Pump Crew Operator at Goonyella Riverside mine site – no previous disciplinary action for any contravention of respondent's policies and procedures – applicant involved in physical altercation with colleague on 26 January 2025 – colleague called applicant a 'boofhead' – applicant threw coffee mug at colleague, grabbed colleague by collar and pushed him towards stairs – in show cause letter, applicant stated he had been taking acid reflux medication and was not aware that medication caused mood swings – applicant admitted throwing coffee mug at colleague and had done so out of frustration towards colleague and after colleague had called applicant a derogatory name – applicant denied putting colleague in headlock or trying to drag him downstairs – applicant stated colleague had caused him trouble and stress and considered colleague to be lazy – applicant acknowledged this did not excuse his behaviour and that it is never appropriate to throw a mug at someone at work – applicant was dismissed on 18 March 2025 for serious breaches of respondent's Code of Conduct – applicant requested opportunity to offer colleague apology, however respondent told applicant he was not permitted to speak to colleague – applicant sought reinstatement – applicant submitted incident was a once-off and not reflective of his character and normal behaviour at work – applicant stated he had concerns about colleague's work ethic and attendance for a number of years – applicant raised issues with management, but they were not addressed – applicant detailed history of colleague calling him racist and insulting names, which he attempted to address with colleague, yet colleague continued to use such terms – respondent submitted applicant's contention that he had history of colleague antagonising him was unsupported by evidence – respondent submitted applicant's response to name calling was disproportionate – Commission found more likely than not applicant had been called names by colleague, including racist taunts – observed respondent did not act on information to discipline colleague – acknowledged applicant irritated by colleague and frustrated by denial of career opportunities, with colleague placed ahead of him – observed applicant did not report racist taunts prior to 26 January 2025, despite so many avenues for applicant to have reported the various alleged slurs from colleague – noted applicant was hostile, angry and defeated before incident, upset that mine was likely to soon convert to 7/7 roster – applicant blamed colleague for 7/7 flexible work arrangement – Commission observed applicant should have removed himself from workplace as he was not feeling his usual self and was upset – applicant familiar with workplace rights and responsibilities, including respondent's Fitness for Work Procedure – reasonable amount of time passed for applicant to calm down – acknowledged colleague referred to applicant as 'boofhead' – found applicant then threw large stainless steel mug into wall with force resulting in a considerable hole in wall – observed applicant engaged in dangerous act and was intent on having it out with colleague – found applicant did not act in self-defence – noted applicant held colleague in headlock and pushed him to top of stairs – observed colleague was at significant risk of falling backwards down stairs and acknowledged possibility that colleague could have been killed or severely injured if he fell backwards down the stairs – found applicant's conduct at high end of

workplace physical violence and significantly affected safety and welfare of other employees – Commission did not accept that applicant was provoked by colleague – applicant had thorough understanding of Code of Conduct and breached Code – Commission satisfied of valid reason for dismissal of applicant under s.387(a) – Commission considered other matters under s.387(h) – Commission had regard to applicant's otherwise exemplary work history for 12 years and remorse shown – Commission observed it did not understand how an organisation the size of respondent failed to have a checklist for decision makers in relation to dismissal of employees – noted decision makers did not review important documents prior to making decision to dismiss applicant – senior members also did not have all relevant information before them prior to dismissal of applicant – Commission agreed with respondent's submission that in absence of extreme or unusual circumstances, physical violence in workplace, the kind engaged in by applicant cannot be tolerated – satisfied applicant's termination was not disproportionate to conduct engaged in by him – found dismissal was not harsh, unjust or unreasonable – application dismissed.

U2025/4304 [2026] FWC 34
Hunt C Brisbane 8 January 2026

Bond v Brian's Auto Centre P/L

TERMINATION OF EMPLOYMENT – extension of time – postal delay – s.394 Fair Work Act 2009 – applicant dismissed on 7 September 2025 – applicant posted unfair dismissal application via express post on 26 September 2025 – application arrived in Commission's PO Box in Brisbane on 29 September 2025 – however, application was not delivered to Commission's Brisbane office until 30 September 2025, despite Commission paying for daily delivery service – application therefore lodged one day outside statutory timeframe – Commission made enquiries as to why envelope was not delivered on 29 September 2025 – Australia Post provided possible explanations for delay in delivery: (1) driver collected mail, but letter may have slipped behind other items and overlooked that day; (2) driver may not have been available that day to collect mail from PO Box; (3) staffing shortages at facility may have impacted mail processing – observed rule 15(2)(b) of *Fair Work Commission Rules 2024* allows a document, including an application, to be lodged with the Commission by post to an office of the Commission – Commission observed a posted application is not made within meaning of s.394(2) until it is received by a Commission office, and noted an application is not 'made' when drafted, dated or posted [*Gore*] – found applicant's application was made on 30 September 2025, when it was received by Commission's office – reason for delay found to be outside of applicant's control and was due to a failure by Australia Post to meet its service commitments to Commission – Commission satisfied there were exceptional circumstances [*Nulty*] – found circumstances were out of the ordinary course, unusual and uncommon – extension of time granted.

U2025/15869 [2026] FWC 173
Hunt C Brisbane 19 January 2026

Keane v The Trustee for Roscon Property Services Trust

TERMINATION OF EMPLOYMENT – Merit – s.394 Fair Work Act 2009 – applicant was employed as an operations manager since March 2022 – applicant was sent a letter of termination from respondent on 16 May 2025 – applicant became aware of termination letter on 19 May 2025, upon returning to work from a period of personal leave – dismissal was effective immediately with payment in lieu of notice, outstanding wages and accrued entitlements – respondent is a small business and submitted that dismissal was consistent with Small Business Fair Dismissal Code (Code) – applicant submitted dismissal was unfair since no valid reason was provided and dismissal occurred whilst she was on sick leave – letter of termination confirmed reasons for dismissal included repeated absences, unapproved working from home

arrangements and failure to follow instructions – applicant submitted previous warnings dating back to 2022 were dealt with and were no longer relevant – respondent submitted reason for dismissal was a failure to comply with lawful instructions, culminating in her failure to complete a time-critical task – respondent critical of applicant leaving workplace on 16 May 2025 early due to illness, but failing to attend to her emails from home – respondent conceded there was a lack of process to enable applicant to respond to reasons – Commission found dismissal was not a summary dismissal despite wording of termination letter, since applicant was dismissed for performance concerns raised by respondent – noted applicant was paid notice in lieu, which suggested dismissal was not summary termination and dismissal was not consistent with definition of summary dismissal under Code – noted Code requires dismissals other than summary dismissals to comply with requirement that an employee is given the reason that their employment is at risk, and the reason must be valid based on performance or conduct – Commission found reasons for dismissal were not consistent with reasons given in termination letter – Commission found prior warnings were not of relevance on account of its historical age and questionable relevance – noted reasons stated by respondent were unclear or unsupported by evidence – Commission satisfied no valid reason provided for dismissal under s.387(a) – found applicant not notified of reasons in explicit, plain, or clear terms that employment was at risk, and alleged warnings were aged and too vague to be described as a valid warning that ongoing employment was at risk under s.387(b) – found applicant was not given an opportunity to respond to any reasons under s.387(c) – Commission satisfied applicant's dismissal was harsh, unjust and unfair – held applicant was unfairly dismissed – Commission considered remedy – found reinstatement was untenable on grounds of being unhelpful and impractical – compensation considered [*Sprigg*] – ordered compensation of 6 weeks' pay at $9,230.76 to be taxed according to law, plus superannuation.

U2025/9325 [2026] FWC 51
Yilmaz C Melbourne 9 January 2026

Eales v RB Enterprises P/L

TERMINATION OF EMPLOYMENT – Merit – compensation – s.387, 394 Fair Work Act 2009 – applicant applied to Commission for unfair dismissal remedy – applicant engaged by respondent since 24 October 2023 as a Guest Service Agent at Airport Tourist Village Melbourne on casual basis – respondent told applicant shifts were not available for next few weeks, due to budgetary reasons – respondent advertised recruitment for same role as applicant three days later – applicant enquired if he still had a job – respondent informed applicant he was dismissed – respondent contended applicant resigned – Commission found on evidence that applicant did not resign his employment and was instead dismissed by respondent on 19 August 2025 – Commission considered whether dismissal was harsh, unjust or unreasonable under s.387 – respondent contended applicant resigned, which Commission did not accept – Commission did not find respondent established applicant was dismissed because of budgetary reasons or because his role was not required – found there was no valid reason for respondent's decision to dismiss applicant based on conduct under s.387(a) – Commission found applicant was not notified of reason for dismissal under s.387(b) and not provided with an opportunity to respond under s.387(c) – Commission acknowledged respondent's small business nature and lack of dedicated human resources expertise under ss.387(f) and 387(g) – Commission observed respondent's failure to adhere to basic standards of decency with respect to applicant, noting in most circumstances a cursory text message or email is not an appropriate means of conveying information as serious as dismissal of a person's employment – Commission held dismissal of applicant was harsh, unjust and unreasonable – held applicant was unfairly dismissed – Commission considered remedy – found reinstatement not appropriate because of breakdown in relationship between applicant and respondent, and due to applicant finding new employment – Commission considered compensation [*Sprigg*] – respondent acknowledged an order for compensation would not have significant financial impact on business –

remuneration for 12 months calculated, noting there was nothing to suggest applicant would not have continued working for employer for another 12 months – two weeks' pay deducted for period where respondent told applicant no shifts were available – remuneration from new employment deducted – 25% reduction applied for contingencies – compensation ordered to applicant of $11,845.54 less taxation, plus superannuation of $1,421.46.

U2025/13952 [2026] FWC 59
Redford C Melbourne 12 January 2026

Khan v Portier Pacific P/L

CONDITIONS OF EMPLOYMENT – unfair deactivation – reactivation – s.536LU Fair Work Act 2009 – applicant commenced work for respondent as delivery person on Uber Eats Delivery Platform in November 2022 – on 22 August 2024, respondent received message from user making a complaint about applicant in relation to sexual misconduct – respondent informed applicant his access to App was 'temporarily blocked' while matter was reviewed – applicant asked why the account was on hold and received no answer – respondent sought further information from user and then issued applicant with warning and reactivated access – on 16 July 2025, respondent received message from second user who made a complaint about applicant's inappropriate behaviour – following second complaint respondent again advised applicant his account was temporarily blocked while matter was investigated – respondent telephoned applicant and issued second warning but did not provide details of allegation and reactivated access – respondent issued preliminary deactivation notice to applicant, including only very limited details of allegations from both 2024 and 2025 – applicant provided a response and was deactivated on 29 July 2025 – Commission held application made within statutory time period under 536LU(3) and applicant was a protected person under 536LD – Commission considered whether deactivation was consistent with the *Fair Work (Digital Labour Platform Deactivation Code) Instrument 2024* (Code) – respondent submitted that first and second warnings met requirements of s.8 of Code – Commission found warnings did not meet requirements as allegations not squarely put to applicant, even when he asked for an explanation – respondent submitted exception in s.9 of Code applied, as it believed on reasonable grounds that matter relating to applicant's conduct was such that warranted immediate suspension of applicant's access, or it was not reasonable to expect it to allow applicant to continue to perform work through platform – Commission found decision to issue second warning at odds with respondent's submission that s.9(1) of Code was 'enlivened' – Commission not satisfied respondent established exception in s.9 of Code – Commission considered merits of application [*Hotak*] – reason identified in preliminary deactivation notice was 'multiple instances of sexual misconduct' – Commission found this not made out on evidence – respondent submitted alleged conduct (in combination) was valid reason – Commission considered whether on balance of probabilities on evidence provided whether conduct occurred [*Hotak*] – Commission found that although it could not assume veracity of allegations made by users, 2024 allegation was somewhat corroborated by trip data, user provided additional information on request from respondent, and user had no history of making unmeritorious complaints – found on balance, applicant engaged in 2024 conduct, however respondent did not deactivate applicant for that conduct – found 2025 allegation not made out on evidence – Commission satisfied no valid reason for deactivation – Commission also considered significant denial of procedural fairness to applicant because he was not provided with details of allegations, was not made aware of material respondent was relying on or given opportunity to respond to conclusions it drew, and language of respondent's reply to second user suggested it had pre-determined that applicant had engaged in conduct before having heard from him – Commission held applicant unfairly deactivated – Commission found it appropriate to order reactivation and lost pay to applicant – directed parties to confer to reach outcome as to quantum of order.

UDE2025/185 [2026] FWC 48
Sloan C Sydney 12 January 2026

Jones v Exclusive Contracting (WA) P/L

TERMINATION OF EMPLOYMENT – Merit – compensation – ss.387, 394 Fair Work Act 2009 – applicant employed by respondent as a Ceiling Fixer for just over two years – respondent dismissed applicant after he allegedly made 'inappropriate and racially offensive remarks' about Chinese labour within construction industry at a company meeting – applicant made remarks that 'in 10 years' time, it will be a Chinese industry' and 'employees were worried about our job security', in context of site-wide discussion about upcoming work and low morale – applicant submitted he did not intend for comments to be offensive, did not single out an individual, did not racially vilify anyone, and should not have been dismissed – Commission considered whether respondent had a valid reason for dismissal under s.387(a) – found applicant had made comments contending that an increase in Chinese workers in construction industry was having a negative effect – observed implicit in his comments that people of Chinese heritage should not have the same opportunities as people of other races due to their race, demonstrating an 'inherent prejudice' – found comments made by applicant in context of a site-wide meeting in a multicultural workplace where members of the prejudiced race were present, constituted a valid reason for dismissal – found respondent made decision to dismiss applicant prior to notifying him of reason for dismissal, contravening notification requirement under s.387(b) – consequently found applicant was not provided an opportunity to respond under s.387(c) – Commission satisfied dismissal was harsh and unfair, and applicant was not afforded procedural fairness – held applicant unfairly dismissed – parties submitted reinstatement inappropriate – remedy considered – respondent submitted no compensation should be ordered due to serious nature of applicant's misconduct and his intention to soon retire – Commission found lack of procedural fairness by respondent in effecting dismissal meant compensation order appropriate – *Sprigg* formula applied – Commission found if procedural fairness had been afforded in dismissing applicant, he would have been employed for no more than three additional weeks – however, having established a valid reason for dismissal, one week's wages was reduced from total compensation amount – compensation ordered to the amount of two week's wages at $4,059.44.

U2025/12697 [2026] FWC 253
Rogers C Adelaide 30 January 2026

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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.fcfcoa.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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