FWC Bulletin

30 April 2026 Volume 4/26 with selected Decision Summaries for the month ending Tuesday, 31 March 2026.

We will cease publication of the *Bulletin* at the end of June 2026.

The *Bulletin* requires a significant ongoing resource commitment. Given the unprecedented increase in workload across the Fair Work Commission, levels of engagement with the publication, and the availability of other decision subscription options, this commitment can no longer be justified. Ceasing publication will reduce duplication of effort and allow resources to be directed to higher-priority work.

We encourage readers to subscribe to our other subscription services for decisions of the FWC: Decisions – all, Decisions – significant and Decisions – enterprise agreements.

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Junior rates decision issued

31 March 2026

The Full Bench of the Fair Work Commission issued its decision in the Junior rates application (AM2024/24).

On 6 June 2024, the Shop, Distributive and Allied Employees' Association (SDA) applied to change junior rates, seeking to increase rates of pay for employees aged 20 years old and under in the following 3 awards:

- *Fast Food Industry Award 2020*
- *General Retail Industry Award 2020*
- *Pharmacy Industry Award 2020*

The Full Bench has decided that:

- after 6 months' experience, the rates payable to adult junior employees will be set at a rate of 100% of the full adult rate of pay.
- the current percentage rates for adult junior employees with less than 6 months' experience with their current employer will stay the same.
- there will be no change to junior rates for persons aged under 18.

Next steps

The Full Bench will hear from the parties further on the timing and transitional arrangements. Their provisional view is that the changes will be phased in over time starting from 1 December 2026, with the final changes to happen from 1 July 2029.

Directions will be issued to provide a further opportunity to be heard in relation to the implementation of the Full Bench's decision.

Read:

- Decision [2026] FWCFB 74 (pdf)
- Summary of decision [2026] FWCFB 75 (pdf)
- Junior rates application (AM2024/24)

New Net Zero Economy Authority application

2 April 2026

The Chief Executive Officer of the Net Zero Economy Authority has applied under section 56(1) of the *Net Zero Economy Authority Act 2024* for us to make a community of interest determination. The application relates to the **Eraring Power Station**, which is scheduled to close by 30 April 2029.

We will publish information about the application on the new Eraring Power Station NZEA application (NZ2026/1) page on our website.

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

Fairer Fuel Act commenced and major case

2 April 2026

The *Fair Work Amendment (Fairer Fuel) Act 2026* received Royal Assent on 1 April 2026. Changes to the *Fair Work Act 2009* have commenced.

Fair Work Commission President Justice Hatcher issued a statement outlining the changes and our approach to how they will be implemented.

The Fairer Fuel Act allows us to deal with certain applications for a road transport contractual chain order more quickly if the Minister determines that it is an 'emergency application'.

Our website has been updated with relevant information. Questions about the procedure to apply can be emailed to rws@fwc.gov.au.

Major case – MS2026/1

The Commission received a related joint application from the Transport Workers' Union of Australia (TWU) and the Australian Road Transport Industrial Organisation (ARTIO). The application is for a road transport contractual chain order that would cover a number of sectors of the road transport industry and contain terms dealing with fuel cost recovery.

Read:

- President's statement (pdf)
- TWU & ARTIO application for a road transport contractual chain order – fuel cost recovery (MS2026/1)
- Application for a road transport contractual chain order (pdf)

Registration of the Timber Furnishing and Textiles Union and withdrawal from the CFMEU

17 April 2026

The Manufacturing Division has withdrawn from its amalgamation with the Construction, Forestry and Maritime Employees Union (CFMEU) as at 17 April 2026 to form the Timber Furnishing and Textiles Union (TFTU), a new registered organisation under the *Fair Work (Registered Organisations) Act 2009* (the Registered Organisations Act).

The certificate of registration establishing the TFTU was signed on 17 April 2026.

The General Manager of the Fair Work Commission is required to send a written statement to each affected member of the new organisation advising that they are now a member of the TFTU.

Emails, SMS messages and hardcopy letters through the post are being sent to affected members. Any members who have clicked on a link via an email or a text message and were brought to this article can be assured that it was a genuine communication from the Fair Work Commission advising them of this change, as required by the Registered Organisations Act.

The legal name of the Construction, Forestry and Maritime Employees Union will as a result of the withdrawal of the Manufacturing Division change to the reflect its former acronym, the 'CFMEU'. The remaining parts of the organisation will accordingly continue to be known as the CFMEU.

Members of the TFTU can access information about their new union, including its rules, on the TFTU's page on our website.

Historic lodgments from the former Manufacturing Division including rule changes, annual returns, disclosure statements, elections and financial reports can be found on the CFMEU's page on our website.

Members of CFMEU can continue to access these documents about their union from the same page, as well as an updated copy of the CFMEU's rulebook.

Read

- Timber Furnishing and Textiles Union (TFTU) webpage
- CFMEU webpage

Road transport contractual chain order issued

20 April 2026

An Expert Panel for the Road Transport Industry made the first time-sensitive road transport contractual chain order. It is also the first order under the new regulated workers provisions.

The Road Transport Contractual Chain Order – Fuel Cost Recovery – 2026 commenced on 21 April 2026.

The operation of the order will be reviewed after one month.

The Expert Panel, comprising Fair Work Commission President Justice Hatcher and Vice Presidents Asbury and Gibian, held hearings from 8 to 17 April 2026. Vice President Asbury held an engagement conference on 16 April 2026.

Consultations on the draft order closed at 12 noon on Friday 17 April 2026.

The Expert Panel's decision and reasons, and the order, are published on our major case webpage.

Read

- Decision [2026] FWCFB 95
- Road Transport Contractual Chain Order – Fuel Cost Recovery – 2026 (pdf)
- Fact sheet about the order (pdf)
- Major case webpage: TWU & ARTIO application for a road transport contractual chain order – fuel cost recovery (MS2026/1)

General Manager statement: Mark Irving KC resignation

29 April 2026

The General Manager has issued a statement regarding the resignation of Mark Irving KC as Administrator of the Construction and General Division (C&G Division) of the CFMEU, effective 1 June 2026.

In the statement the General Manager explains that he will seek the views of registered organisations, peak councils and industry participants to identify a suitable person with the skills and experience to replace Mr Irving KC. This is a significant appointment which requires the General Manager to consider:

- his obligations under the *Registered Organisation's Act*.
- the tasks that remain to be completed under the Scheme of Administration and the CFMEU Strategic Plan 2025-2028.
- the remaining issues to be addressed within both the C&G Division and the wider building and construction industry.

Read the General Manager's statement: Resignation of Mark Irving KC and replacement of Administrator of the scheme of Administration of the CFMEU Construction and General Division (pdf).

Decisions of the Fair Work Commission

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

Summaries of selected decisions signed and filed during the month ending Tuesday, 31 March 2026.

1 TERMINATION OF EMPLOYMENT – jurisdiction – foreign state immunity – ss.394, 604 Fair Work Act 2009; ss.9, 12 Foreign States Immunities Act 1985 – appeal – permission to appeal – Full Bench – appellant worked at Royal Embassy of Saudi Arabia (Embassy) in Canberra since 10 December 2012 – appellant terminated from Embassy on 30 March 2022 – appellant's unfair dismissal application was dismissed by Commission on grounds he had not provided sufficient material to establish he was a permanent resident of Australia at time he made employment contract with Embassy in 2012 – appellant sought permission to appeal and to appeal decision to dismiss his unfair dismissal application – permission to appeal was already granted by earlier Full Bench of Commission – appellant's application was initially dealt with together with unfair dismissal applications made by 17 other employees of Embassy, who were dismissed around the same time – Embassy objected to the applications, including on grounds it had immunity from jurisdiction of the Commission because it is a sovereign foreign state and immune from jurisdiction by virtue of the *Foreign States Immunities Act 1985* (Cth) (FSI Act) – on 2 May 2024, Commission issued decision with respect to jurisdictional objections by Embassy – Commission dismissed two of the applications on grounds that two individuals were not permanent residents of Australia at time their employment contracts with Embassy were made for purposes of s.12(6) and (7) of FSI Act and rejected objections made by Embassy, and found it was not immune from jurisdiction of Commission to determine unfair dismissal applications – Commission found 3 individuals, who were New Zealand citizens at the time their employment contracts were made, were permanent residents – appeal was brought from first instance decision to initial Full Bench – on 16 September 2024, initial Full Bench granted permission to appeal, but dismissed appeal other than to dismiss applications of two further individuals on grounds they were not permanent residents of Australia at time their contracts of employment with Embassy were made – noted by reason of s.12(6), s.12(1) of FSI Act, immunity lifted of a foreign state with respect to a member of administrative and technical staff of a mission, only if the employee was, at the time the employment contract was made, a permanent resident of Australia – initial Full Bench found three individuals who were New Zealand citizens at time their contracts of employment were made, were 'permanent residents' for purposes of s.12(6) and (7) of FSI Act, because they held a subclass 444 visa at time – Embassy sought judicial review of initial Full Bench decision – on 15 December 2025, Full Court of Federal Court dismissed application for judicial review – in short, Full Court concluded that exception to immunity in s.12(1) of FSI Act extends to unfair dismissal proceedings, a foreign state is a national system employer in s.14(1)(f) of FW Act and applicants were each permanent residents at time their employment contracts were made for purposes of FSI Act – in relation to applicants who were

New Zealand citizens at time their employment contracts were made, Full Court agreed with initial Full Bench decision that those persons were permanent residents for purposes of FSI Act – on 12 January 2026, Embassy applied for special leave to appeal to High Court of Australia with respect to decision of Full Court – Full Bench noted appellant's case took different procedural course – Commission at first instance, inadvertently failed to address appellant's application in decision dealing with the remaining 17 unfair dismissal applications – appellant had brought matter to attention of Commission – on 9 May 2024, Commission subsequently issued separate decision in relation to appellant's application – Commission dismissed application on basis appellant had not established he was a permanent resident at relevant time – appellant filed notice of appeal that same day – on appeal, appellant submitted further evidence including his New Zealand passports, visa documents and other supporting material – Full Bench observed question posed by ss.12(6) and (7) of FSI Act turns on whether person was a permanent resident of Australia 'at time when contract of employment was made' – noted earlier decision of Full Bench and decision of Full Court demonstrated a New Zealand citizen who held a subclass 444 visa in 2011 or 2012 was a permanent resident for that purpose – observed if appellant held a subclass 444 visa at time he made a contract of employment with the Embassy on 10 December 2012, then Embassy was not immune from jurisdiction of Commission and appellant's unfair dismissal application should not have been dismissed – acknowledged appellant provided direct evidence he entered Australia on 1 December 2012 using New Zealand passport and was issued with subclass 444 visa upon arrival – Full Bench satisfied appellant held subclass 444 visa on 10 December 2012 and was a permanent resident for purposes of FSI Act at that time – appeal allowed – first instance decision and order quashed – unfair dismissal application remitted to Member of Commission to be determined.

Appeal by Almahadi against decision [[2024] FWC 1211] and order [PR774674] of Easton DP of 9 May 2024 Re: Saudi Arabian Cultural Mission/Saudi Embassy & Embassy of the Kingdom of Saudi Arabia, Cultural Mission

C2024/2960 — [2026] FWCFB 50
Asbury VP
Gibian VP
Dobson DP
Sydney — 5 March 2026

2 TERMINATION OF EMPLOYMENT – Merit – reinstatement – ss.394, 400, 604 Fair Work Act 2009 – permission to appeal – appeal – Full Bench – respondent was professor and chair of Reservoir Engineering in Department of Infrastructure Engineering at University of Melbourne (University) – respondent was dismissed on 17 December 2024 due to breaches of University's Appropriate Workplace Behaviour Policy (AWB Policy) by being involved in a series of personal and inappropriate email and text message communications with a PhD student (student) he was supervising in May and June 2017 – in 2017, student had informed another professor that she was concerned about respondent's supervision of her PhD and his behaviour – in 2018, University's Human Resources (HR) department was informed about situation and met with student to discuss matter – student was subsequently assigned a different supervisor – in January 2024, student sent email to University alleging respondent had sexually harassed her in 2017 – University commenced investigation and later dismissed

respondent – in first instance decision, Commission found valid reason for dismissal, however found significant time gap of 7 years between conduct and dismissal was unfair – reinstatement, continuity of employment and lost remuneration ordered – University (appellant) raised 12 grounds of appeal – Full Bench satisfied in public interest to grant permission to appeal under s.400 – Full Bench considered appellant's grounds that Commission erred in finding dismissal harsh – noted mere disagreement with outcome of decision is insufficient to justify appellate intervention – acknowledged Commission found misconduct was serious, having regard to relationship between a senior academic and PhD student, and aspects of the conduct were 'highly inappropriate' – however, Commission also identified reasons why dismissal was regarded as harsh, including fact misconduct occurred so long ago and respondent had maintained an unblemished record over following 7 years of his employment – Full Bench not satisfied decision was outside range of reasonable discretionary decisions – Full Bench considered grounds that Commission erred in finding respondent had insight into his misconduct or that decision would enlighten him – acknowledged Commission formed view respondent had likely assimilated the 'erroneous', 'unmeritorious' and 'specious' arguments advanced by his representative and concluded that respondent's acceptance of his wrongdoing prior to dismissal was genuine and reflected his true views – observed Commission was confident respondent would be enlightened by decision, even if he lacked insight, and did not hold concern respondent would breach policy again – Full Bench indicated it is not possible for it to make same kind of assessment as Commission made at first instance – Full Bench did not consider findings of Commission had been demonstrated to be wrong by 'incontrovertible facts or uncontested testimony', or that they were 'glaringly improbably' or 'contrary to compelling inferences' – Full Bench considered grounds in relation to appropriateness of reinstatement remedy – Full Bench accepted that whether trust and confidence can be restored is to be assessed objectively on basis of all relevant circumstances [*Goodall*] – Full Bench found Commission had considered and gave full effect to seriousness of misconduct and importance of AWB Policy – did not consider decision of reinstatement was outside range of reasonable discretionary decisions – Full Bench considered ground in relation to lost remuneration and continuity of employment – found no error in findings – Full Bench satisfied appellant did not demonstrate first instance decision was attended by error – appeal dismissed.

Appeal by University of Melbourne against decision of Colman DP of 7 July 2025 [[2025] FWC 1938] Re: Matthai

C2025/7086 | [2026] FWCFB 42
Gibian VP | Sydney | 19 February 2026
Millhouse DP
Grayson DP

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3 ENTERPRISE AGREEMENTS – approval – ss.185, 604 Fair Work Act 2009 – permission to appeal – Full Bench – United Workers' Union (UWU) appealed first instance decision of Commission to approve proposed enterprise agreement, *PMFresh P/L Broadmeadows (Vic) and United Workers Union Enterprise Agreement 2025* (Agreement) – at first instance, Commission raised better off overall test (BOOT) concerns with parties in relation to shift penalties – employer provided undertakings

addressing concerns – Commission sought views of UWU, as bargaining representative – UWU did not raise any objections to undertakings – Commission was satisfied undertakings would not cause financial detriment to any employee covered by Agreement and would not result in substantial changes to Agreement – Agreement was approved on 19 November 2025 – Full Bench granted permission to appeal under s.604 – UWU appealed first instance decision on ground Commission erred in approving Agreement and accepting Undertaking 6 in approval process – UWU contended effect of undertaking is that employees who commenced their ordinary 8 hour shifts at 3am and 4am would suffer a financial detriment under terms of Undertaking 6 in comparison to clause 24.7.2 of Agreement, and that approval was contrary to s.190(3)(a) of FW Act, because Commission could not have been satisfied acceptance of Undertaking 6 was not likely to cause financial detriment to any employee covered by Agreement – respondent submitted there is no financial detriment arising from acceptance of Undertaking 6 – Full Bench noted Commission was only able to accept Undertaking 6 if satisfied effect of accepting undertaking was not likely to cause financial detriment to any employee covered by the Agreement or result in substantial changes to Agreement – Full Bench considered financial detriment referred to in s.190(3)(a) is one that arises by comparison between terms of Agreement including undertaking, with terms of Agreement as voted upon by employees (in case of a non-greenfields agreement) – whereas, calculations provided by respondent appear to proceed by comparing hourly rates and penalty rates provided by Award with hourly rates and penalty rates provided by Agreement, including Undertaking 6 – noted it was unclear how UWU calculated financial detriment referred to in its submissions and no evidence of shift arrangements had been provided to Commission – Full Bench found based on Commission's analysis, an employee working an 8-hour shift and who has a 3am start would receive less under Agreement, including Undertaking 6 accepted by the Commission, than they would receive based on terms of Agreement as voted upon by employees – acknowledged acceptance of Undertaking 6 may have addressed Commission's concern regarding employees who commenced work at 5am, but it was not apparent from first instance decision that Commission considered whether effect of accepting Undertaking 6 was not likely to cause financial detriment for employees working an early morning shift commencing work at 3am and 4am – accepted based on figures and material provided, financial detriment may arise in respect of those employees – acknowledged UWU's failure to raise concerns when sought at first instance by Commission was unhelpful in approval process, given Commission is to have regard to views of bargaining representatives in applying the BOOT – noted figures provided by UWU in submissions in appeal matter were also of limited assistance – Full Bench satisfied UWU demonstrated an arguable case of appealable error in relation to Commission's decision to accept Undertaking 6 – observed if Undertaking 6 could not have been accepted because it was incapable of satisfying the condition in s.190(3)(a), this would amount to jurisdictional error in approval of Agreement, which calls into question whether Agreement was validly approved – Full Bench persuaded it is in public interest that any doubt as to effective operation of Agreement be resolved – permission to appeal granted.

C2025/12448
Roberts DP
Matheson C
Crawford C

Sydney

[2026] FWCFB 68
24 March 2026

4 TERMINATION OF EMPLOYMENT – Merit – reinstatement – s.394 Fair Work Act 2009 – applicant commenced employment with respondent around 27 years ago and worked as Area Supervisor for past 12 years – applicant terminated for serious misconduct on 15 September 2025, due to testing positive to THC metabolites at an on-site drug screening urine test on 25 August 2025 – applicant initially received non-negative test to THC and was stood down pending a laboratory confirmatory test using the same sample – confirmatory test detected 41 micrograms per litre of THC metabolites, which is above laboratory cut-off levels of 15 micrograms per litre – respondent terminated applicant based on serious misconduct from four breaches of respondent's policies – Commission considered whether dismissal was harsh, unjust or unreasonable – considered valid reason under s.387(a) – found applicant did not breach Alcohol and Other Drugs Procedure (Procedure) – expert witness noted presence of THC metabolites was proof of previous cannabis use, but not proof of current impairment or intoxication – Commission accepted applicant was not a regular user of cannabis and found applicant was not impaired for work on 25 August 2025 – Commission found applicant did not breach Cardinal Rule 10 of Procedure, as applicant was not under 'consumption' or 'influence' of non-approved drugs, since he did not consume nor was under the influence of THC on 25 August 2025 – Commission found applicant did not breach employment contract requirement of reporting if he was unfit to perform work, as applicant was fit to perform duties on 25 August 2025 – Commission found applicant did not act contrary to Standards of Business Conduct, as he did not perform any work 'under the influence' of illegal drugs or substances which prevented him from performing his job effectively or safely – Commission noted Managing Misconduct Standard extended Cardinal Rule 10 of Procedure and classified returning a positive reading to drugs and alcohol as serious misconduct, subject to disciplinary action which may lead to dismissal – Commission found applicant returning positive result to drug test breached internal policy and was a valid reason for dismissal, weighing in favour against a finding of dismissal being found as harsh, unjust or unreasonable – Commission acknowledged it did not consider breach as a misdemeanour, but observed breach may not be fair – Commission considered ss.387(b), (c) (d) and (g) weighed against a finding of dismissal being found harsh, unjust or unreasonable, with the exception of (e) being a neutral factor – Commission considered other relevant matters under s.387(h) – (1) found respondent's zero tolerance approach of default sanction of dismissal for employees who tested positive to drugs and alcohol was contrary to its policies – observed neither the Managing Misconduct Standards nor the Alcohol and Other Drugs policies or procedures mandated dismissal for a type of misconduct – noted Managing Misconduct Standard listed alternative disciplinary actions to dismissal for substantiated misconduct such as development of a performance improvement plan, formal letter of expectation, written warning, demotion, re-training, or additional training – observed Procedure referred to positive test results being subject to 'disciplinary

action which *may* include termination' and any disciplinary action must be consistent with internal disciplinary policies, Managing Misconduct Standard requirements, any industrial agreement requirements, and may include provision of rehabilitation information and reference to EAP requirements – found respondent's approach that zero tolerance policy meant default sanction to a positive test result was dismissal was misconceived – acknowledged that if a zero tolerance policy meant not giving any consideration to mitigating circumstances, it may constitute denial of opportunity for applicant to respond to reason for dismissal under s.387(b) [*Hawken*] – noted dismissal may be disproportionate to conduct if respondent failed to take into account mitigating circumstances [*Hawken*] – found dismissal being the only penalty was inconsistent with policy, particularly if policy included alternative disciplinary sanctions [*Goodall*] – noted that although respondent took applicant's mitigating circumstances into account to some extent, it failed to adequately consider other sanctions other than dismissal within its zero tolerance approach – Commission found respondent failed to consider following factors – (a) applicant's lengthy work history of 27 years with no prior disciplinary issues – (b) applicant made a significant contribution to respondent and was awarded for his work performance – (c) applicant conducted a THC self-test on 24 August 2025, which produced a negative result, to satisfy his fitness to attend work the next day – (d) applicant was contrite in admitting to taking two puffs of cannabis cigarette at a dinner party on 22 August 2025 – (e) applicant explained using cannabis was out of character and not a regular habit – (f) test results indicated a low level of THC metabolites – (g) applicant proposed ways of keeping his job, such as undertaking regular daily drug tests – (h) found applicant's responses demonstrated contrition and should have instilled confidence in respondent that applicant would not re-offend – found failure of respondent to give adequate consideration to such matters weighed in support of a finding that dismissal was harsh, unjust or unreasonable – (2) Commission found testing procedure was not applied correctly – acknowledged applicant's concerns regarding testing method and chain of custody of his urine sample, noting his on-site test kit was pre-opened, expressed doubt about faint line in test indicating non-negative result and was not provided with secondary on-site kit contrary to retesting procedure – found applicant's doubt was well-founded as anomalous situation where applicant's THC metabolites result of 41 micrograms per litre was under the on-site cut-off level of 55 micrograms per litre, but over the laboratory cut-off level of 15 micrograms per litre – noted applicant tested under the on-site cut-off level, and if re-tested on-site, he would have had a negative result, instead of testing procedure continuing and applicant testing positive to laboratory test – found respondent supported applicant's concerns regarding test kit being pre-opened – found respondent's testing procedure was contrary to procedure and cast doubt on application of procedure and weighed in support of dismissal being found as harsh, unjust or unreasonable – (3) acknowledged concentration of THC metabolites was low, and expert evidence confirmed that while drug test confirmed recent cannabis use, it did not determine if person was impaired – found that since applicant was neither impaired nor under the influence of cannabis at work on 25 August 2025, he had not breached the four alleged company policies, including the Cardinal Rule 10 of Procedure – factor weighed in support of dismissal being found as harsh, unjust or unreasonable – Commission satisfied dismissal was harsh and in all the circumstances was unfair – considered remedy for unfair

dismissal and considered respondent's arguments opposing reinstatement – (1) rejected respondent's argument that applicant knowingly attended work with detectable substances in his body – found applicant took precautions in self-testing and tested negative, and to his knowledge, did not have a detectable level of THC – noted his low level of THC metabolites did not make him a safety risk – (2) rejected respondent's argument regarding a loss of trust and confidence in applicant, as respondent had initially considered alternative options to dismissal prior to taking its zero-tolerance approach – (3) noted respondent's argument of lack of trust and confidence in applicant's ability to conduct himself appropriately, which undermined safety of its operations, was not made out – accepted applicant's assurances regarding safety, demonstrated through his self-testing action, and accepted applicant understood importance of safety – (4) rejected respondent's argument that reinstatement ran contrary to its zero tolerance policy – acknowledged respondent's focus on safety in the workplace and strong emphasis on maintaining a drug-free workplace – noted applicant's reinstatement should not be seen as a 'condonation of a breach of policy' but as a 'reflection of the unfairness of applying zero tolerance approach in these circumstances' – ordered reinstatement with orders for lost wages and continuity of service.

Brew v Downer EDI Works P/L

U2025/16042 [2026] FWC 955
Slevin DP Sydney 23 March 2026

5 TERMINATION OF EMPLOYMENT – Misconduct – compensation – ss.387, 392, 394 Fair Work Act 2009 – applicant formerly employed at civil contracting and commercial landscaping company as a supervisor – respondent submitted four reasons for dismissal: (1) undermining another supervisor in a disciplinary meeting; (2) overstepping of personal/professional lines; (3) taking leave without formal approval; and (4) using a side door in an improper and unsafe manner – Commission considered four reasons for dismissal – (1) found speaking out during disciplinary meeting not particularly tactful and accepted applicant was not told what meeting was beforehand, but did not warrant dismissal – (2) found meeting minutes did not provide particulars of how applicant was bad at keeping professional boundaries and noted socialising with subordinates outside of work in this case was not a valid reason for dismissal – (3) acknowledged even if applicant knew procedure for taking annual leave and ignored it, it was not a valid reason for dismissal – (4) found respondent did not communicate to employees that blocking usage of side door formed part of evacuation plan and shackled door not generally considered a safe or sensible part of evacuation plan – Commission satisfied no valid reason for dismissal under s.387(a) – Commission found applicant first put on notice of respondent's concerns in same meeting he was dismissed under s.387(b) – noted applicant not given opportunity to respond under s.387(c) – Commission found applicant denied procedural fairness and dismissal was unfair – remedy considered – applicant did not seek reinstatement – compensation considered [*Sprigg*] – length of service did not support reduction or increase of amount of compensation ordered – Commission accepted applicant's anticipated period of employment as one year – compensation calculated higher than 26 week compensation cap – respondent

ordered to pay 26 weeks' pay at $39,498.90 plus superannuation.

Yong v UGC Holdings P/L

U2025/16366 [2026] FWC 976
Lim C Perth 23 March 2026

Other Fair Work Commission decisions of note

Rehman v Portier Pacific P/L

CONDITIONS OF EMPLOYMENT – unfair deactivation – reactivation and lost remuneration – ss.536LH, 536LQ, 536LU, Fair Work Act 2009 – applicant commenced work through respondent's digital labour platform (Uber Driver Platform) as rideshare driver on 30 May 2023 – on 15 December 2025, respondent deactivated applicant due to applicant allegedly failing background check – respondent voluntarily reactivated applicant on Uber Driver Platform on 20 February 2026 – applicant submitted application for lost renumeration under s.536LQ(3) – Commission noted purpose of order to restore lost pay is to place employee-like worker in 'financial position they would have occupied had they not been unfairly deactivated' [*Hotak*] – Commission considered merits of unfair deactivation application – respondent opposed order for reactivation citing Commission had no basis to make order since respondent voluntarily reactivated applicant and there were no further measures to restore applicant to same position pre-deactivation – observed order for reactivation 'should not be read down so as to confine the Commission's power to making an order limited solely to restoring a worker's access to the digital labour platform', noting narrow construction would be 'inconsistent with the broader remedial purpose of the provision and the flexible language Parliament had employed' [*Hotak*] – noted in *Hotak,* a formal order for reactivation is necessary to restore applicant to pre-deactivation position, even if respondent voluntarily reinstated access to digital labour platform – Commission considered order for re-activation – (1) acknowledged applicant's communication regarding reactivation confirmed applicant was 'eligible' for reactivation, whereas, order from Commission requires respondent to reinstate access to digital labour platform and take active measures to restore applicant to pre-deactivation position – (2) acknowledged ordering reactivation provides certainty that applicant's ongoing work is governed by same terms and conditions within his pre-deactivation service agreement, and period of performing work was not uninterrupted by deactivation – (3) noted Part 3A-3 of Act enables Commission to provide remedies if deactivation is unfair – observed respondent's contention in *Hotak*, that construction of Commission's jurisdiction ceases if respondent restores access to worker prior to determination of application – Full Bench in *Hotak* found respondent's contention undermines the remedial purpose of provision and risks incentivising tactical reinstatements to avoid scrutiny or accountability, and would produce unjust consequences including financial loss due to interruption in access – noted it is presumed that Parliament did not intend to withdraw or limit Commission's jurisdiction unless implication arose clearly and unmistakably – respondent submitted it offered to pay applicant $5,500 in exchange for applicant signing settlement agreement and discontinuing proceedings – observed monetary offer showed respondent had taken measures to restore applicant to pre-deactivation position, rendering order under s.536LQ(1) of no utility – found respondent failed to acknowledge certainty and enforceability arising from order for reactivation and contention that $5,500 accurately reflected renumeration lost and would have placed applicant in his position pre-deactivation was misconceived – Commission found respondent's contention that Commission had no basis to make order for reactivation under s.536LQ(1) was not upheld – noted order to be issued for applicant's reactivation will ensure his access to the Uber Driver Platform is restored on terms that place him in position he would have been in but for deactivation – Commission considered remedy regarding order to restore lost renumeration – Commission assessed amount for renumeration based on methodology in *Hotak* – (1) found applicant's average weekly earnings amounted to $747.05 based on 12-week period pre-deactivation – (2) found earnings applicant was likely to receive calculated from

date of deactivation to date respondent reactivated amounted to 9 and a half weeks, amounting to $7,096.96 gross – (3) found applicant had no earnings to deduct from regarding his paid work – (4) noted no evidence submitted addressing expenses applicant incurred had he continued working, resulting in no further deduction – Commission ordered applicant's reactivation to Uber Driver Platform, noting applicant deemed to have performed work on regular basis during period of deactivation and engaged on same terms and conditions pre-deactivation – ordered respondent to pay lost renumeration to applicant amounting to $7,096.96 gross.

UDE2025/384		[2026] FWC 953
Beaumont DP	Perth	20 March 2026

Hoverd v M & J D P/L

GENERAL PROTECTIONS – dismissal dispute – misrepresentation – use of artificial intelligence – s.365 Fair Work Act 2009 – applicant formerly employed as an Earthmoving Plant Operator/Labourer from September 2025 – on October 2025, respondent commenced consultation to proposed changes to rostered shift times – on 25 November 2025, applicant sent an email to respondent which indicated he refused to move to the proposed shift time of 7.30am to 6pm – applicant had been working 10.5 hour shifts which ended at 4.30pm – applicant stated proposed shift times were not possible on account of family and church commitments – applicant incorrectly asserted that clause 23.2 of *Waste Management Award* 2020 (Award) required majority consent for a finishing time beyond 5pm, however there is no clause 23.2 in Award – applicant met with respondent and asserted he had been threatened with termination of his employment if he did not accept shift time changes – respondent sought response from applicant in relation to acceptance of proposed shift times – on 26 November 2025, applicant responded to request by email indicating his resignation – applicant submitted general protections involving dismissal application – applicant informed Commission he relied on Artificial Intelligence (AI) tools to assist in organising and drafting his submissions – Commission observed applicant consistently relied upon provisions of his contract and Award which did not exist as basis for his argument of constructive dismissal, despite chambers warning applicant he should not provide false or misleading evidence – Commission noted it was only after applicant was reminded he was providing sworn evidence in hearing that he accepted his contract did not say what he contended it did – observed applicant chose to rely on AI to 'extract' terms of contract which did not exist, instead of reading contract which he signed, which was not an excessively long document – Commission found applicant misrepresented his employment by changing position title to omit labouring and stated he had set contractual hours of 6am to 4.30pm Monday to Friday, when he did not – applicant argued respondent repudiated contract by assigning silt fencing duties constituting a demotion – Commission found duties of applicant included such work and therefore his argument was dismissed – no evidence existed that assignment to labouring duties was permanent and Commission found change to be within respondent's powers under contract – applicant asserted his supervisor stated he had been assigned to labouring duties because of complaints made – this was not proven under cross examination of supervisor – Commission held concerns regarding applicant's honesty and credibility as a witness which were not lessened by character references he provided – Commission found applicant deliberately misrepresented facts concerning employment to Commission – Commission found applicant was not assigned labouring duties on account of raised complaints – Commission found in favour of respondent that applicant was not being asked to undertake additional hours, but to change when those hours were performed – Commission found applicant could have: (1) mitigated impact by holding discussion with respondent; (2) exercised his rights under general protections without resigning; and (3) could have worked the shift on 26 November 2025 as directed – Commission satisfied applicant was not forced to resign – Commission concluded applicant not eligible to lodge a general protections claim – application dismissed.

C2025/11918		[2026] FWC 1013
Lake DP	Brisbane	25 March 2026

O'Meley v Bara Barang Corporation Ltd

TERMINATION OF EMPLOYMENT – costs – ss.394, 400(A)(1), 611(2)(b) Fair Work Act 2009 – costs respondent employed with Bara Barang Corporation Ltd (costs applicant) since 23 September 2024 as Industry Mentor: Indigenous Skills and Employment – costs respondent claimed she was unfairly dismissed from employment on 1 August 2025, since costs applicant was unwilling to facilitate her return to work after surgery – costs respondent filed an unfair dismissal application – costs applicant objected to application on basis it is a small business and minimum employment period not met by costs respondent – costs applicant's representative sent email to costs respondent on 4 September 2025 to put her on notice that she was not eligible to bring application and they would seek an order for costs if she proceeded – costs respondent did not provide a response – on 5 September 2025, costs applicant sent an email to Commission (copied to costs respondent) confirming that costs applicant did not wish to participate in conciliation and requested matter be referred to Commission Member to determine minimum employment period jurisdictional objection – costs respondent did not provide a response – on 16 September 2025, chambers issued correspondence to costs respondent seeking response as to whether she accepted that costs applicant is a small business employer and that she had not completed minimum employment period – costs respondent advised Commission and costs applicant that she did not believe costs applicant was a small business and therefore pressed her application – Commission issued directions for determining whether costs applicant was a small business – costs applicant complied with directions, whereas costs respondent did not comply – Commission sent a show cause email directing costs respondent to file submissions as to why her matter should not be dismissed for non-compliance with directions – no response was received from costs respondent, nor did she comply with directions – Commission attempted to contact costs respondent by telephone on multiple occasions, no response was received – on 3 October 2025, Commission issued decision ([2025] FWC 2964) and order (PR792367) dismissing application under s.587 of FW Act – costs respondent did not appeal decision or order – on 16 October 2025, costs applicant filed costs application against costs respondent – on 18 October 2025, costs respondent filed evidence and submissions regarding both her non-compliance and small business employer objection – costs applicant submitted that costs respondent unreasonably continued and failed to discontinue her unfair dismissal application, no cogent evidence was advanced, she was put on notice and was not incapable of making a decision or choice to discontinue – costs respondent claimed she was unfamiliar with deadlines and procedural requirements, did not have legal representation, non-compliance with directions was unintentional, her capacity to participate was hindered and it would be unreasonable, unjust and severe to make an order of costs against her – Commission considered if application was made vexatiously, or if it was reasonably apparent that application had no reasonable prospects of success [*Church; Baker*; *Keep*] – Commission found costs applicant is a small business, and that although costs respondent was provided multiple opportunities, she never provided any evidence to the contrary – not a case in which an arguable point of law or arguable facts would have determined outcome [*Abbey*] – Commission did not accept requirements set out in s.611 were satisfied – Commission held power was enlivened under s.400A to award costs – found costs respondent was sent and received the Form F3 response and the costs applicant's emails of 4 and 5 September 2025 – found wilful blindness or ignorance of material is a wholly unacceptable response to contact made by the Commission or another party concerning proceedings before Commission; costs respondent's failure to discontinue unfair dismissal proceedings on or about 5 September 2025 was an unreasonable act or omission; legal costs incurred by costs applicant was caused by costs respondent's unreasonable act or omission in failing to discontinue proceedings; circumstances in case were undoubtably exceptional and extraordinary – costs respondent ordered to pay total cost amount of $3,102 to costs applicant.

Ullah v Om Security P/L

GENERAL PROTECTIONS – costs – ss.365, 375B, 611 Fair Work Act 2009 – on 2 February 2026, Om Security P/L (costs applicant) applied for a costs order against costs respondent pursuant to ss.611 and 375B of FW Act – proceedings which costs application relates concerned cost respondent's application to deal with a contravention involving dismissal under s.365 (originating application), which was filed around 10 months out of time – costs respondent's request for extension of time was dismissed on 19 January 2026 ([2026] FWC 164 and PR795954) – costs respondent did not appeal decision or order – costs applicant submitted costs respondent's unreasonable acts or omissions in connection with conduct or continuation of cost respondent's general protections application caused costs applicant to incur costs – costs applicant submitted costs respondent was put on notice that costs applicant would be vigorously opposing originating application – Commission considered criteria under s.375B and s.611 [*Goffet; Roy Morgan Research Ltd; Kube*] – costs respondent objected to costs application stating Commission lacked jurisdiction due to costs respondent's application for appeal of decision of 19 January 2026 in Federal Court of Australia – costs applicant contended Commission had jurisdiction on three bases (1) Commission held jurisdiction pursuant to criteria outlined under s.375B, namely that an order for costs is contingent on costs order being sought against either a party to a dispute, or by the other party to a dispute, if originating application was made under s.365 of FW Act, if costs application was made in accordance with s.377 of FW Act, and if Commission satisfied of certain matters – (2) submitted s.611 of FW Act provides power for Commission to order costs against a person is (in part) contingent on an application having been made to the Commission, which was evidenced in existence of originating application – (3) submitted costs respondent's appeal to Federal Court of Australia is incompetent due to lack of consideration of appropriate procedure for dealing with appeals against decisions of Commission as prescribed under ss.604 to 607 of FW Act – Commission endorsed costs applicant's submissions – Commission observed costs respondent's contention that Commission lacked jurisdiction to hear and determine costs application stood in stark contrast to his originating application – Commission found nothing for which the costs respondent contended would effectively stay a costs application in Commission – Commission found it held jurisdiction to determine application – Commission found requirements under s.611 not satisfied – Commission acknowledged discretion to award costs under s.375B enlivened – Commission considered it must be satisfied costs incurred because unreasonable act or omission of a party – observed unreasonable act or omission includes one which was deliberate or reckless – Commission outlined procedural difficulties associated with costs respondent's originating application, noting requirement to satisfy existence of exceptional circumstances to grant extension of time – Commission noted costs applicant put costs respondent on notice that substantial delay could not meet legal test for exceptional circumstances and that Commission agreed with this contention in first instance – Commission found costs respondent's reasons for delay in first instance did not weigh in favour of exceptional circumstances – Commission found costs respondent engaged in unreasonable acts or omissions in connection with continuation of originating application which caused costs applicant to incur additional costs – Commission found cost applicant's response to originating application put costs respondent on notice about the limited likelihood that application would succeed and that he did not challenge this contention in initial proceedings – Commission satisfied that costs respondent's continuation of originating application in all circumstances was an unreasonable act or omission – acknowledged overall circumstances were undoubtedly exceptional and/or extraordinary that they displace any notion that each party bear own costs, therefore enlivening Commission's discretion to award costs – rejected any assertion that costs applicant was not required to or did not need to actively engage with opposing the originating application, or that costs applicant did not require legal representation before Commission – Commission considered it appropriate for costs applicant to oppose originating application and to engage legal representation – Commission observed no costs schedule applies to s.375B pursuant to s.377A of FW Act – Commission

calculated costs to be awarded as (1) reflecting work done to oppose originating application and (2) counsel's work and appearance – costs respondent ordered to pay total cost amount of $8,484.03 (including GST) to costs applicant.

C2025/11024 [2026] FWC 1014
Boyce DP Sydney 30 March 2026

Mercer v Sharn Enterprises P/L atf Kapoor Family Trust

TERMINATION OF EMPLOYMENT – Merit – compensation – s.394 Fair Work Act 2009 – applicant alleged she had been unfairly dismissed from employment as Educator at childcare centre – childcare centre had recently been purchased by respondent – on 23 December 2025, prior jurisdictional decision ([2025] FWC 3933) issued relating to whether respondent was a small business employer and whether applicant and two other employees had separately met minimum employment period – Commission held application not jurisdictionally barred, minimum employment met in relation to applicant, and respondent to be considered as 'small business employer', subject to Small Business Fair Dismissal Code (Code) – respondent raised status as small business employer and whether dismissal could not be unfair under Code – applicant submitted dismissal not consistent with Code and was harsh, unjust or unreasonable – Commission subsequently issued directions for arbitration – applicant commenced employment with respondent on 8 August 2019 – in early 2025, applicant informed centre director of cancer diagnosis and was approved to use accrued personal leave to undergo treatment – applicant provided centre director with list of chemotherapy dates over two months or more – under schedule, applicant would fortnightly take Monday and Wednesday off to undergo cancer treatment, then work regular hours on alternating week – although treatment dates subsequently changed, centre director gave evidence that applicant provided advance notice to assist roster planning – prior to respondent's purchase of business, applicant had pre-approved leave to attend two arts and music festivals in February and April 2025 – whilst on leave at second festival, applicant advised leave had been cancelled by respondent – applicant stated after acquisition of centre, she observed issues and incorrect payments of leave entitlements, citing 7 days between March and May 2025 in which leave was not paid – respondent provided no explanation in evidence with regard to this – in May 2025, applicant received termination notice from centre director, which stated 'after careful consideration, we have determined that we are unable to accommodate your current availability in line with operational requirements of the service' – applicant had no conversations with respondent owner or centre director, who was directed by owner, to terminate applicant – respondent owner claimed centre director had made termination decision – whereas centre director claimed termination was the respondent owner's decision – centre director noted difficulties in covering applicant's leave in March 2025 due to unrelated resignations, and at this time owner began raising possibility of termination – employee of respondent gave evidence that after owner found out applicant's leave in May was to visit Canberra, rather than undergo chemotherapy, she became agitated and directed centre director to draft termination letter – applicant stated she had attempted contact with owner following dismissal in relation to unpaid leave and information to support Centrelink claim, but had never received a response – 10 weeks after dismissal, applicant received payment for four weeks of notice in lieu, incorrectly calculated and significantly below her entitlement – applicant submitted respondent had not met any procedural requirements in Code: notice period too short, no valid reason that employment at risk where employee has opportunity to respond and rectify – as applicant not summarily dismissed, dismissal deemed an 'Other Dismissal' under Code – applicant led evidence that she received absolutely no warning she may be dismissed due to capacity – Commission found respondent did not comply with Code and failed to provide any submissions or evidence of compliance with Code – Small Business Fair Dismissal Code jurisdictional objection dismissed – Commission considered merits – considered whether there was a valid reason for dismissal – Commission noted limited evidence on part of respondent – applicant claimed dismissal for 'lack of availability for rostering' was not a valid reason in circumstances – Commission considered respondent's evidence inconsequential, being irrelevant whether termination decision was made by

respondent owner or centre director, as decisions ultimately reflect on employer – Commission reiterated applicant was undergoing chemotherapy, which was approved by respondent and applicant notified respondent in advance – on evidence applicant clearly had sufficient leave to cover absences, was meeting contractual obligations, had no performance issues and did nothing in error – Commission found no valid reason for dismissal under s.387(a) – Commission considered whether applicant notified of reason for dismissal – observed s.387(b) contemplates a 'valid' reason, and since no valid reason for dismissal provided, s.387(b) not applicable – Commission considered whether applicant given an opportunity to respond to reason for dismissal under s.387(c), lack of which was considered a factor in favour of applicant – Commission found due to lack of prior discussion, respondent did not allow applicant to have a support person under s.387(d) – Commission considered whether applicant had been warned about unsatisfactory performance before dismissal (in matters relating to unsatisfactory dismissal) under s.387(e) – Commission found no evidence that respondent had raised any issues, and evidence showed applicant to be an exemplary worker – Commission considered degree to which size of employer would have impacted procedures effecting dismissal – Commission noted respondent to be a small business employer, albeit with no evidence that respondent sought independent advice in process – Commission observed factors in s.387(f) and (g) of FW Act cannot shield employer from reasonable scrutiny, nor can respondent abdicate responsibility, in relation to procedural fairness – Commission observed small size of respondent cannot significantly mitigate consideration when employee dismissed in process 'devoid of any fairness' [*Williams*] – Commission observed other relevant matters under s.387(h): applicant had over 5 years of unblemished service and intended to work until retirement; as a result of dismissal and age, applicant would be unlikely to ever qualify for long service leave; applicant's endeavours to obtain further employment so far unsuccessful; dismissal effected by email; and respondent terminated applicant with knowledge that she was undergoing cancer treatment which should be considered as harsh [*Chanintorn*] – additionally, applicant's age and length of service warranted five weeks of notice, whereas applicant received only four weeks, which was underpaid – Commission found ultimately respondent did not have a valid reason for dismissal, and there had been unfairness in 'egregious' dismissal – Commission considered remedy – found reinstatement not appropriate – turned to factors in s.392(2) – Commission found no evidence that remedy order would affect viability of respondent; applicant's length of service to weigh in favour of higher compensation, due to applicant's intention to work until retirement; and deemed maximum compensation to be appropriate – applicant had attempted to find other employment following dismissal, but Commission observed this to be understandably difficult due to her age and cancer treatment – Commission found respondent's outstanding debt to applicant of correct amounts for notice and personal leave weighed in favour of applicant – in relation to calculation, Commission observed applicant had sought maximum gross amount of compensation ($17,122.95 plus superannuation), whereas respondent put no evidence nor submissions on issue of remedy – Commission noted under s.392(4) of Act, compensation cannot include component for shock, distress or humiliation, but observed 'nothing to redeem employer' in matter – Commission ordered maximum compensation of 17,122.95 plus superannuation to applicant.

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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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