



# DECISION

*Fair Work Act 2009*  
s.394—Unfair dismissal

**Julian Spadavecchia**

v

**The Trustee For Modern Concrete Co Trust T/A Modern Concrete Co**  
(U2023/7985)

DEPUTY PRESIDENT ANDERSON

ADELAIDE, 20 OCTOBER 2023

*Application for an unfair dismissal remedy – jurisdiction – minimum employment period – concreter – whether ‘trial days’ constitute employment – gap between ‘trial days’ and full-time employment – whether “regular casual” – not a “regular casual” – gap period not counted – minimum employment period not met – application dismissed*

[1] On 24 August 2023 Julian Spadavecchia (Mr Spadavecchia or the applicant) applied to the Commission under s 394 of the *Fair Work Act 2009* (the FW Act) for an unfair dismissal remedy in relation to his dismissal by The Trustee for Modern Concrete Co Trust trading as Modern Concrete Co (Modern Concrete, the employer or the respondent).

[2] He claims to have been unfairly dismissed on 4 August 2023. He seeks compensation.

[3] Modern Concrete is a small business employer. It opposes the application and raises a jurisdictional issue.<sup>1</sup> It submits that Mr Spadavecchia was not a person protected from unfair dismissal under the FW Act because he had not completed the minimum employment period (of twelve months) required by ss 382(a) and 383. It says that Mr Spadavecchia commenced employment on 10 August 2022 and was dismissed on 4 August 2023, short of twelve months service.

[4] In response, Mr Spadavecchia contends that his employment commenced on 27 July 2022 when he started trial periods of work.

[5] Conciliation did not take place as the employer did not wish to participate in conciliation in light of its jurisdictional objection.

[6] I issued directions on 27 September 2023.

[7] I heard the jurisdictional matter by video on 13 October 2023.

[8] Mr Spadavecchia was represented by an unpaid agent, Ms Penley. Ms Penley is a human resources officer of an accounting firm and is related to the applicant. Modern Concrete was represented by its Director Mr Laurence Domin and Accounts Manager Ms Erin Domin.

[9] This decision deals only with the minimum employment period issue.

### **Evidence**

[10] I received evidence from:

- Julian Spadavecchia (applicant); and
- Laurence Domin (Director).

[11] The state of some of the evidence is unsatisfactory. This is partly due to some events not being well documented and also the understandable difficulty witnesses had in specifically recalling conversations fourteen and fifteen months ago. That said, most but not all facts related to the jurisdictional issue are generally not in dispute. It is the conclusions that should be drawn from those facts that are strongly contested.

[12] To the extent necessary, in resolving factual disputes I apply standard tools available to first-instance decision-makers including creditworthiness, plausibility and consistency with the documentary record.

[13] Some evidence is hearsay. I give little weight to hearsay unless the facts asserted are not contested.

### **Facts**

#### *Modern Concrete*

[14] Modern Concrete is a small Adelaide-based concreting business employing, at the relevant time, six persons.

[15] Mr Domin is its owner and director. He is a hands-on small business owner. Ms Domin handles accounts and administration.

#### *Mr Spadavecchia*

[16] Mr Spadavecchia worked in and around the construction industry for approximately two and a half years prior to July 2022. He had some prior experience with concreting work.

[17] At the time of the relevant events he was working as a casual employee for another employer.

#### *Expression of interest*

[18] In July 2022 Mr Spadavecchia noticed an online advertisement placed by Modern Concrete seeking concreters who could work full-time and start immediately.

[19] In the days prior to 23 July 2022 Mr Spadavecchia contacted Modern Concrete and spoke to Mr Domin. Mr Spadavecchia advised Mr Domin that he was interested in the job. He told Mr Domin that he had existing construction industry employment from which he would need to resign before he could take up full-time employment. For his part, Mr Domin indicated that he would take Mr Spadavecchia's expression of interest further but wanted to assess whether Mr Spadavecchia could do the job and fit in with his team. To this end, Mr Domin asked Mr Spadavecchia to attend a work site over the next week so his suitability could be assessed. Mr Spadavecchia agreed to do so.

[20] On 23 July 2022 Mr Spadavecchia advised Mr Domin (by text) that he (Mr Spadavecchia) was available to "come out Wednesday" (27 July).<sup>2</sup> Mr Domin replied by providing Mr Spadavecchia the start time and location (Greenwith) at which the business would be pouring concrete that day.<sup>3</sup>

[21] There was no discussion orally or in writing as to the terms on which Mr Spadavecchia would be working on 27 July.

*27 July 2022*

[22] Mr Spadavecchia attended the Greenwith site on 27 July. The pour was a swimming pool which limited the capacity for Mr Domin to enable Mr Spadavecchia to fully engage in concreting work and display his capability. Most of the work done by Mr Spadavecchia that day was labouring work.

[23] Either during or at the end of the work day Mr Spadavecchia advised Mr Domin that he (Mr Spadavecchia) was not required by his then employer the next day and would be free to attend another site where Modern Concrete was working. As Mr Domin wanted to better assess Mr Spadavecchia, it was agreed that Mr Spadavecchia would attend a site in Magill the next day. At 5.18pm on 27 July Mr Domin sent Mr Spadavecchia a text with the Magill address and the following:<sup>4</sup>

"Cheers for today mate hopefully you enjoyed it. Will chat about things tomorrow and see if we can work something out"

[24] There was no discussion orally or in writing as to the terms on which Mr Spadavecchia would be working on 28 July.

*28 July 2022*

[25] Mr Spadavecchia attended the Magill site on 28 July. The pour was a simpler concreting job. Mr Spadavecchia actively engaged in concreting work and was able to display his capability.

[26] At the end of the work day (28 July) a discussion occurred between Mr Domin and Mr Spadavecchia. Mr Domin indicated that he considered Mr Spadavecchia had suitable skills. He also felt that Mr Spadavecchia fitted in, though wished to speak to his other staff about that. Mr Spadavecchia indicated that he would be willing to resign from his then employment and work full-time for Modern Concrete. Mr Domin spoke to Mr Spadavecchia about how he might go about resigning. Although Mr Domin's evidence was somewhat vague on whether he then

indicated that an offer of employment would be made, I find that Mr Domin did leave Mr Spadavecchia with an understanding that he could expect an offer.

[27] There is a dispute whether Mr Spadavecchia was paid for work performed on 27 and 28 July 2022. Mr Spadavecchia's evidence was that he was paid a cash amount. Mr Domin's evidence was that he made no payment. Neither party produced corroboration and the evidence as to the amount was vague. It is one witness's word against the other. It is not inconceivable that some payment was made. Mr Spadavecchia spent five to six hours on site on 27 July and around eight hours the next day. Doing so for no compensation is unlikely though possible given that he wanted to be assessed as suitable in order to secure a full-time job. Whilst some doubt exists, it is more likely than not that some form of payment was made.

[28] Mr Spadavecchia worked for his then employer the following day (Friday 29 July) and the following Monday (1 August). Mr Spadavecchia resigned from that employment effective 1 August.

#### *Offer of employment*

[29] On 3 August 2022 Mr Domin decided to offer Mr Spadavecchia full-time employment as a concreter. He arranged for an offer to be sent. It was sent by Ms Domin by email at 9.13pm. It read:<sup>5</sup>

“Hi Julian

Please find attached the following paperwork to be completed:

- Tax File Number Declaration
- Super Fund Form
- Employee Details Form

Could you please return the completed forms before Monday 8 August 2022 along with the following;

- Copy of your white card; and
- Copy of current drivers licence

Your employment will be on a full-time basis of \$█ per hour. Please note there will be a probation period of three months.

In regards to your commencement date, this will be on the 10<sup>th</sup> or 11<sup>th</sup> of August 2022 however Laurence will touch base with you.

In regards to your hours, when you finish at the end of the week you will need to text them to my number █ by latest Sunday night. Pays are processed every Wednesday.

If you have any questions please let me know.

Thank you  
Erin Domin” (emphasis in original)

[30] Mr Spadavecchia responded on 7 August 2022 by email. He returned the employment forms completed and indicated that he would give his tax file declaration “to Laurence on my first day”.<sup>6</sup>

[31] Mr Spadavecchia was informed by Mr Domin, on a date and time unclear from the evidence, that he would commence on 10 August at a site in Pooraka.

#### *Commencement*

[32] Mr Spadavecchia’s first day of work as a full-time employee was 10 August 2022.

[33] Aside from working on site on 27 and then 28 July 2022 (above) Mr Spadavecchia did not perform work for Modern Concrete during the twelve days that followed, until commencing full-time employment on 10 August 2022.

[34] Mr Spadavecchia worked continuously from 10 August 2022 until 4 August 2023 when he was dismissed.

[35] Mr Spadavecchia commenced these proceedings on 24 August 2023.

#### **Submissions**

##### *Modern Concrete*

[36] Modern Concrete submit that Mr Spadavecchia did not serve the minimum period of twelve months required by the FW Act to have been protected from unfair dismissal.

[37] Modern Concrete submit that:

- Mr Spadavecchia was not employed on 27 or 28 July 2022 because these were trial days;
- even if he was employed on those days, he was not in employment between those days and 10 August 2022 (and in particular was not in continuous service between 4 and 10 August 2022); and
- even if he was in service as an employee in this period, the days do not count because he was not a “regular casual employee” in that period.

[38] Accordingly, Modern Concrete submit that the application should be dismissed.

##### *Mr Spadavecchia*

[39] Mr Spadavecchia submits that the period 27 July 2022 until commencing as a full-time employee on 10 August 2022 should be counted for two reasons.

[40] Firstly, he submits that the two days of work were periods of employment irrespective of whether the employer described them as trial periods. He says that the FW Act does not recognise unpaid work or unpaid trial periods of the type he undertook.

[41] Secondly, he submits that as he was employed on 27 July and 28 July 2022 an employment relationship existed on those days which continued until he was offered and accepted full-time employment on 7 August 2022 which commenced on 10 August 2022.

[42] Accordingly, Mr Spadavecchia submits that he served more than twelve months prior to his employment ending on 4 August 2023 and is thus a person protected from unfair dismissal.

## **Consideration**

### Legislative provisions

[43] Section 382 of the FW Act provides that a person is protected from unfair dismissal if they have completed a period of employment of at least the minimum employment period.

[44] Section 383 sets out the minimum employment period:

#### **“383 Meaning of minimum employment period**

The minimum employment period is:

- (a) if the employer is not a small business employer—6 months ending at the earlier of the following times:
  - (i) the time when the person is given notice of the dismissal;
  - (ii) immediately before the dismissal; or
- (b) if the employer is a small business employer—one year ending at that time.”

[45] Section 384 provides:

#### **“384 Period of employment**

- (1) An employee’s period of employment with an employer at a particular time is the period of continuous service the employee has completed with the employer at that time as an employee.
- (2) However:
  - (a) a period of service as a casual employee does not count towards the employee’s period of employment unless:

- (i) the employment as a casual employee was as a regular casual employee; and
  - (ii) during the period of service as a casual employee, the employee had a reasonable expectation of continuing employment by the employer on a regular and systematic basis; and
- (b) if:
- (i) the employee is a transferring employee in relation to a transfer of business from an old employer to a new employer; and
  - (ii) the old employer and the new employer are not associated entities when the employee becomes employed by the new employer; and
  - (iii) the new employer informed the employee in writing before the new employment started that a period of service with the old employer would not be recognised;

the period of service with the old employer does not count towards the employee's period of employment with the new employer."

[46] Section 12 defines "service" by referring to "section 22" and "continuous service" as having "a meaning affected by section 22".

[47] In somewhat curious drafting, s 22 defines "service" but does not contain an express meaning of "continuous service" (though the phrase is bolded by the legislature in s 22(4)(b) without subsequent definition). Section 22 relevantly provides:

## **"22 Meanings of service and continuous service**

### *General meaning*

- (1) A period of *service* by a national system employee with his or her national system employer is a period during which the employee is employed by the employer, but does not include any period (an *excluded period*) that does not count as service because of subsection (2).
- (2) The following periods do not count as service:
  - (a) any period of unauthorised absence;
  - (b) any period of unpaid leave or unpaid authorised absence, other than:
    - (i) a period of absence under Division 8 of Part 2-2 (which deals with community service leave); or
    - (ii) a period of stand down under Part 3-5, under an enterprise agreement that applies to the employee, or under the employee's contract of employment; or

- (iii) a period of leave or absence of a kind prescribed by the regulations;
  - (c) any other period of a kind prescribed by the regulations.
- (3) An excluded period does not break a national system employee's *continuous service* with his or her national system employer, but does not count towards the length of the employee's continuous service.
- (3A) Regulations made for the purposes of paragraph (2)(c) may prescribe different kinds of periods for the purposes of different provisions of this Act (other than provisions to which subsection (4) applies). If they do so, subsection (3) applies accordingly."

[48] A "casual employee" is defined in s 15A as:

**"15A Meaning of *casual employee***

- (1) A person is a *casual employee* of an employer if:
- (a) an offer of employment made by the employer to the person is made on the basis that the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person; and
  - (b) the person accepts the offer on that basis; and
  - (c) the person is an employee as a result of that acceptance.
- (2) For the purposes of subsection (1), in determining whether, at the time the offer is made, the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person, regard must be had only to the following considerations:
- (a) whether the employer can elect to offer work and whether the person can elect to accept or reject work;
  - (b) whether the person will work as required according to the needs of the employer;
  - (c) whether the employment is described as casual employment;
  - (d) whether the person will be entitled to a casual loading or a specific rate of pay for casual employees under the terms of the offer or a fair work instrument.

Note: Under Division 4A of Part 2-2, a casual employee who has worked for an employer for at least 12 months and has, during at least the last 6 months of that time, worked a regular pattern of hours on an ongoing basis may be entitled to be offered, or request, conversion to full-time employment or part-time employment.

- (3) To avoid doubt, a regular pattern of hours does not of itself indicate a firm advance commitment to continuing and indefinite work according to an agreed pattern of work.



- (4) To avoid doubt, the question of whether a person is a casual employee of an employer is to be assessed on the basis of the offer of employment and the acceptance of that offer, not on the basis of any subsequent conduct of either party.
- (5) A person who commences employment as a result of acceptance of an offer of employment in accordance with subsection (1) remains a *casual employee* of the employer until:
- (a) the employee’s employment is converted to full-time or part-time employment under Division 4A of Part 2-2; or
- (b) the employee accepts an alternative offer of employment (other than as a casual employee) by the employer and commences work on that basis.”

[49] A “regular casual employee” is defined in s 12 as:

“a national system employee of a national system employer is a *regular casual employee* at a particular time if, at that time:

- (a) the employee is a casual employee; and
- (b) the employee has been employed by the employer on a regular and systematic basis.”

#### The required period of service

[50] Modern Concrete is a small business employer. In order to be protected from unfair dismissal, the minimum employment period required to have been served by Mr Spadavecchia prior to his dismissal taking effect was one calendar year (twelve months).

[51] As Mr Spadavecchia’s dismissal took effect on 4 August 2023, the question which arises is whether he had twelve months of “continuous service” (s 384(1)) prior to that date.

[52] “Service” as an employee for the purposes of s 22 does not require a person to be actually working on each of the days in the relevant period. Rather, the issue is whether an unbroken employment relationship existed in that period. The reason for this is self-evident. An employee may be rostered off work during a relevant period or not required to work on a day or days during a relevant period or be taking paid or unpaid leave during a relevant period yet be in continuous service as an employee. It is a separate issue, addressed by s 22(2), whether a particular day or days in that period are excluded from being counted towards the length of continuous service.

[53] As noted, the phrase “continuous service” (used in s 384) is not defined in the FW Act. However, its ordinary meaning is a period of unbroken service by an employee with an employer.<sup>7</sup> Subject to the statutory exceptions in s 22, “continuous service” for the purposes of ss 384 and 22 of the FW Act requires the employment relationship to have been unbroken. However, as provided by s 384(2)(a), for unfair dismissal purposes regularly and systematically rostered casual employees remain in service notwithstanding that each engagement may be by separate casual contracts provided reasonable expectation of continuing employment on that basis exists. Gaps in time between such contracts do not necessarily break service because it is the employment relationship and not the contract that is assessed for continuity.<sup>8</sup>

**[54]** For these reasons, the phrases “period of employment” and “continuous service” in s 384 of the FW Act and the phrase “continuous service” in s 22 are best read as relating to a period of an unbroken employment relationship and not necessarily an unbroken employment contract (subject to the further statutory provisions in s 22 which deem certain service to be continuous despite a break in the employment relationship).

**[55]** It is not disputed by Modern Concrete that Mr Spadavecchia was in continuous service between 10 August 2022 and 4 August 2023. This is because it is not disputed that Mr Spadavecchia was employed in a full-time capacity by an offer accepted on 7 August 2022 and that he commenced in that capacity on 10 August 2022.

**[56]** The relevant issue is whether Mr Spadavecchia was also in a period of “continuous service” in at least the six days prior to his full-time employment commencing, that is between 4 and 10 August 2022.

**[57]** The answer to this question firstly rests on whether an employment relationship between Mr Spadavecchia and Modern Concrete existed during this six-day period. This is because “continuous service” for the purpose of s 384 and “service” within the meaning of s 22 means service as an employee. Section 22(1) provides that it must be a period “during which the employee is employed by the employer”. To have been “employed by the employer” requires an employment relationship to have existed in the relevant period.

Was there an employment relationship prior to 10 August?

**[58]** On 27 July and 28 July 2022 Mr Spadavecchia performed work on two concreting sites. Mr Spadavecchia did so at the invitation of the business. The business asked him to do so because it wished to assess his suitability for the job he had expressed interest in. In order to make that assessment, the business owner wanted to assess the ‘on the job’ skills and capacity of Mr Spadavecchia. Mr Spadavecchia agreed to work on 27 July and, in a subsequent discussion, agreed to also work on 28 July. There was no agreement or understanding as to pay or conditions because the business considered it a trial period. On these days Mr Spadavecchia performed five hours of work and eight hours of work respectively, labouring and assisting during two different concrete pours. He actively worked, not simply observed others working.

**[59]** Mr Spadavecchia was not working as a contractor. He worked under the control and direction of Mr Domin and the supervisors on the day.

**[60]** Nor does the evidence support a finding that Mr Spadavecchia was, on either of these days working under a full-time employment contract or as a part-time employee. Rather he worked the hours required on each day until the job was completed for the day. This is indicative of casual employment. Mr Spadavecchia worked “as required according to the needs of the employer” within the meaning of s 15A(2)(b) of the definition of “casual employee” in the FW Act. There was no “firm advance commitment to continuing and indefinite work” within the meaning of s 15A(2)(a).

**[61]** Was this casual employment?

[62] It is arguable that no contract of employment existed because whilst an offer, acceptance and consideration arguably existed, it could be said that the necessary intention to enter legal relations was absent. Further it could be well argued that Mr Spadavecchia was simply volunteering his labour solely for the purposes of being assessed. Factors used to determine whether a person is performing ‘work’ as a volunteer or intern are well established<sup>9</sup>. In this matter, some point in that direction, others do not.

[63] That said, it is also tolerably arguable (and somewhat the better proposition) that Mr Spadavecchia was a casual employee on these days despite no express agreement to that effect.

[64] The FW Act provides only limited scope for work in a commercial business setting which is performed under the control and supervision of a business owner and at their request to be unpaid training or voluntary work.<sup>10</sup>

[65] It is well established that mere labelling a form of work in a particular manner (in this case, a ‘trial period’) does not of itself characterise the engagement as such. Having accepted the offer to work on these days, Mr Spadavecchia provided his labour in a manner that somewhat benefited the business. He worked to assist the completion of the job, and worked under the observation of the business owner and supervisors. Whilst there was no agreement to remunerate and some doubt exists as to whether a cash payment was made, this does not mean that there was no employment that required remuneration.

[66] I give no weight to company personnel, superannuation and long service leave records tendered by Modern Concrete that indicate a commencement date of 10 August 2022.<sup>11</sup> A record of a commencement date is, at best, a record of a business entry reflecting its understanding at a given point in time. It is not, of itself, objective evidence of whether an employment relationship existed prior to that date.

[67] However, in light of the issue of a prior employment relationship not being clear-cut and because (below) I have found that Mr Spadavecchia, if a casual employee on these days, was not a “regular casual employee” within the meaning of the FW Act, it is not necessary to make a formal finding to this effect.

Are the days prior to 10 August 2022 counted?

[68] That a casual employment relationship may have existed on 27 July and 28 July 2022 does not necessarily mean that Mr Spadavecchia was a person employed by Modern Concrete beyond those days and until 10 August 2022. After 28 July 2022 he did not work for Modern Concrete again for twelve days. Rather, he worked for his then employer on 29 July and 1 August, resigning effective that day.

[69] Section 384(2) makes it clear that, for days in this period to be counted, Mr Spadavecchia not only has to establish that he was a casual employee (as defined) but also:

- that he was a “regular casual employee” (as defined in s 12); and
- that he had a reasonable expectation of continuing employment on a regular and systematic basis (s 384(2)(a)(ii)).

[70] On the evidence, neither proposition is made out.

[71] It was clearly understood and agreed between the parties that the two days of work on 27 and 28 July 2022 would be for the purpose of the business forming a view as to his suitability for a full-time offer. The evidence is that an offer was then made by Modern Concrete in the week that followed (on 3 August) which was accepted on 7 August 2022.

[72] There is no evidence that Mr Spadavecchia had, prior to 10 August 2023, “been employed by the employer on a regular and systematic basis” as required by the definition of “regular casual employee” in s 12. Rather the evidence is to the contrary; there were separately made agreements to work on 27 and 28 July 2022 for a singular purpose – to be assessed for suitability. Beyond those days, and if and until an offer of full-time employment was made and accepted, no other work was offered and none performed. Indeed, Mr Spadavecchia was not available to work for Mr Domin at least until 2 August. At its highest, on 28 July 2022 Mr Domin told Mr Spadavecchia that he was suitable and would be offered a full-time contract. Even if that were so (and on the evidence it is more likely than not), a promise of a forthcoming full-time offer does not establish the fact of regular and systematic employment prior to that offer being made and accepted.

[73] Mr Spadavecchia was not a “regular casual employee” prior to 10 August 2022. Nor was he employed in any capacity prior to that date other than potentially on the two days 27 and 28 July 2022 when it is arguable that he was casually employed.

[74] Not being a “regular casual employee”, Mr Spadavecchia could not and did not, in this period, have had a reasonable expectation of continuing employment on that basis (s 384(a)(ii)).

[75] This being so, the two days of work, even if they were employment, do not count as part of the minimum employment period (s 384(2)(a)).

[76] Further, Mr Spadavecchia was not “employed by the employer” in the sense required by s 22(1) in the gap period after 28 July 2022, and in particular was not so employed between 4 and 10 August 2022.

[77] That being so, it is not necessary to determine whether days in the gap period were “excluded periods” within the meaning of s 22(2) of the FW Act.

## **Conclusion**

[78] The periods of Mr Spadavecchia’s employment with Modern Concrete were, arguably, two stand-alone periods of employment as a casual employee on 27 July 2022 and 28 July 2022, and an undisputed period of continuous service as a full-time employee commencing 10 August 2022.

[79] The gap between 28 July 2022 and 10 August 2022 was not a period of “continuous service” with the employer within the meaning of s 384(1) of the FW Act and in particular the period 4 August 2022 to 10 August 2022 was not.

[80] Consequently, no days prior to 10 August 2022 are included in the count for the purposes of determining the minimum employment period.

[81] That being so, the “period of employment” for the purposes of ss 383 and 384 of the FW Act served by Mr Spadavecchia immediately prior to the dismissal on 4 August 2023 fell short of the one year minimum employment period by six days.

[82] That being so, Mr Spadavecchia had not relevantly completed the period of employment required by s 382 of the FW Act to be protected from unfair dismissal.

[83] In light of this, there is no jurisdiction to hear and determine the unfair dismissal application. It must be dismissed.

[84] An order giving effect to this decision is issued in conjunction with its publication.<sup>12</sup>



DEPUTY PRESIDENT

*Appearances:*

Ms D Penley, *on behalf of* Mr J Spadavecchia

Mr L Domin with Ms E Domin, *of and on behalf of* The Trustee For Modern Concrete Co Trust  
t/as Modern Concrete Co

*Hearing details:*

2023

Adelaide (by video)

13 October

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<sup>1</sup> Employer Response (F3) 8 September 2023

<sup>2</sup> A3

<sup>3</sup> Ibid

<sup>4</sup> A4 page 2

<sup>5</sup> A4; R2

<sup>6</sup> A5; R3

<sup>7</sup> *Holland v UGL Resources Pty Ltd* [2012] FWA 3453, [20]

<sup>8</sup> *Shortland v Smiths Snackfood Co Ltd* [2010] FWAFB 5709; *Flinders Ports Pty Ltd v Woolford* [2015] SASCFC 6 at [74] per Stanley J with whom Kelly J agreed

<sup>9</sup> As summarised in *Barbour v Derbas* [\[2021\] FWC 1718](#) at [70]

<sup>10</sup> Section 15(1)(b) and definition of “vocational placement” (s 12)

<sup>11</sup> R5; R6

<sup>12</sup> [PR767457](#)