



# DECISION

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

**Matthew Kim Wilson**

v

**Australian Federal Police (On Behalf Of The Commonwealth)**  
(U2023/4298)

DEPUTY PRESIDENT LAKE

BRISBANE, 3 JANUARY 2024

*Application for an unfair dismissal remedy – whether mandatory vaccination policy lawful – valid reason – dismissal not unfair – application dismissed.*

[1] Mr Matthew Kim Wilson (the **Applicant**) lodged an application with the Fair Work Commission (the **Commission**) seeking a remedy pursuant to s.394 of the *Fair Work Act 2009* (the **Act**) in relation his dismissal by the Australian Federal Police (the **Respondent**).

[2] A conciliation was held on 10 July 2023. Directions were provided to the parties and the matter was listed for hearing on 25 September 2023. The Applicant was self-represented, and the Respondent sought to be represented by Ms Cathy Dowsett of Counsel.

[3] The Applicant nor Respondent dispute the four specified matters before considering the merits of the matter nor have I identified any issues involving s396 of the Act. I have considered all the evidence provided before me and I provide my consideration below.

## **Background**

[4] The Applicant joined the Australian Federal Police (**AFP**) in January 1991 and progressed through a series of assignments and promotions including overseas postings. The Applicant was most recently appointed to the Joint Counter Terrorism Unit (**JCT**) where he performed work subject to the chain of command which included the Commander Investigations Northern Command.

[5] On 29 October 2021, the AFP Commissioner issued Commissioner's Order 10 (**CO10**). The effect of this was to requires AFP appointees (including AFP employees) who regularly work in AFP premises to have received at least one dose of a COVID-19 vaccination by 8 November 2021, and to have received a second dose of a COVID-19 vaccination by 14 February 2022.

[6] CO10 requires AFP appointees to advise the AFP of their vaccination status and provide evidence of having received a COVID-19 vaccination in accordance with the AFP National Guideline on COVID-19 mandatory vaccination (the **National Guideline**).

[7] There were exemptions to this policy for AFP employees who were on long term leave, have an approved medical or non-medical exemption or are awaiting the outcome of their application for exemption.

[8] The Applicant commenced a period of long term leave on 26 October 2021 and was as an exempt employee until his period of leave ended on 12 February 2023. During this period, the Applicant applied for an exemption but was unsuccessful. The Applicant did not request a review of this decision.

[9] On 6 February 2023, the Applicant emailed Commander Caroline Taylor (then Detective Superintendent) who was the Applicant's second level supervisor stated that his approved leave would expire on 12 February 2023, and he had an intention to return to work on 13 February 2023. Mr Wilson noted the requirements of CO10 and stated that he was available to work from home.

[10] It was determined by Commander Taylor that the Applicant's role was unable to be performed from home on a full-time basis. Mr Wilson was advised from Commander Taylor that he may be able to apply for annual leave or long service leave to cover the period he was unable to attend work and asked him to notify her if he wanted her to enter the applicable leave on his behalf.

[11] Mr Wilson did not request leave or nominate an applicable leave type to be entered on his behalf. As a result, Mr Wilson was deemed to be on an unauthorised absence from 13 February 2023. Because of the expiration of his approved leave, Mr Wilson ceased to be an Exempt Appointee on 13 February 2023.

[12] To comply with CO10, a Direction was issued on 27 February 2023 by Commander John Tanti. Mr Wilson was required to have a first dose of a COVID-19 vaccination and to provide evidence of his vaccination status to the AFP. He was also directed to not enter AFP premises until he received the vaccination. The Applicant did not follow this Direction.

[13] On 13 April 2023, Ms Brooke Everett (Manager, People Strategies) notified Mr Wilson that the AFP were considering terminating his employment as he had failed to comply with CO10, and the Direction issued on 27 February 2023. Mr Wilson was provided with an opportunity to respond to potential termination, and to provide any additional information or documentation he wished to have considered before a final decision was made regarding the continuation of his employment.

[14] Mr Wilson provided a written response on 19 April 2023 where he made his position clear on the COVID-19 vaccination. Mr Wilson stated that *'As it is well established that the vaccines do not prevent transmission or infection any termination on this basis would be unreasonable'* and that the grounds for CO10 are no longer valid considering the level of COVID in the community, and the removal of stay-at-home orders.

[15] On 17 May 2023, Ms Leah Paterakis (Manager, People Strategies) terminated Mr Wilson's employment on the basis that the Applicant did not comply with CO10 and the Direction.

## **Procedural History and Permission to Appear**

[16] Prior to the Hearing date, the Applicant sought to produce an Order to Attend of the Chief Medical Officer, Ms Paterakis, Ms Taylor, and Ms Lesa Gayle. The Applicant also sought an Order to Produce. The documents that the Applicant sought in summary are:

1. Briefing regarding COVID-19 vaccination policy.
2. Weekly or Monthly vaccination statistics.
3. Details of any disciplinary action taken against members who did not get booster doses as mandated.
4. Data on the number of medical exemptions.
5. Medical advice that the AFP relied upon regarding vaccination in his termination letter.

[17] Mr Wilson sought these Orders to demonstrate that the AFP knew or at least ought to have known that the mandates were not effective and unreasonable. The Applicant requested the Chief Medical Officer and Ms Lesa Gayle to attend to demonstrate how the medical advice affected the mandate, and the changes to the mandate.

[18] The Applicant sought to adduce evidence on medical advice and evidence questioning the validity of the Order.

[19] The Applicant's requests were rejected on the basis that the vaccination mandate or CO10 was issued through a Commissioner Order prescribed under s.37 of the *Australian Federal Police Act 1979* (Cth) ('AFP Act'). Under s.38 of the AFP Act, the AFP Commissioner can make a written order with respect to general administration and control of the AFP.

[20] The *Fair Work Act 2009* does not have jurisdiction to determine the validity of the AFP's Commissioner Order itself which is prescribed in a different Act.

[21] However, the Commission does have the jurisdiction to determine if the Applicant was unfairly dismissed under the criteria of s.387 of the Act. As a result, Commander Taylor and Ms Paterakis who were involved in the dismissal process would be appropriate people to request an Order to Attend. Commander Taylor and Ms Paterakis provided statements to the Commission and the Respondent had stated they would attend the hearing. Therefore, I exercised my discretion not to issue an Order to Attend.

[22] As the Applicant was self-represented and was informed of the above considerations, he was given a further opportunity to provide evidence on how he was unfairly dismissed considering this factor. The Applicant provided a response on 21 September 2023.

[23] The Respondent sought to be represented which was not opposed by the Applicant. Granting permission to be represented under s 596 requires the satisfaction of two elements.<sup>1</sup>

[24] The first pre-requisite: the presence of one of the criteria under s 596(2), does not immediately invoke the right to representation and establishing satisfaction "involves an evaluative judgment akin to the exercise of discretion."<sup>2</sup>

[25] Once that first step is satisfied, the second step “involves consideration as to whether in all of the circumstances the discretion should be exercised in favour of the party seeking permission.”<sup>3</sup>

[26] I exercised my discretion and granted permission pursuant to s.596(2), to the Respondent, as I was satisfied that the matter would be dealt with more efficiently and effectively, considering the complexity of the matter and that there would not be unfairness. The Applicant did not oppose representation.

### **Was the Applicant unfairly dismissed?**

[27] I am satisfied that the criteria in Section 385 of the Act are met, and these issues have not been contested by the parties.

[28] Section 387 of the Act provides the criteria and considerations the Commission must take into account when deciding if the dismissal was harsh, unjust, or unreasonable. As required by the Act, I consider the following:

- (a) whether there was a valid reason for the dismissal related to the person’s capacity or conduct (including its effect on the safety and welfare of other employees); and
- (b) whether the person was notified of that reason; and
- (c) whether the person was given an opportunity to respond to any reason related to the capacity or conduct of the person; and
- (d) any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal; and
- (e) if the dismissal related to unsatisfactory performance by the person – whether the person had been warned about that unsatisfactory performance before the dismissal; and
- (f) the degree to which the size of the employer’s enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
- (g) the degree to which the absence of dedicated human resource management specialists or expertise in the enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
- (h) any other matters that the FWC considers relevant.

#### ***(a) valid reason for the dismissal;***

[29] It is well established that the factual basis for the reason for dismissal will not of itself demonstrate the existence of a valid reason.<sup>4</sup> It must, as s.387(a) makes clear, be a valid reason for dismissal. To be a valid reason, the reason for the dismissal should be “sound, defensible or well founded”<sup>5</sup> and should not be “capricious, fanciful, spiteful or prejudiced.”<sup>6</sup> As summarised by Deputy President Asbury in *Smith v Bank of Queensland Ltd* a “dismissal must be a justifiable response to the relevant conduct or issue of capacity”.<sup>7</sup> The Commission must consider the entire factual matrix in determining whether an employee’s termination was for a valid reason.<sup>8</sup>

[30] The Respondent states that there was a valid reason for dismissal as the Applicant did not follow a lawful order and did not intend to comply with this order at any point. He was a sworn member of the AFP and therefore required to comply with orders made by the

Commissioner of Police under s.39 of the AFP Act.<sup>9</sup> Under CO10, the Applicant was required to obtain a COVID-19 vaccination unless they are an exempt appointee. The Applicant did not comply with this order.

[31] The Applicant contends this notion stating that the belief any direction from the Commissioner, or his delegates, is a lawful direction merely because they issued it is an incorrect assertion in any civilised society. He states that there are limits on what the AFP can order or require from a sworn police officer similarly to any serving member of the armed forces and reasonableness needs to be considered. Therefore, there was no valid reason for dismissal on the basis that COVID-19 vaccinations would not reduce transmission, and that CO10 had not been properly reviewed.

[32] The Applicant noted that some instances of when an Order could be lawful, and not reasonable. For instance, if the Commissioner made such as an order that all members dye their hair pink, or where surveillance of a politician not suspected of a specific crime is required, or that members are directed to wear a particular colour to support an ideological cause, or if an order was made akin to soldiers during 1930's or 1940's Germany.

[33] I find that the Respondent had a valid reason for dismissal which were sound, defensible or well-founded on the following basis.

[34] Officers are declared to be a member of the Australian Federal Police when they receive written recommendation by the Police Commissioner, and they undertake an oath before serving. This is stipulated in the *Australian Federal Police Regulations 2018* and its predecessor the *Australian Federal Police Regulations 1978* which Mr Wilson took the following oath.

*“I, MATTHEW KIM WILSON hereby undertake that I shall, in the performance of my duties as the Member of the Australian Federal Police, comply with the provisions of the Australian Federal Police Act 1979, the Regulations made under that Act and the General Orders and General Instructions issued by the Commissioner under s14 of that Act.”*<sup>10</sup>

[35] As a member of the Australian Federal Police, all officers including Mr Wilson are required to comply with the Police Commissioner's orders.

[36] Section 38 of the AFP Act states:

“An AFP appointee **must** comply with Commissioner's Orders (emphasis added).”

[37] Section 40 of the AFP Act states:

An AFP appointee must not:

- (a) disobey; or
- (b) fail to carry out;

a lawful direction, instruction or order, whether written or oral, given to him or her by:

(c) the Commissioner; or

(d) the AFP appointee under whose control, direction or supervision he or she performs his or her duties.

[38] The provisions from the AFP Act and the AFP regulations provide a fundamental term of the employment relationship that the Applicant must comply with a Police Commissioner's Order.

[39] The Applicant made a submission on following lawful orders that may be considered unreasonable. While the Applicant is correct in observing that employers can only make lawful and reasonable requests and that employees should not follow unreasonable requests made by the employer, the employment relationship with Police Officers and their Commissioners provide different obligations.

[40] The nature of a member of the AFP and their Commissioner is one of loyalty and obedience as stated by Finn J in *Anderson v Sullivan* (1997) 148 ALR 633 at 646.

*“Courts in this country have often observed that members of our police forces are both engaged in a very distinctive form of public service and belong to organisations possessing distinctively hierarchical structures. Loyalty and obedience — manifest in oaths of office and statutory and common law duties to obey lawful orders — are characteristics of their service (see *Police Service Board v Morris*, at CLR 404 per Gibbs CJ; 408-9 per Wilson and Dawson JJ; *R v Travers* (1958) 58 SR(NSW) 85 at 104) as are hierarchy and discipline*

*The discipline expected of, and exacted from, police reflects the particular public character and importance of policing and of police duties: see eg *Pense v Hemy* [1973] WAR 40 at 42. In this regard it is, perhaps, of more than historical interest to note that the rules made under one of colonial Australia's first “modern” police statutes, the *Police Regulation Act 1862 (NSW)*, described “the system of Police [as embracing] in its leading features centralisation of authority and unity of action”: r 2; see also rr 7, 12; on the evolution of Australia's police forces, see generally *Bryett, Harrison and Shaw, An Introduction to Policing*, vol 2, *Butterworths, Sydney, 1994.*”*

[41] CO10 is a lawful order on the basis that there are legislative provisions which give the Police Commissioner to make any Order it sees fit. Mr Wilson raises instances where the Police Commissioner may make orders that are lawful but may be perceived not to be reasonable. This is correct. The Police Commissioner could hypothetically order something which some members of the AFP may disagree with based on their personal views or values. The Fair Work Commission is not the jurisdiction to question whether Commissioner Order C010 itself is a lawful order and should be dealt with in the appropriate jurisdiction.

[42] The AFP mandated the Applicant to have at least one dose of a COVID-19 vaccine which the Applicant did not comply with, nor had any intention to comply with. The Applicant expressed his clear intention to not comply with the Order when he responded to the Show Cause Letter issued on 13 April 2023.

[43] Mr Wilson is entitled to have his personal beliefs and views on the COVID-19 vaccination. However, this was inconsistent with the lawful request made by his employer and his failure to obtain the vaccination was in breach of his fundamental employment obligations.

[44] As a result, the Applicant was in breach of his employment obligations provided to him under s.38 and s.40 of the AFP Act which gave the Respondent a sound, defensible reason for dismissal.

[45] The Applicant focused on the question of reasonableness in the vaccination policy as a lawful and reasonable request in that the request was lawful, but not reasonable. Therefore, there was no valid reason for dismissal. This is a test that could have been considered if it was a vaccination policy that was not mandated by an Order issued by law such as a Public Health Order, or in this case a Police Commissioner's Order. To address all concerns, I note the following as a matter of completeness.

[46] It is well established that employees are required to follow their employer's lawful and reasonable request.<sup>11</sup> The question of what is reasonable is a question of fact and balance; it is not material that a "better" direction may exist – a determination of what is reasonable must be assessed against factors relevant to the employment relationship. This was summarised in *CFMEU v Glencore*:<sup>12</sup>

*[9] In Woolworth Ltd v Brown a Full Bench of the Commission observed as follows:*

*"In the modern era employers face an often bewildering array of statutory obligations in relation to matters such as health and safety, discrimination, taxation, trade practices and fair trading to mention the most obvious examples. Employers face potential liability arising from their common law duty of care to their employees and to members of the public. Employers may be subject to contractual obligations that require them to conduct their business in a particular way or to meet particular standards or observe particular constraints. For these reasons it is entirely reasonable, and often necessary, for employers to put in place policies, with which employees must comply, to facilitate the employer's compliance with its obligations and duties. (at [24])*

...

*What is reasonable will depend upon all the circumstances including the nature of the employment, the established usages affecting it, the common practices which exist and the general provisions of the instrument governing the relationship. A policy will be reasonable if a reasonable employer, in the position of actual employer and acting reasonably, could have adopted the policy. That is, a policy will only be unreasonable if no reasonable employer could have adopted it. A policy will not be unreasonable merely because a member of the Commission considers that a better or different policy may have been more appropriate. As the Full Bench observed in the XPT case, albeit in a somewhat different context, it is not the role of the Commission 'to interfere with the right of an employer to manage his own business unless he is seeking from the employees something which is unjust or unreasonable.'"* (at [35])

*[10] In Briggs v AWH the Full Bench relevantly said (at [8]):*

*"The determination of whether an employer's direction was a reasonable one ... does not involve an abstract or unconfined assessment as to the justice or merit of the direction. It does not need to be demonstrated by the employer that the direction issued was the preferable or most appropriate course of action, or in accordance with "best practice", or in the best interests of the parties. The proper approach to the task is that identified by Dixon J in *The King v Darling Island Stevedoring and Lighthouse Company Limited; Ex Parte Halliday and Sullivan*."*

*[11] Whether a direction is reasonable is essentially a question of fact and balance.*

[47] What is reasonable is question of fact; it “does not involve an abstract of unconfined assessment as to the justice or merit of the decision.”<sup>13</sup> The direction must relate to the subject matter of the employment, which is informed by the “nature of the work the employee is engaged to do, the terms of the contract, and customary practices or the course of dealings between the parties.”<sup>14</sup> The policy need only be reasonable – it is immaterial that a “better” policy may exist.<sup>15</sup>

[48] As covered above, the vaccine mandate is lawful. In terms of its reasonableness, the policy appears to have been made on a sound and reasonable basis.

[49] The AFP have roles with policing at airports, borders, and quarantining facilities. The members of the AFP undertake public facing roles and are exposed to high-risk areas where they could be exposed to COVID-19.<sup>16</sup> The risk assessment of CO10 was done with consideration of the laxing of Public Health Orders. I do note the Applicant’s views that COVID-19 has been endemic. However, the risk assessment shows the benefits of the COVID-19 vaccine to the broader AFP workforce.<sup>17</sup> It is not uncommon for a workplace to mandate a vaccine when being exposed to workplace risks.<sup>18</sup>

[50] As made clear in *Glencore*, the assessment of the vaccination policy is not confined to an assessment or merit of the direction. The Applicant’s questions surrounding the efficacy of the vaccination policy through his conversation with Dr Randell does not invalidate the order.

[51] Vaccination policies that place social and economic pressures do not make it unreasonable as articulated by Vice President Asbury in *Clouette v S & S Webster Investments Pty Ltd* [\[2023\] FWC 991](#):

*“[85] I do not accept the Applicant’s assertions that he was being coerced into being vaccinated against his will. The Applicant was not forced to do anything. While the threat of dismissal for refusal to comply with a policy places social and economic pressure on employees to be vaccinated, it does not constitute coercion in a legal sense. The Applicant had a choice as to whether he complied with the Vaccination Policy. The fact that the implications of his choice were that he was in breach of a lawful and reasonable direction of his employer and was liable to be dismissed from his employment, did not deprive him of choice, notwithstanding that the choice was a difficult one.”*

[52] There are further indications of the policy being reasonable as the Respondent had provided sufficient time and leeway for the Applicant to consider the vaccine mandate, to apply for an exemption and was provided the option to take leave for the period he would be ineligible to return to work. Given the nature of the Applicant’s employment, I am satisfied that the vaccine mandate in this case was lawful and reasonable.

[53] I am satisfied on either account that the Respondent had a valid reason for dismissal on the basis that the Applicant’s failure to comply with a lawful direction of obtaining a COVID-19 vaccine mandated through CO10 which was in breach of his employment obligations to follow the Police Commissioner’s Orders.



***(b) whether the Applicant was notified of the reason for dismissal***

[54] Notification of a valid reason for termination must be given to an employee protected from unfair dismissal before the decision is made to terminate their employment,<sup>19</sup> and in explicit<sup>20</sup> and plain and clear terms.<sup>21</sup>

[55] I am satisfied that the Applicant was notified of the reason for his dismissal – that he failed to follow a lawful direction to comply with CO10 in accordance with the AFP Act.

***(c) whether the Applicant was given an opportunity to respond to any reason related to the capacity or conduct of the person***

[56] To be given an opportunity to respond, the employee must be made aware of allegations concerning the employee's conduct or capacity so as to be able to respond to them and must be given an opportunity to defend themselves. As Justice Moore has stated:<sup>22</sup>

*“...the opportunity to defend, implies an opportunity that might result in the employer deciding not to terminate the employment if the defence is of substance. An employer may simply go through the motions of giving the employee an opportunity to deal with allegations concerning conduct when, in substance, a firm decision to terminate had already been made which would be adhered to irrespective of anything the employee might say in his or her defence. That... does not constitute an opportunity to defend.”*

(emphasis added)

[57] The requirements of s.387(c) of the Act will be satisfied “[w]here the employee is aware of the precise nature of the employer's concern about his or her conduct or performance and has a full opportunity to respond to this concern...”<sup>23</sup>

[58] The Full Bench of the Fair Work Commission has held that s.387(c) of the FW Act is to be applied in a common sense way to ensure that the Applicant has been treated fairly and does not necessarily require formality in the sense of conducting a meeting with the employee to inform the employee of the reasons for the proposed dismissal or providing the employee with an opportunity to address the employer's concerns in writing.<sup>24</sup>

[59] In this matter there is no dispute that the Applicant was provided an opportunity to respond.<sup>25</sup>

***(d) any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal***

[60] There is no evidence to suggest that there was an unreasonable refusal by the employer to allow the person to have a support person present.

*(e) if the dismissal related to unsatisfactory performance by the person—whether the person had been warned about that unsatisfactory performance before the dismissal*

[61] The Applicant's dismissal was not related to unsatisfactory performance. The Respondent stated that the Applicant was a valued and strong performer in the team.

*(f) the degree to which the size of the employer's enterprise would be likely to impact on the procedures followed in effecting the dismissal; and (g) the degree to which the absence of dedicated human resource management specialists or expertise in the enterprise would be likely to impact on the procedures followed in effecting the dismissal*

[62] The Applicant stated that there were no issues regarding the process and was satisfied that the Respondent provided a fair and proper procedure.

*(h) any other matters that the FWC considers relevant*

[63] Section 387(h) requires the Commission to take into account any other matters that the Commission considers relevant.

[64] The Applicant had a significant period of service and was valued by the AFP as an officer with well-developed specialist skills, along with his dedication to the public service. Due to his long period of service, he was able to avoid the impact of the mandate for 18 months and then elected to return. He did have the possibility of extending his long service leave until retirement but chose to return in 2023 knowing that the vaccination policy was still in effect.

[65] The Applicant returned from work after a long period of absence knowingly aware of the consequences of non-compliance with order C010. The process of termination extended over several months and the decision to terminate was not a hasty one. This factor does not contribute to a finding that the Applicant's dismissal was harsh, unjust or unreasonable given the amount of time and consideration was placed before his dismissal.

## **Conclusion**

[66] The Respondent had valid reason to dismiss the Applicant as he had failed to follow a requirement of his employment which was to follow the Police Commissioner's Order and a subsequent lawful direction to obtain the vaccination. As he did not intend to comply with the Order, this gave the Respondent grounds to dismiss the Applicant despite his personal beliefs that the COVID-19 vaccination request should have been properly reviewed.

[67] Regardless of the Applicant's view on the Order, I can only assess whether the Applicant was unfairly dismissed prescribed within the Act. The Respondent had a valid reason for dismissal and was given a significant amount of time from October 2021 to February 2023 to consider his options before the Applicant was dismissed. Besides dismissal, there were no other disciplinary measures that the Respondent could have considered given that the Applicant would still be in breach of the Commissioner's Orders.

[68] Having considered all of the evidence and submissions in the context of the statutory considerations I am not satisfied the dismissal was harsh, unjust or unreasonable.

[69] The Application is dismissed. I Order accordingly.



*Appearances:*

M. Wilson for the Applicant.

C. Dowsett of Counsel on behalf of the Respondent

*Hearing details:*

25 September 2023

Brisbane

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<sup>1</sup> *Wellparks Holdings Pty Ltd t/as ERGT Australia v Mr Kevin Govender* [\[2021\] FWC 268](#).

<sup>2</sup> *Asciano Services Pty Ltd v Zak Hadfield* [\[2015\] FWC 2618](#), [19(3)].

<sup>3</sup> *Wellparks Holdings Pty Ltd t/as ERGT Australia v Mr Kevin Govender* [\[2021\] FWC 268](#), [48].

<sup>4</sup> *Raj Bista v Group Pty Ltd t/a Glad Commercial Cleaning* [\[2016\] FWC 3009](#).

<sup>5</sup> *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371, 373.

<sup>6</sup> *Ibid.*

<sup>7</sup> [2021] FWC 4 at 118.

<sup>8</sup> *Commonwealth of Australia (Australian Taxation Office) t/a Australian Taxation Office v Shamir* [\[2016\] FWC 4185](#), [46] citing *Allied Express Transport Pty Ltd v Anderson* (1998) 81 IR 410, 413

<sup>9</sup> Respondent's Submissions 23 citing *Anderson v Sullivan* (1997) 78 FCR 380.

<sup>10</sup> Statement of Jackson Inglis, Annexure JI-1.

<sup>11</sup> *R v Darling Island Stevedoring & Lighterage Co Ltd; Ex parte Halliday (Darling Island Stevedoring)* (1938) 60 CLR 601, 621-622 (Dixon J).

<sup>12</sup> *Construction, Forestry, Mining and Energy Union v Glencore Mt Owen Pty Ltd* [\[2015\] FWC 7752](#), [8]-[11].

<sup>13</sup> *Briggs v AWH Pty Ltd* (2013) 231 IR 159, [8].

<sup>14</sup> *Michael King v Catholic Education Office Diocese of Parramatta T/A Catholic Education Diocese of Parramatta* [\[2014\] FWC 2194](#), [27].

<sup>15</sup> *Briggs v AWH Pty Ltd* (2013) 231 IR 159, [8].

<sup>16</sup> AFP National Guideline on COVID-19 mandatory vaccination dated 29 October 2021.

<sup>17</sup> Executive Briefing EC22-002035.

<sup>18</sup> See *Barber v Goodstart Early Learning* [\[2021\] FWC 2156](#).

<sup>19</sup> *Crozier v Palazzo Corporation Pty Ltd* (2000) 98 IR 137, 151.

<sup>20</sup> *Previsic v Australian Quarantine Inspection Services* Print Q3730 (AIRC, Holmes C, 6 October 1998).

<sup>21</sup> *Ibid.*

<sup>22</sup> *Wadey v YMCA Canberra* [1996] IRCA 568.

<sup>23</sup> *Gibson v Bosmac Pty Ltd* (1995) 60 IR 1, 7.

<sup>24</sup> *Pitts v AGC Industries* [\[2013\] FWCFB 9196](#), [54] referring also to *Gibson v Bosmac Pty Ltd* (1995) 60 IR 1; cited and adopted in *RMIT v Asher* (2010) 194 IR 1.

<sup>25</sup> Paterakis Statement, Annexures LP – 13 and LP – 14; Statement of Matthew Wilson dated 24 August 2023, [13].