



# DECISION

*Fair Work Act 2009*

s.394 - Application for unfair dismissal remedy

**Yvonne Daly**

v

**Very Helpful Chats Pty Ltd**

(U2025/10355)

COMMISSIONER REDFORD

MELBOURNE, 28 NOVEMBER 2025

*Application for an unfair dismissal remedy – dismissal found to be unfair – reinstatement not appropriate - compensation ordered.*

[1] On 18 June 2025, Yvonne Daly filed an application pursuant to s 394 of the *Fair Work Act 2009* (Cth) (**the Act**) seeking a remedy in relation to unfair dismissal with respect to her former employer, Very Helpful Chats Pty Ltd (**VHC**).

[2] There appears to be no basis upon which it is said that Ms Daly is not a person protected from unfair dismissal within the meaning of s 382 of the Act. The application was made within the time period required by s 394(2) of the Act, and it is not claimed the dismissal occurred as a result of a genuine redundancy. VHC is not a small business within the meaning of s 23 of the Act.

[3] Thus, the application was the subject of a hearing conducted in the Commission online via Microsoft Teams on 9 and 10 September 2025 to determine its merits and if necessary, the question of remedy. Ms Daly was represented by Mr Daruwalla from the Health Services Union of Australia Victoria No. 4 Branch T/A Medical Scientists Association of Victoria (**HSU**) at the hearing. I granted VHC permission to be represented by a lawyer or a paid agent pursuant to s 596 of the Act, because I considered it would enable the matter to be dealt with more efficiently. Mr Ritchie appeared for VHC.

[4] Ms Daly gave evidence at the hearing, as did Ms Nicolle Griffin, VHC Director, together with several other employees of VHC.

[5] After the hearing, I asked the parties to file short further written submissions on the question of remedy and confer on monies earned by Ms Daly since dismissal. Both parties filed further written submissions and a Statement of Agreed Facts on monies earned by Ms Daly since dismissal.

## Background

[6] VHC is a telehealth psychology practice. It operates on an entirely online basis. It's employees (including Ms Daly) all work remotely<sup>1</sup>.

[7] Ms Daly was employed by VHC as a senior psychologist. She has relevant qualifications, including a Masters in Counselling Psychology from Swinburne University, is registered with the Australian Health Practitioner Regulation Agency<sup>2</sup>, and appears to have been so since 2008<sup>3</sup>. She commenced employment with VHC in around April 2024 and by the time of her termination of employment had worked for VHC for about thirteen months.

[8] Ms Daly was dismissed on 30 May 2025. She was provided with a letter confirming the termination of her employment on 2 June 2025 which said the reason for her dismissal was that she had engaged in serious misconduct<sup>4</sup>. It said that she had engaged in the following conduct:

- a. Dishonesty and breach of trust by having made repeated and materially false statements regarding a supervisee's performance and conduct.
- b. "Seriously inappropriate behaviour" by questioning the legitimacy of a staff member's LGBTQIA+ identities based on "personal assumptions and associated false claims".
- c. Wilful or deliberate conduct inconsistent with Ms Daly's role and contractual obligations by sending multiple inappropriate messages to administrative staff that placed undue pressure on them and breached expectations of professional and respectful communication, and by "deliberately misrepresenting internal definitions and processes relating to client retention and drop-out rates".

### **Findings of fact**

[9] Perhaps because it is an entirely online operation, VHC operates on the basis that much of what occurs in the "workplace" is recorded via various transcription software, including a program called "Tactiq". Consequentially, while the witnesses who gave evidence in this matter did so by filing written statements and were cross examined on those statements (thus giving oral evidence), I was also asked to have regard to somewhat voluminous transcript recordings of workplace interactions. In some cases, people involved in these workplace interactions gave oral evidence about the interactions that were the subject of transcript before me. In other cases, I was presented with transcript in which some participants in the relevant workplace interaction did not give evidence at all and were not subject to cross examination. A further challenge arose from the tendency of some witnesses to give evidence as to their own characterisation of the transcripts presented to me – evidence seeking to explain what a particular witness "says they meant" by words they apparently said as recorded in transcript. It also became evident during the course of the hearing that the transcripts often contained errors, or missing words, or had been edited to redact names or other detail. It was also the case that some workplace interactions were described in oral evidence but *not* underpinned by transcript, leading to the perhaps inevitable submission (referred to below) that any such evidence is impugned by the absence of a transcript. It has been necessary to attempt to navigate these challenges to make findings about the evidence in this matter.

[10] One aspect of the evidence was the subject of an application for a confidentiality order – that of the identity of the person described below as “Psychologist A”. There was no opposition to that application, and I made an order that this person be described as such in any decision or transcript issuing from the Commission.

[11] With all of this in mind, I have had regard to all of the material before me, even where not specifically referred to in these reasons. What follows is a summary only of the evidence based on my findings in relation to it, as is relevant to the issues I must determine in this matter.

***The allegation that Ms Daly engaged in dishonesty and breach of trust by having made repeated and materially false statements regarding a supervisee’s performance and conduct***

[12] Psychologist A was, as I understand it, a relatively junior member of the VHC practice. In November 2024, Ms Griffin spoke to Mr Daly about her concerns about the quality of Psychologist A’s report writing. It was decided Ms Daly would take on a supervisory role in respect to Psychologist A, including providing them with feedback about their reports.

[13] The evidence shows that in private conversations between them, Ms Daly and Ms Griffin expressed to one another their critical opinion of the quality of Psychologist A’s reports. Their views were occasionally expressed in forthright or colloquial terms – for example on one occasion Ms Daly described the quality of the reports as “shit”<sup>5</sup> or that she “does my head in”<sup>6</sup> or they were “hurting her brain”<sup>7</sup>.

[14] Later, when Ms Griffin had cause to review transcripts of exchanges that had taken place between Ms Daly and Psychologist A, she found what she considered to be a marked contrast in the nature of Ms Daly’s feedback provided to Psychologist A about the quality of her work, and her general competency, as opposed to what she had expressed to Ms Griffin in their private exchanges. Ms Griffin ultimately had cause to say to Ms Daly “You are telling [Psychologist A] that everything is good and improving. This is not what you told me”<sup>8</sup>.

[15] Ms Daly said on occasion words to the effect that Psychologist A was resistant to her feedback. Upon review of the transcripts of some of the interactions between Ms Daly and Psychologist A, Ms Griffin said she could find no instances where Psychologist A appeared resistant to feedback, and some which appeared to display her willingness to accept feedback<sup>9</sup>.

[16] It is on this basis that Ms Griffin considers Ms Daly made “materially false statements” concerning a supervisee’s performance and conduct.

[17] Ms Griffin conceded that there were occasions in which Ms Daly appropriately coached Psychologist A in relation to her report writing<sup>10</sup>. However, in the transcripts of interactions between Ms Daly and Psychologist A, Ms Daly is generally much less critical of the quality of their reports, than in her conversations with Ms Griffin. At most, Ms Daly appears to have said that Psychologist A needs to write in a way that is more direct<sup>11</sup> or implied, largely by way of affirmation, that improvement had been required. Sometimes, she communicated with Psychologist A in a manner which could be interpreted as ingratiating herself with her – for example – Ms Daly said they had “similar brains”<sup>12</sup> or that she “fought for her” in relation to

an assessment of one her reports by another psychologist<sup>13</sup>. In Ms Daly's own evidence, she said part of her approach was "aimed at building rapport and providing reassurance to a junior colleague"<sup>14</sup>. The difference between the manner in which Ms Daly expressed negativity towards the quality of Psychologist A's work in her interactions with Ms Griffin and her much more affirmatory language in her exchanges with Psychologist A is quite stark.

[18] Ms Daly gave evidence that the transcript of her interactions with Psychologist A do not show the full picture, and she had other substantial interactions with Psychologist A in which she was more critical or corrective in respect to their report writing. Some occurred through a platform called a "huddle" (in relation to which there is no recording). Other interactions occurred through collaborative "google docs" which were not in evidence, by which Ms Daly says showed the significant extent of her corrections.

[19] VHC sought to impugn this evidence by suggesting that it was "convenient" that Ms Daly sought to rely on the interactions between her and Psychologist A which are not recorded, to substantiate her claim that her interactions with them were more reflective of her interactions with Ms Griffin than appears in the transcript in evidence. It also suggested that I should not credit this evidence because Ms Daly could have sought the production of further documents evidencing those interactions and did not do so.

***That Ms Daly engaged in "seriously inappropriate behaviour" by questioning the legitimacy of a staff member's LGBTQIA+ identities based on "personal assumptions and associated false claims".***

[20] Transcript was provided of a meeting held on 8 May 2025 involving Ms Daly, Ms Griffin and several other employees of VHC. During the meeting, a short discussion ensued about VHC's "advertising" (perhaps located on its website) which shows which of its staff are "gender diverse" or "queer" or "LGBTIQA+". During this conversation, Ms Daly said that one of the staff members which was presented in the advertising in this way, Ms Zoe Smith, was not "queer". Ms Daly said (referring to Ms Smith) "she said to me she's very straight". Ms Daly said "she's straight. She's living the traditional male-female life ..."<sup>15</sup>.

[21] Ms Griffin later raised this matter with Ms Daly in a meeting held on 22 May 2025. In this meeting, Ms Griffin asked Ms Daly why she had made the comment about Ms Smith, referring to the transcript of this conversation which was in evidence<sup>16</sup>. The transcript suggests Ms Daly told Ms Griffin she had spoken about the matter to Ms Smith who "comes to me because she knows I am part of the community for advice". The transcript also suggests that in attempting to explain why Ms Smith might have been advertised as having been part of the LGBTQIA+ community when, on Ms Daly's belief, she was not, Ms Daly suggested Ms Smith may have indicated she was an "ally", and it was misrepresented<sup>17</sup>.

[22] It was also suggested that Ms Daly said to another psychologist that she knew two clinicians who were "straight" when they were listed (presumably in the VHC "advertising" or website) as "queer", "when they're not". The other psychologist – Ms Vu – said to have been part of this conversation did not give evidence in this proceeding. When the proposition was put to Ms Daly that she had said this to Ms Vu, she said that in this conversation she did not name the other clinicians she was referring to. She did not accept the suggestion she was talking

about Ms Smith. She said that it was a supervisory conversation, and that as she herself is a person who identifies herself as being part of the queer community, the conversation was about the importance of being accurately represented in respect to that community when working with members of it in a clinical capacity.

[23] Ms Daly said in her evidence that she thought her comment about Ms Smith made in the meeting on 8 May 2025 was correct at the time. She tendered in evidence a copy of some handwritten notes she had made during a supervision session with Ms Smith in which she had written “Queer Ally” with a drawing of a love heart, which she appeared to believe suggested she had considered Ms Smith at the time to be an “ally” in respect to the LGBTIQ+ community, rather than a member of that community. Ms Daly said she now understands she was wrong about this belief but said she held it at the time of the 8 May 2025 meeting.

[24] Ms Smith gave evidence in the proceeding. Ms Smith had a number of sessions with Ms Daly in which she was provided with supervision<sup>18</sup>. She said she did not discuss her sexuality with Ms Daly at any time<sup>19</sup>. She said the notes provided by Ms Daly mentioning “queer ally” relate to a client they were discussing, not her<sup>20</sup>. She said that the continuing assertion that she is not a member of the LGBTIQ+ community is demonstrably untrue<sup>21</sup>. She said that she considers the comment she was told Ms Daly had made about her was a gross misrepresentation of her character, professionalism and ethics as well as a deeply personal and harmful attack on her identity<sup>22</sup>. She said she has sought psychological support as a result, and the matter disrupted her sense of psychological safety in the workplace and reduced her professional confidence<sup>23</sup>.

[25] Ms Daly, under cross examination, appeared to maintain that despite Ms Smith having said she had not discussed her sexuality with her at any time, she did some point have a conversation with her about it. I did not consider this evidence to be particularly reliable. I had no reason to doubt the evidence of Ms Smith, who said no such conversation occurred. I consider in giving this evidence Ms Daly re-constructed her recollection of a conversation she thought she had with Ms Smith based on documentary evidence – in this case the note about “queer ally”. As I have observed above, this was a practice not uncommon in the way several of the witnesses in this proceeding gave evidence.

[26] In addition to Ms Smith herself, evidence was given by other VHC employees in relation to this incident. Ms Aminov is a senior psychologist and was at the meeting. She said she thought the comments were “inappropriate” and that the effect of this and other behaviour she attributed to Ms Daly caused her a diminished sense of safety in meetings, physical illness and the avoidance of work activities due to anticipated exposure to inappropriate behaviour and a loss of trust in Ms Daly’s professional integrity<sup>24</sup>.

***The allegation that Ms Daly engaged in wilful or deliberate conduct inconsistent with her role and contractual obligations by sending multiple inappropriate messages to administrative staff that placed undue pressure on them and breached expectations of professional and respectful communication, and by “deliberately misrepresenting internal definitions and processes relating to client retention and drop-out rates”.***

[27] The third substantive allegation made against Ms Daly upon which the decision to terminate her employment was based was that she sent inappropriate messages to administrative

staff that placed them under pressure, and in particular, misrepresented “internal definitions”, and “processes relating to client retention and dropout rates”.

[28] In its submissions made in relation to this allegation, VHC relied to a large extent on evidence it had intended to lead from Ms Stange, its practice manager, who did not eventually appear to give evidence in this proceeding. I have not had any regard for these submissions in so far as they relied on evidence not ultimately given by Ms Stange<sup>25</sup>.

[29] When Ms Griffin conducted her examination of transcripts relating to Ms Daly (as described above) she found several comments apparently made by Ms Daly during supervision sessions, which were critical of VHC’s administrative team<sup>26</sup>. VHC submitted that “the Respondent found this extremely distressing and concerning behaviour which contributed to the breakdown in trust and confidence in the relationship with the Applicant”<sup>27</sup>.

[30] Ms Rizzotto gave evidence in this proceeding. Ms Rizzotto is employed in administrative support at VHC. Ms Rizzotto said:

- a. At a meeting she attended, which she understood was for the purpose of peer supervision and a discussion about client cases, Ms Daly instead used the meeting to raise administrative processes. Ms Rizzotto said she considered this conduct to constitute a misuse of Ms Daly’s position and a policy breach<sup>28</sup>.
- b. That in a Slack channel Ms Rizzotto was a part of, Ms Daly denied having made a comment suggesting she may discharge a client for cancelling appointments, when she did make that comment<sup>29</sup>.
- c. That in a Slack channel Ms Rizzotto was a part of, Ms Daly questioned the appropriateness of booking a client into a second therapy session within a week<sup>30</sup>.
- d. That in a Slack channel Ms Rizzotto was part of, Ms Daly said words to the effect that she wanted a returning client placed on a waitlist, instead of being prioritised in accordance with VHC policy, and then denied giving such a directive “contradicting the written record”<sup>31</sup>. Ms Rizzotto later described having felt “gaslit” over this incident<sup>32</sup>.
- e. That Ms Daly told someone from the administrative team that she sent a client a copy of their assessment report, when in fact there was no evidence that she did so<sup>33</sup>.

[31] In relation to several of these incidents, Ms Rizzotto said they caused her stress, because she began to doubt her own memory, felt disempowered, and her confidence was eroded. She said the incidents created a “hostile and unsafe work environment for her”<sup>34</sup> and was “personally traumatic”<sup>35</sup>.

[32] The reference made to “client retention and dropout rates” related to an incident in which Ms Griffin accidentally shared with Ms Daly a “google sheet” containing data relating Ms

Daly's client retention and dropout rate<sup>36</sup>. Following this, Ms Daly sent some messages to Ms Stange. Ms Griffin appears to have taken the view that the messages sent by Ms Daly to Ms Stange, in which she queried the accuracy of the data, were of an aggressive tone, or at least that she thought Ms Stange found them to be so<sup>37</sup>. Transcript was provided in relation to the exchange between Ms Daly and Ms Stange. Ms Daly queried the data, but it is difficult to discern any specific comment made by Ms Daly which could be properly described as "aggressive". She did appear to say "can I ask why I am receiving this? I haven't been told of any issues with my retention rates, quite the opposite to be honest. Is it a new thing?"<sup>38</sup>. This comment is about as "direct" as Ms Daly is during the exchange – it is not an "aggressive" comment.

[33] The reference made by Ms Griffin in her reasons for the termination of Ms Daly's employment to "misrepresenting internal definitions and processes relating to client retention and drop-out rates" relates to conversations she discovered occurred between Ms Daly and Ms Vu. As mentioned above, Ms Vu did not give evidence in this proceeding. Ms Griffin took the view that in this conversation, Ms Daly told Ms Vu that she had defended or "fought" for her in respect to her client retention rates, when, according to Ms Griffin, Ms Daly had never engaged in such a discussion with management about Ms Vu's retention rates. Ms Griffin described this conduct as an attempt to "sabotage" the relationship between VHC and Ms Vu<sup>39</sup>. Ms Daly denied this and maintained that Ms Stange *had* spoken to her about Ms Vu's client retention rates. Under cross examination, Ms Griffin refused to accept transcript shown to her of an apparent conversation between Ms Stange and Ms Daly in which Ms Stange said Ms Vu's dropout rate "isn't great".

#### ***Other allegations of dishonesty made by Ms Griffin about Ms Daly***

[34] Ms Griffin related a number of instances in which she considered Ms Daly had not been honest with her which obviously caused significant damage to their relationship but were also characterised by VHC as conduct inconsistent with Ms Daly's role and even her contractual obligations. One such occurrence involved representations Ms Griffin believed Ms Daly had made that an Early Career Group Supervision group Ms Daly was running was "going well" when other feedback Ms Griffin had received was that attendances at the meeting had dwindled<sup>40</sup>.

[35] Ms Griffin had a conversation Ms Daly on 22 May 2025 in which she sought to put to Ms Daly the concerns she had formed about her conduct. Ms Griffin is of the view that Ms Daly sought to "dominate" and "divert" the conversation away from the conduct issues Ms Griffin was trying to raise. During the course of this conversation, Ms Griffin asked whether Ms Daly would share her transcripts of conversations she had with Psychologist A with her, and Ms Daly said she had deleted those transcripts. Ms Griffin said this claim was false, and that she later discovered all of the transcripts, and that they had not been deleted<sup>41</sup>. Ms Daly said she thought her assertion was true: that she had deleted those transcripts from her "g-mail" account and thought that this meant the transcripts had been permanently deleted<sup>42</sup>.

#### ***Serious Misconduct.***

[36] The termination of Ms Daly’s employment was described as having been as a result of “serious misconduct”. To some extent, this was based on the proposition that VHC has a “HR Manual” which provides among other things a list of examples of conduct said to constitute “serious misconduct” many of which it submitted Ms Daly had engaged in. Some of those examples include “unsafe behaviour towards clients or staff”, “breaching the psychological safety of clients or colleagues”, “making materially false statements to management, colleagues or clients” and “dishonesty and breach of trust inconsistent with continued employment”<sup>43</sup>.

### **Statutory provisions - unfair dismissal**

[37] Section 387 of the Act provides that, in considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable, the Commission must take into account:

- 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.

[38] I am required to consider each of these factors, to the extent they are relevant to the factual circumstances before me<sup>44</sup>.

### **Was there a valid reason for dismissal related to Ms Daly’s capacity or conduct?**

[39] It is well established that order to be a valid reason relating to an employee’s capacity or conduct, the reason for the dismissal should be “sound, defensible or well founded” and should not be “capricious, fanciful, spiteful or prejudiced”<sup>45</sup>.

[40] In *Rode v Burwood Mitsubishi*<sup>46</sup> a Full Bench of the Australian Industrial Relations Commission held: "... the meaning of s.170CG(3)(a) the reason for termination must be defensible or justifiable on an objective analysis of the relevant facts. It is not sufficient for an employer to simply show that she or she acted in the belief that the termination was for a valid reason." Where a dismissal relates to an employee's conduct, the Commission must be satisfied that the conduct occurred and justified termination<sup>47</sup>.

[41] Merely establishing the factual basis for the reason for dismissal does not by itself demonstrate it was a valid reason. Dismissal must be a justifiable response to the relevant conduct or issue of capacity<sup>48</sup>. A reason not of sufficient gravity to justify dismissal is not sound, defensible or well-founded<sup>49</sup>.

[42] I will say at the outset that I was struck by how unshakable Ms Griffin's belief appeared to be as to Ms Daly's misconduct. Her synopsis of Ms Daly's conduct did not appear to me to be a dispassionate, objective assessment of the record, but rather an attempt at a comprehensive character assassination, borne from a sense of acrimony, likely arising because she believes she has been lied to. This was particularly evident when Ms Griffin was subjected to cross examination, during which she refused to give any quarter or concession, even when confronted with evidence that appeared to contradict matters she assumed to have been the case, such as is referred to above, relating to Ms Vu's drop off rates. I consider Ms Griffin's belief that Ms Daly had been dishonest with her was genuinely felt as was her resultant feeling of betrayal.

[43] However, the assessment of whether VHC had a valid reason for the decision to dismiss Ms Daly calls for an objective assessment as to whether she had engaged in conduct sufficiently serious to justify her termination.

### *Interactions with Psychologist A*

[44] In relation to her interactions with Psychologist A, I do not consider the evidence supports a finding that Ms Daly engaged in conduct capable of being described as dishonest or a breach of trust, to the extent described by VHC, or conduct of sufficient gravity to justify the termination of her employment. There was no evidence before me that Ms Griffin had taken steps, as she ultimately did with respect to Ms Daly, to subject Psychologist A to some kind of performance or conduct management process in relation to the quality of her report writing. Whether Psychologist A's reports were as problematic as suggested in some of the exchanges between Ms Griffin and Ms Daly, or had improved (as suggested by Ms Daly in some of her direct engagement with Psychologist A), it appears the reports themselves were not of such a poor quality as to cause VHC to take performance management steps in relation to Psychologist A. This leads me to conclude that VHC's complaint in relation to Ms Daly's conduct with respect to Psychologist A is really about the inconsistency of tone and content as between her exchanges with Ms Griffin and her exchanges with Psychologist A – not the consequences which may have resulted from the nature of Ms Daly's supervision of Psychologist A. I do accept that the inconsistency in tone and content, at least in the material in evidence, is quite pronounced. But there may be a range of reasons for this. Most obviously, having been tasked with supervising and coaching Psychologist A, Ms Daly seems to have adopted a supportive and affirmatory approach. I suspect she probably considered this approach would be more likely to help Psychologist A improve, rather than using the negative language she used with Ms

Griffin (when she was obviously blowing off steam). I note this approach is somewhat consistent with what Ms Griffin said to Ms Daly at the outset of the supervision arrangement – that she could “good cop it”<sup>50</sup>. I also accept that the merits of this affirmatory approach, coupled with the more detailed corrective feedback through drafts and templates Ms Daly said she provided through huddle and google docs, likely explains to a large extent the inconsistency. Conversely, the tone adopted in her exchanges with Ms Griffin, which is often colloquial and effusive, and is often shared or echoed by Ms Griffin, is rather more consistent with efforts Ms Daly may have been making to ingratiate herself with Ms Griffin.

[45] I also do not consider it impugns Ms Daly’s credibility that she did not seek through some application, the production of these documents not in evidence. She gave evidence of the existence of this material, her approach to the supervisory task, and I accept it.

### *The comment about Ms Smith*

[46] In relation to the comment Ms Daly made about Ms Smith, I do not consider the conduct rises to the level of misconduct justifying the termination of Ms Daly’s employment.

[47] A great deal was sought to be made by VHC in this matter about Ms Daly’s comment about Ms Smith’s sexuality. For example, Ms Griffin frequently characterised Ms Daly’s behaviour as her having started “rumours” about these matters<sup>51</sup>. In its submissions, VHC described Ms Daly’s conduct as “gossip to stir up trouble”<sup>52</sup>. However, a careful examination of the evidence before me reveals nothing more than this comment having been made by Ms Daly at the meeting of 8 May 2025, and then a further conversation with another psychologist – Ms Vu - in which she did not name any person but repeated her concern VHC’s advertising was not accurate. There is no evidence that the comments were malicious. There is no evidence that the assertion in respect to Ms Smith was made more broadly than in the meeting on 8 May 2025.

[48] The evidence tendered by VHC as to the effect over Ms Daly’s colleagues of the comment was at times somewhat histrionic and appears to be to some extent intended to be self-serving. For example, I find it difficult to accept the proposition that Ms Daly’s comment about Ms Smith, made in the meeting, had the resultant effect on others, such as Ms Aminov, that they experienced a diminished “sense of safety” in meetings.

[49] Having said this, the effect on Ms Smith from Ms Daly’s comment, and also its likely effect on Ms Daly’s standing and level of respect in the workplace is not to be dismissed out of hand. A comment about another person’s sexuality made to others without that person’s consent can in many circumstances be a significant breach of that person’s privacy, can be damaging, and will rarely be appropriate subject matter for comment in the workplace. While I do not consider it was made maliciously, it nevertheless impacted negatively upon Ms Smith who said she has sought psychological support to address the damage the comment did to her professional confidence.

[50] I also consider it likely to have damaged Ms Daly’s working relationship with others who took issue with the conduct and that the comment damaged her standing in the workplace.

I note she was given several opportunities in her evidence to express remorse for her comment or the impact that it had on Ms Smith and unfortunately did not take that opportunity. Ms Daly let herself down by making this comment about her work colleague, Ms Smith, at the meeting of 8 May 2025.

### ***Interactions with the administrative team***

[51] In relation to her interactions with VHC’s administrative team, I do not consider Ms Daly engaged in wilful or deliberate conduct inconsistent with her role and contractual obligations. The evidence as to these matters was very thin. On the evidence before me, Ms Daly’s interactions with people such as Ms Stange were not aggressive, inappropriate or dishonest.

### ***Other conduct***

[52] In relation to Ms Daly’s interactions with Ms Griffin in May 2025, I consider that Ms Daly’s behaviour probably contributed to Ms Griffin’s sense of anger with respect to Ms Daly but on an objective assessment do not constitute serious misconduct. If Ms Daly appeared defensive or evasive during these conversations, it was likely because Ms Griffin was challenging her, in a way that had not occurred before. She has provided explanations in relation to allegations of outright dishonesty. None of these are accepted by Ms Griffin, but this likely reflects the probability that Ms Griffin had already formed a fixed view about these matters before the meetings, on her own reading of the transcripts.

[53] VHC’s submissions as to Ms Daly’s conduct being a breach of its policies or her contractual obligations are fundamentally based on the exaggerated characterisation of her conduct that, for the reasons I have set out above, I do not think is supported by the evidence. I do not consider Ms Daly breached VHC’s policies or procedures, or her contractual obligations. I also do not consider Ms Daly’s behaviour to be “wilful or deliberate behaviour”, “that is inconsistent with the continuation of the contract of employment”, or conduct causing “serious and imminent risk” to a person’s health and safety or the reputation, viability or profitability of VHC’s business<sup>53</sup>.

[54] I do not consider VHC has established that Ms Daly engaged in conduct capable of being described as serious misconduct nor has it established that it had a sound, defensible or well-founded reason justifying the termination of her employment.

### **Was Ms Daly notified of the reason for dismissal?**

[55] Notification of the valid reason for dismissal must be given to the employee explicitly and in plain and clear terms. But crucially, this must occur before the decision to terminate the employment is made<sup>54</sup>.

[56] Ms Daly had two meetings with Ms Griffin in the lead up to the termination of her employment, the second of which was the meeting in which she was told by Ms Griffin that her employment was terminated for her having engaged in serious misconduct. In the first meeting,

held on 22 May 2025, Ms Griffin did not tell Ms Daly that she had engaged in conduct in relation to which VHC was contemplating terminating her employment – the prospect of termination of employment did not arise at all. In the second meeting, which occurred on 30 May 2025, Ms Griffin told Ms Daly her employment was terminated – from the commencement of this meeting the decision to terminate Ms Daly’s employment had already plainly been made.

[57] Thus, Ms Daly was advised of the reason for her dismissal when she was advised of the termination of her employment, on 30 May 2025. She was not notified of the reason for her dismissal before the decision was made to terminate her employment. This factor weighs in favour of a finding that the termination of Ms Daly’s employment was unfair.

### **Was Ms Daly given an opportunity to respond to the valid reason?**

[58] An employee protected from unfair dismissal should be notified of a valid reason for the termination of their employment before a decision is taken to terminate that employment so that they can respond to it in such a way as there is an opportunity to influence the ultimate decision<sup>55</sup>.

[59] While the opportunity to respond does not require formality and this factor is to be applied in a common-sense way to ensure the employee is treated fairly<sup>56</sup>, the employee must be aware of the precise nature of the employer’s concern about her or her conduct or performance and has a full opportunity to respond to this concern<sup>57</sup>.

[60] VHC submitted that in the meeting of 22 May 2025 Ms Griffin made her concerns known to Ms Daly in plain explicit terms, and she was given a chance to respond, and her response was considered by Ms Griffin before making the decision to dismiss Ms Daly<sup>58</sup>. It also submits Ms Daly was provided with a transcript of this meeting and could have submitted a written response, which she did not. I do not accept the submission that VHC gave Ms Daly a chance to respond to the reason for the termination of her employment during the meeting. As I have said, on 22 May 2025 Ms Daly could not have known that VHC was contemplating terminating her employment. The evidence does not support the proposition that Ms Griffin gave consideration to Ms Daly’s “responses” provided in the meeting of 22 May 2025. Rather, Ms Griffin continued her “investigation”, particularly her analysis of transcript, and reflected on what she characterised as “dishonesty” engaged in by Ms Daly during the meeting<sup>59</sup>. Her decision to terminate the employment was based on this reflection, not Ms Daly’s responses.

[61] Because Ms Daly was not notified of the reason for her dismissal before the decision was made, she was not properly given an opportunity to respond to it. This weighs in favour of a finding that the termination of her employment was unfair.

### **Did Very Helpful Chats unreasonably refuse to allow Ms Daly to have a support person present to assist at discussions relating to the dismissal?**

[62] There is no evidence VHC refused to allow Ms Daly to have a support person present to assist at discussions relating to her dismissal. I do not consider this factor weighs for or against a finding the termination of Ms Daly’s employment was unfair.

### **Was Ms Daly warned about unsatisfactory performance before the dismissal?**

[63] The reason for the dismissal of Ms Daly's employment did not relate to her performance. This consideration therefore weighs neither for nor against a finding that the termination of Ms Daly's employment was unfair.

### **To what degree would the size of Very Helpful Chats' enterprise or the absence of human resources management specialists or expertise would be likely to impact on the procedures followed in effecting the dismissal?**

[64] It is well established that the absence of dedicated human resources management or specialisation does not justify a dismissal to be conducted without procedural fairness or the employee being provided with a fair go<sup>60</sup>. The particular failing in the procedure followed with respect to the termination of Ms Daly's employment was the one-sided nature of the conclusion reached that she had behaved dishonestly and engaged in serious misconduct. While Ms Griffin operates a small business, neither its size nor the absence of dedicated human resources management specialisation justifies her failure to properly provide Ms Daly a chance to respond to the proposition that her employment be terminated as a result of the alleged conduct and to give proper consideration to any such response. This factor does not weigh against a conclusion that the termination of Ms Daly's employment was unfair.

### **What other matters are relevant?**

[65] Ms Daly submitted that I should have regard to the impact on her personal and economic situation arising from her dismissal. In this regard, she submitted that the dismissal had an adverse effect on her mental health, and she was unemployed for about four weeks before obtaining work at a lower income. It also submitted I should have regard to the fact that Ms Daly's employment was dismissed summarily and was not afforded procedural fairness or natural justice.

[66] VHC submitted I should have regard to several matters it discovered after the dismissal involving Ms Daly which it said caused it adverse impact. The evidence in relation to these matters was not, in my view, reliable, based primarily as it apparently is on the testimony of people who have not given evidence in this proceeding. I have not had regard to these matters. VHC also submitted Ms Daly maintained her own private practice during her employment, thus mitigating her loss, and has found other employment. I deal with this issue further below.

[67] The termination of Ms Daly's employment was summary, and relatively abrupt. I consider this to be a case where it is appropriate to take into account the effect of the nature of the termination on Ms Daly, sudden as it was, and its impact on her personal and economic circumstances. This weighs in favour of a finding the dismissal was unfair. In so far as these economic consequences are offset by Ms Daly finding other employment (or obtaining remuneration through her own practice), those matters can be taken into account on the question of remedy.

### **Conclusion**

[68] In circumstances where VHC relies on allegations of serious misconduct which I have found lack substance, and where there was no notification provided to Ms Daly of valid reason or chance for her to respond, it is difficult to avoid the conclusion that the termination of Ms Daly's employment was harsh, unjust and unreasonable, and I find that to be so.

### **Remedy**

[69] Being satisfied that Ms Daly:

- a. made an application for an order granting a remedy under s 394;
- b. was a person protected from unfair dismissal;
- c. and was unfairly dismissed within the meaning of s 385 of the Act,

I may, subject to the Act, order Ms Daly's reinstatement, or the payment of compensation to Ms Daly.

[70] Under s 390(3) of the Act, I must not order the payment of compensation to Ms Daly unless: (a) I am satisfied that reinstatement of Ms Daly is inappropriate; and (b) I consider an order for payment of compensation is appropriate in all the circumstances of the case.

### **Is reinstatement of Ms Daly inappropriate?**

[71] Ms Daly does not seek reinstatement<sup>61</sup> and it is opposed by VHC<sup>62</sup>. I find in these circumstances that reinstatement is inappropriate.

### **Is an order for payment of compensation appropriate in all the circumstances of the case?**

[72] Ms Daly has suffered financial loss in circumstances where I have found she was unfairly dismissed. Whilst it does not automatically follow that a payment of compensation is appropriate<sup>63</sup>, in all the circumstances, I consider that an order for payment of compensation is appropriate.

### **Compensation – what must be taken into account in determining an amount?**

[73] Section 392(2) of the Act requires all of the circumstances of the case to be taken into account when determining an amount to be paid as compensation to Ms Daly in lieu of reinstatement including:

- a. the effect of the order on the viability of VHC's enterprise;
- b. the length of Ms Daly's service;

- c. the remuneration that Ms Daly would have received, or would have been likely to receive, if she had not been dismissed;
- d. the efforts of Ms Daly (if any) to mitigate the loss suffered because of the dismissal;
- e. the amount of any remuneration earned by Ms Daly from employment or other work during the period between the dismissal and the making of the order for compensation;
- f. the amount of any income reasonably likely to be so earned by Ms Daly during the period between the making of the order for compensation and the actual compensation; and
- g. any other matter that the Commission considers relevant.

[74] I consider each of these matters below. In this regard, I have been assisted by further written submissions filed by the parties and a Statement of Agreed facts in relation to several matters associated with Ms Daly's earnings since dismissal.

#### **Effect of the order on the viability of Very Helpful Chats' enterprise**

[75] The onus is on VHC to provide evidence as to the likely effect that an order of compensation will have on the viability of the business<sup>64</sup>. It submitted that an order for compensation is not appropriate in the circumstances, including because of the "ongoing impact of her misconduct on the Respondent's business and operations"<sup>65</sup> and its employees. There was no evidence as to the impact of an order of compensation on the financial viability of VHC's enterprise.

[76] As I have explained, I consider VHC's description of Ms Daly's conduct to have been overstated and some of the assertions as to the purported impact upon its employees, to be exaggerated. I do not consider that her conduct as I have characterised it to have had a significant impact on the viability of the VHC operation. I consider this to be a neutral factor.

#### **Length of Ms Daly's service**

[77] Ms Daly was employed by VHC for just over 1 year. This is not a significantly long period of service, but it is not a short one either. The length of Ms Daly's service does not add particular weight for or against an order of compensation in this matter.

#### **Remuneration that Ms Daly would have received, or would have been likely to receive, if she had not been dismissed.**

[78] In determining the remuneration that Ms Daly would have received, or would have been likely to receive, I am required to address myself to the question of whether if Ms Daly's employment had not been terminated, the employment would have been likely to continue or

would have been terminated at some time by another means, and in doing so, make an assessment as to the anticipated period of employment<sup>66</sup>.

[79] Ms Daly submitted that a reasonable prediction as to how long she may have continued to work at VHC, had she not been dismissed, is one year<sup>67</sup>. VHC submitted the period is two weeks, because this is the period Ms Daly would have remained employed if VHC had taken a more “exhaustive and procedurally thorough investigation process” (albeit maintaining its process was full and extensive)<sup>68</sup>.

[80] Ms Daly engaged in conduct which I consider likely damaged her standing in the workplace and with some of her colleagues. This might suggest in favour of a prediction that if her employment relationship had not been terminated, it might have continued to deteriorate in any event and perhaps may have ended sooner rather than later. Against this is the somewhat unusual nature of the workplace, where Ms Daly and her colleagues all work remotely, meaning there is more space in the nature of their workplace interactions than if they were engaging with each other in person. Notwithstanding this factor, clearly the working relationship between Ms Daly and Ms Griffin was an important one, and it appeared to have been significantly damaged by these events – perhaps irreparably so. I also consider that if Ms Daly had engaged in further conduct causing VHC to believe her employment should be terminated, it is likely a more extended process should have been implemented to understand her side of the story and take it into account than what actually occurred.

[81] In all the circumstances I consider it appropriate to predict that Ms Daly’s employment might have otherwise continued for another three months, had it not been ended through her dismissal.

[82] Ms Daly asserted that her average gross weekly earnings was \$1,950.00 and no issue appeared to be taken with that assertion<sup>69</sup>. I calculate the remuneration Ms Daly would have been likely to receive working for VHC for a further 12 weeks to be \$23,400.00 gross (plus superannuation).

### **Efforts of Ms Daly to mitigate the loss suffered by Ms Daly because of the dismissal**

[83] VHC made submissions about “mitigation of loss” which related to her earnings since termination<sup>70</sup>. Ms Daly submitted that upon termination she promptly began looking for a new job and found one<sup>71</sup>. I consider Ms Daly made efforts to mitigate the loss she suffered as a result of the termination of her employment that this factor does not weigh against the order of compensation I intend to make in this matter.

### **Amount of remuneration earned by Ms Daly from employment or other work during the period between the dismissal and the making of the order for compensation**

[84] The Statement of Agreed Facts confirms that Ms Daly commenced new employment with a business called I’ve Got Your 6 Foundation (**IGY6**) on 30 June 2025 – four weeks after her dismissal. It also confirms she earned \$13,978.00 (excluding superannuation) from this

employment up until 21 November 2025. Ms Daly has since ceased in this employment, finishing with IGY6 on 4 September 2025.

**[85]** In this regard, I note that VHC submitted that it would be inappropriate and unfair for the Commission to take the “second period of unemployment” into account when assessing any compensation and described the argument I should do so as “exotic”<sup>72</sup>. It said that the dismissal from Ms Daly’s new job is not attributable to the alleged unfair dismissal<sup>73</sup>. In this regard, the “second period of unemployment” is the period after Ms Daly lost the new job with IGY6 that she found after dismissal. I consider this submission to be something of a misnomer. It is not the “second period of unemployment” that is to be taken into account, but rather the amount of remuneration that Ms Daly earned since her unfair dismissal. If this remuneration was limited by the fact that she had a new job, but lost the job, then so be it. This does not attribute loss arising from the loss of the new job to the original unfair dismissal – rather – it is simply the calculation of loss arising from dismissal mitigated by gain.

**[86]** Ms Daly also said she had a private practice during her employment with VHC and has maintained that practice since dismissal. She said prior to her dismissal with VHC she had earned an average of about \$1,100.00 per week from this business. The Statement of Agreed Facts says that she earned \$12,363.28 from this practice after dismissal up until 21 November 2025.

**[87]** Ms Daly submitted that if I am to award compensation in this matter, I should not deduct her private-practice income because it was an ongoing, established source of secondary income during her employment with VHC, and the income did not arise in response to the dismissal, and while the Commission must “take into account” this income, this obligation does not compel a deduction, because the exercise is evaluative rather than mathematical<sup>74</sup>. In its submissions on remedy, VHC acknowledged that the Commission’s task with respect to an Order of compensation involves an “evaluative discretion”<sup>75</sup>, and submitted that the unfair dismissal remedy process is “designed to compensate an unfairly dismissed employee in lieu of reinstatement for losses reasonably attributable to the unfair dismissal”, referring me to a relevant authority in that regard<sup>76</sup>.

**[88]** Section 392(2)(e) provides that I must take into account “the amount of any remuneration earned by the person from employment or other work during the period between the dismissal and the making of the order for compensation”. Ms Daly’s income from private practice is plainly remuneration from “other work”. It mitigates, to some extent, the effect of the unfair dismissal of Ms Daly’s employment because she is not entirely without income following that dismissal.

**[89]** However, this income does not detract from the loss Ms Daly suffered as a result of the dismissal. It is well established that the fundamental purpose of compensation is to attempt to place the wronged party in the position they would have been in, but for the wrong or breach<sup>77</sup>. Applying this principle within the context of the Act, I will not deduct from the compensation I intend to award Ms Daly in this matter the amount of remuneration she has earned from her existing business since dismissal. I will however take this into account by applying a discount for contingencies (referred to below).

**Amount of income reasonably likely to be so earned by Ms Daly during the period between the making of the order for compensation and the actual compensation**

[90] The Order I intend to make in this matter will be expressed such that it must be complied with within 14 days. On the basis of the information before me, I do not consider it reasonably likely Ms Daly will earn income during this period outside of that from her own business such that it need affect the Order of compensation I intend to make into relation to this matter.

**Other relevant matters and misconduct.**

[91] Ms Daly said that a deduction was made from her final payment which she is concerned was not lawful. She said the deduction related to training for the Psychology Board of Australia approved Supervision Accreditation through James Cook University, that she attended during her employment, which VHC had paid for. She said she recalled entering into a written agreement which said that if she left her employment VHC could recoup the money it had spent on the training. She said she did not believe the deduction was made principally for her benefit – that the training was primarily so VHC could have provisional psychologists on placement<sup>78</sup>. VHC submitted that I should give little or no weight to this submission. It also appeared to submit that Ms Daly *is* using this accreditation as part of her online profile, apparently to her benefit, that than perhaps I should consider this as a relevant factor to reduce compensation<sup>79</sup>. I do not consider this matter to be relevant to the amount of compensation I intend to order in this matter. There is insufficient evidence before me to allow me to conclude the deduction was unlawful or should operate to increase the amount of compensation that should be ordered – nor do I consider it should reduce it.

[92] I do not consider any other matter to be relevant for the purposes of s 392(2) of the Act.

[93] Section 392(3) of the Act provides that if I am satisfied that misconduct of a person contributed to the employer's decision to dismiss the person, I must reduce the amount otherwise to be ordered by an appropriate amount on account of the misconduct

[94] For the reasons I have outlined above, I do not agree with VHC's characterisation of Ms Daly's conduct as misconduct (or serious misconduct). I do consider her comment in relation to Ms Smith was inappropriate and a factor in her adverse outcome but did not rise to the level of misconduct.

**Calculation of compensation**

[95] Below, I adopt the *Sprigg* formula to calculate the amount of compensation which should be awarded to Ms Daly in respect to this matter<sup>80</sup>. The formula is as follows:

- a. Step 1: Estimate the remuneration the employee would have received, or have been likely to have received, if the employer had not terminated the employment (remuneration lost).

- b. Step 2: Deduct monies earned since termination. Workers' compensation payments are deducted but not social security payments. The failure to mitigate loss may lead to a reduction in the amount of compensation ordered.
- c. Step 3: Discount the remaining amount for contingencies.
- d. Step 4: Calculate the impact of taxation to ensure that the employee receives the actual amount she or she would have received if they had continued in their employment.

### **Step 1**

[96] I have estimated that Ms Daly would have remained employed by VHC for at least a further three months. The remuneration Ms Daly would have received or would have been likely to have received during this period is \$23,400.00 gross plus superannuation.

### **Step 2**

[97] On the basis of the calculations above, during the 12 weeks following termination, Ms Daly earned \$13,978.00 from her employment with IGY6. When this amount is deducted from the remuneration that would have been received, the result is \$9,422.00

### **Step 3**

[98] I have found that Ms Daly did not engage in serious misconduct, nor do I consider she engaged in misconduct. However, I have observed that she engaged in commentary which is not appropriate in the workplace (albeit without malice). I have also engaged in the predicative exercise necessary to arrive at a calculation of the remuneration Ms Daly would have earned had she not been dismissed, taking into account the deterioration in her workplace relationships, caused in part by her own behaviour. That exercise necessarily involves a speculative element<sup>81</sup>. I have also noted above that the effect of dismissal for Ms Daly is ameliorated to some extent by income she has continued to earn through her own business. I consider it appropriate to apply a 10% discount to the amount of compensation I will order in this matter, taking into account those contingencies. Applying this discount results in an amount of \$8,479.80.

### **Step 4**

[99] I have considered the impact of taxation but have elected to settle a gross amount of \$8,479.80, plus superannuation, and leave taxation for determination.

### **Compensation – how does the compensation cap apply?**

[100] The compensation cap<sup>82</sup> in this matter for the purposes is the total amount of remuneration received by Ms Daly or to which she was entitled in the 26 weeks immediately before the dismissal. This figure is \$50,700.00<sup>83</sup> and does not require an adjustment in the amount of compensation I have calculated should be awarded in this matter.

**Is the level of compensation appropriate?**

[101] Having applied the formula in Sprigg, I am nevertheless required to ensure that “the level of compensation is an amount that is considered appropriate having regard to all the circumstances of the case”<sup>84</sup>.

[102] The application of the Sprigg formula has resulted in an outcome where Ms Daly would be awarded compensation of \$8,479.80, plus superannuation.

[103] I am satisfied that the amount of compensation that I have determined above takes into account all the circumstances of the case as required by s 392(2) of the Act and is appropriate.

**Compensation order**

[104] Given my findings above, I will make an Order that Very Helpful Chats must pay Ms Daly \$8,478.090 less taxation as required by law, plus a superannuation contribution into her nominated fund of \$1017.58, within 14 days of the date of the Order.

[105] An Order<sup>85</sup> will be issued to that effect.



COMMISSIONER

*Appearances:*

*Mr Daruwalla* for the Applicant

*Mr Ritchie* for the Respondent

*Hearing details:*

Online – via Microsoft Teams

2025

Tuesday 9 & Wednesday 10 September

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<PR791568>

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- <sup>1</sup> Witness Statement of Nicole Griffin, 29 August 2025 [2]  
<sup>2</sup> Witness Statement of Yvonne Daly, 15 August 2025 [1] – [6]  
<sup>3</sup> Witness Statement of Nicole Griffin [7]  
<sup>4</sup> Witness Statement of Yvonne Daly [54] and Attachment C  
<sup>5</sup> Witness Statement of Nicole Griffin [43]  
<sup>6</sup> Ibid [64]  
<sup>7</sup> Ibid [59]  
<sup>8</sup> Ibid [73]  
<sup>9</sup> Ibid [72] and [68] and [56]  
<sup>10</sup> Ibid [57]  
<sup>11</sup> Ibid [55]  
<sup>12</sup> Ibid [48]  
<sup>13</sup> Ibid [52]  
<sup>14</sup> Witness Statement of Yvonne Daly in Reply, 5 September 2025, [8]  
<sup>15</sup> Witness Statement of Nicole Griffin [89] and Appendix 37  
<sup>16</sup> Witness Statement of Nicole Griffin [92] – [95]  
<sup>17</sup> Witness Statement of Nicole Griffin Appendix 5  
<sup>18</sup> Witness Statement of Zoe Smith, 29 August 2025, [8]  
<sup>19</sup> Ibid [11]  
<sup>20</sup> Ibid [14]  
<sup>21</sup> Ibid [15]  
<sup>22</sup> Ibid [12]  
<sup>23</sup> Ibid [13]  
<sup>24</sup> Witness Statement of Anna Aminov, 29 August 2025, [27] – [28]  
<sup>25</sup> Respondent’s Outline of Submissions [60] – [61]  
<sup>26</sup> Witness Statement of Nicole Griffin [110] – [111]  
<sup>27</sup> Respondent’s Outline of Submissions, [63]  
<sup>28</sup> Witness Statement of Georgia Rizzotto, 29 August 2025, [8] – [14]  
<sup>29</sup> Ibid [18] – [21]  
<sup>30</sup> Ibid [27]  
<sup>31</sup> Ibid [34] – [35]  
<sup>32</sup> Witness Statement of Nicole Griffin, [110]  
<sup>33</sup> Witness Statement of Georgia Rizzotto, [39] – [44]  
<sup>34</sup> Ibid [49]  
<sup>35</sup> Ibid [52]  
<sup>36</sup> Witness Statement of Nicole Griffin, [101]  
<sup>37</sup> Ibid [104]  
<sup>38</sup> Ibid [103]  
<sup>39</sup> Ibid [120]  
<sup>40</sup> Ibid [123] – [130]  
<sup>41</sup> Ibid [74] – [75]  
<sup>42</sup> Witness Statement of Yvonne Daly in Reply, 5 September 2025, [18]

- <sup>43</sup> Respondent's Outline of Submissions, [66] – [71]
- <sup>44</sup> *Sayer v Melsteel Pty Ltd* [2011] FWAFB 7498 [14]
- <sup>45</sup> *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371 [373]
- <sup>46</sup> Print R4471
- <sup>47</sup> *Edwards v Giudice* [1999] FWC 1836 [7]
- <sup>48</sup> *Raj Bista v Glad Group Pty Ltd t/a Glad Commercial Cleaning* [2016] FWC 3009 [34]
- <sup>49</sup> *Kylie Smith v Bank of Queensland Ltd* [2021] FWC 4 [124], [126]
- <sup>50</sup> Witness Statement of Nicole Griffin, [45]
- <sup>51</sup> Witness Statement of Nicole Griffin, [87], [89], [97]
- <sup>52</sup> Respondent's Outline of Submissions [52]
- <sup>53</sup> See *Fair Work Regulations 2009*, r 1.07
- <sup>54</sup> *Newton v Toll Transport* [2021] FWCFB 3457 [182]
- <sup>55</sup> *Crozier v Palazzo Corporation* (1996) 98 IR 137 [73]
- <sup>56</sup> *MIT v Asher* (2010) 194 IR 1 [14] – [15]
- <sup>57</sup> *Gibson v Bosmac Pty Ltd* (1995) 60 IR 1 [7]
- <sup>58</sup> Respondent's Outline of Submissions [85], [90]
- <sup>59</sup> Witness Statement of Nicole Griffin [27]
- <sup>60</sup> *Pecker Maroo Verano Pty Ltd v Stevens* [2024] FWCFB 147 [110]
- <sup>61</sup> Applicant's Submissions on Remedy [3]
- <sup>62</sup> Respondent's Outline of Submissions: Remedy [7]
- <sup>63</sup> *Nguyen v Vietnamese Community in Australia t/a Vietnamese Community Ethnic School South Australia Chapter* [2014] FWCFB 7198 [9]
- <sup>64</sup> *Vickery v Assetta* [2004] FCA 555; *D.A. Moore v Highpace Pty Ltd* (1998) Print Q0871
- <sup>65</sup> Respondent's Outline of Submissions [121]
- <sup>66</sup> *He v Lewin* [2004] FCAFC 161 [58]
- <sup>67</sup> Applicant's Outline of Submissions [133]
- <sup>68</sup> Respondent's Outline of Submissions [122]
- <sup>69</sup> Respondent's Outline of Submissions: Remedy [16]
- <sup>70</sup> *Ibid* [123] – [129]
- <sup>71</sup> Applicant's Outline of Submissions [135]
- <sup>72</sup> Respondent's Outline of Submissions: Remedy [20]
- <sup>73</sup> *Ibid* [21]
- <sup>74</sup> Applicant's Submissions on Remedy [15]
- <sup>75</sup> Respondent's Outline of Submissions: Remedy [31]
- <sup>76</sup> *Kable v Bozelle, Michael Keith T/A Matilda Greenbank* [2015] FWCFB 3512 [17]
- <sup>77</sup> See for example *Merewether v Scottish Australian Mining Co Ltd* (1907) 4 CLR 953
- <sup>78</sup> Witness Statement of Witness Statement of Yvonne Daly, [58] – [62]
- <sup>79</sup> Respondent's Outline of Submissions: Remedy [26]
- <sup>80</sup> *Sprigg v Paul's Licensed Festival Supermarket* (1998) 88 IR 21
- <sup>81</sup> *Ibid* [37]
- <sup>82</sup> *Fair Work Act 2009* s 392(5) and (6)
- <sup>83</sup> Applicant's Outline of Submissions [148]
- <sup>84</sup> *Double N Equipment Hire Pty Ltd t/a A1 Distributions v Humphries* [2016] FWCFB 7206 [17]
- <sup>85</sup> [PR791569](#)