



# DECISION

*Fair Work Act 2009*  
s.604 - Appeal of decisions

**Joseph Osure**

v

**Zoe Honner, Kent Hua, National Disability Insurance Agency**  
(C2025/5169)

VICE PRESIDENT GIBIAN  
DEPUTY PRESIDENT HAMPTON  
DEPUTY PRESIDENT FAROUQUE

SYDNEY, 4 JULY 2025

*Permission to be represented – Appeal against decision [\[2025\] FWC 1346](#) of Deputy President Millhouse on 14 May 2025 in matter number AB2024/747 – Appellant opposes grant of permission to be represented – s 596 of the Fair Work Act 2009 (Cth) – Whether representation would enable the Commission to deal with the matter more efficiently taking into account the complexity of the matter – Permission granted.*

## Introduction

[1] Joseph Osure seeks permission to appeal and to appeal from a decision of a Deputy President of the Commission. The Deputy President’s decision arose from an application by the appellant for an order to stop bullying under s 789FC of the *Fair Work Act 2009* (Cth) (the **Act**). The Deputy President dismissed the application on the basis that there was no risk that the worker will continue to be bullied at work.

[2] The National Disability Insurance Agency (the **NDIA**) seeks permission under s 596 of the Act to be represented by Ryan Murphy of McInnes Wilson Lawyers in relation to the appeal, which is listed for hearing on 16 July 2025. Mr Osure opposes permission being granted. Both parties filed written submissions in relation to the issue of whether permission should be granted for the NDIA to be represented. The NDIA requested that the question of representation be determined by the Full Bench in advance of the substantive hearing of the appeal.

## The Legislation

[3] Section 596 of the Act sets out the circumstances in which the Commission may grant permission for a party to be represented by a lawyer or paid agent in a matter before the Commission. The section provides as follows:

### **596 Representation by lawyers and paid agents**

(1) Except as provided by subsection (3) or the procedural rules, a person may be represented in a matter before the FWC (including by making an application or submission to the FWC on behalf of the person) by a lawyer or paid agent only with the permission of the FWC.

(2) The FWC may grant permission for a person to be represented by a lawyer or paid agent in a matter before the FWC only if:

- (a) it would enable the matter to be dealt with more efficiently, taking into account the complexity of the matter; or
- (b) it would be unfair not to allow the person to be represented because the person is unable to represent himself, herself or itself effectively; or
- (c) it would be unfair not to allow the person to be represented taking into account fairness between the person and other persons in the same matter.

[4] In *Roberts v TasTAFE* [2024] FWCFB 4449, the Full Bench recently summarised the effect of this provision and the principles to be applied in the exercise of the discretion as to whether to grant permission for representation as follows:<sup>1</sup>

As will be apparent, s 596(1) dictates that a person may be represented in a matter before the Commission by a lawyer or paid agent only with the permission of the Commission. Section 596(2) constrains the discretion of the Commission to grant permission for a person to be represented by a lawyer or paid agent. The Commission may grant permission “only if” one of the circumstances in at least one of subparagraph (a), (b) or (c) exist. Even if one of those requirements is satisfied, the Commission must then exercise a discretion as to whether permission should be granted.

In *Lee v Superior Wood Pty Ltd* [2020] FWCFB 1301; (2020) 295 IR 242, the Full Bench explained the approach to be adopted when determining if permission to be represented should be granted in the following terms (at [25]):

As a result, in applying the approach set out above the assessment of whether permission should be granted under s 596 potentially involves a two-step process. The first is consideration as to whether one or more of the criteria in s 596(2) is satisfied. The consideration required by this first step “involves the making of an evaluative judgment akin to the exercise of discretion”. It is only where the first step is satisfied that the second step arises, and involves a consideration as to whether in all of the circumstances the discretion created should be exercised in favour of the party seeking permission.

[5] The NDIA relies only on the ground in s 596(2)(a). In this respect, the only question posed by s 596(2)(a) is whether granting permission “would enable the matter to be dealt with more efficiently”. In applying this test, the Commission must take into account the complexity of the matter. It does not have to find that the matter is actually complex, nor does it have to find the matter is more complex than other matters.<sup>2</sup> Complexity may support a conclusion that granting permission would enable the matter to be dealt with more efficiently, but the Commission may be satisfied that representation would enable the matter to be dealt with more efficiently for reasons other than its complexity. Complexity could arise from the legal issues raised, the nature or extent of the evidentiary material required to be considered or the procedural history of the matter.

[6] The NDIA submits that permission should be granted to be legally represented at the substantive hearing on the basis that representation would enable the matter to be dealt with more efficiently considering the complexity of the issues raised. It says it was represented by the same solicitor at first instance and the appeal seeks to expand established legal principles in

such a way that legal representation would assist the Full Bench. Mr Osure submits that it would be unfair to permit representation taking into account fairness as between the parties. He submits that the NDIA has a human resources department and legal team and that the matters raised on appeal involve simple factual contest and that the appeal does not seek to expand existing legal principles.

### **Consideration**

[7] The Full Bench has determined that permission should be given for the NDIA to be represented by a lawyer in relation to the appeal. The granting of permission in this appeal will enable the matter to be dealt with more efficiently for the purposes of s 596(2)(a). In forming that view, we have taken into account the complexity of the matter.

[8] The decision under appeal is one in which the Deputy President exercised a discretionary power contained in s 587(1)(c) of the Act to dismiss the application on grounds it had no reasonable prospects of success. In short, the Deputy President was not satisfied that there is a risk that Mr Osure will “continue to be bullied at work” within the meaning of s 789FF(1)(b)(ii) of the Act. As a consequence, the Deputy President concluded that, even if she were to find that Mr Osure has been bullied at work by the persons alleged to have engaged in bullying, there would be no jurisdiction to make an order to stop bullying.

[9] On a preliminary review, the decision of the Deputy President attached significance to the consequences of a restructure of the Risk Management Branch of the NDIA and the current working arrangements of Mr Osure. The evidentiary material relevant to those issues is substantial. The notice of appeal filed runs to 32 pages and 154 paragraphs which set out 13 grounds of appeal, including alleging various factual errors, that the Deputy President failed to consider various matters and that Mr Osure was denied procedural fairness. In those circumstances, we are satisfied that granting permission for the NDIA to be represented will enable the Full Bench to deal with the appeal more efficiently. That is particularly so in circumstances in which Mr Murphy appeared for the NDIA at first instance and will be familiar with the relevant material.<sup>3</sup>

[10] The Full Bench has considered whether the granting of permission for the NDIA to be represented would cause prejudice to Mr Osure in circumstances in which he is being represented by his partner who does not have legal training or experience. Whilst there will self-evidently be a disparity in the knowledge and expertise of the respective representatives, the benefit of one party being legally represented is not wholly exclusive. The presence of a responsible legal representative should ensure that relevant issues are identified and appropriately explored.<sup>4</sup> We are confident that the Full Bench will have no difficulty in ensuring a fair hearing is conducted and that no unfairness arises for Mr Osure.

[11] For those reasons, we are satisfied that the Commission is able to grant permission for the NDIA to be represented as it would assist the Commission in the efficient disposition of the appeal for the purposes of s 596(2)(a) and the Full Bench has determined it should exercise its discretion to grant permission. Accordingly, we grant permission for the NDIA to be represented in relation to the appeal.



VICE PRESIDENT

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<sup>1</sup> *Roberts v TasTAFE* [2024] FWCFB 4449 at [4]-[5] referring to *Warrell v Walton* [2013] FCA 291; (2013) 233 IR 335 at [24] (Flick J); *Grabovsky v United Protestant Association of NSW Ltd (t/as UPA)* [2018] FWCFB 4362 at [35]-[36].

<sup>2</sup> *Artery v G Case & H Case (t/as Gavin Case Marine Services)* [2021] FWC 4130 at [19]; *Nightingale v Woolworths Group Ltd (t/as Woolworths Group)* [2022] FWC 1733 at [4]; *Roberts v TasTAFE* [2024] FWCFB 4449 at [9].

<sup>3</sup> See *Lee v Superior Wood Pty Ltd* [2020] FWCFB 1301; (2020) 295 IR 242 at [27].

<sup>4</sup> *Roberts v TasTAFE* [2024] FWCFB 4449 at [13].