



# DECISION

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

**Joseph Osure**

v

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

VICE PRESIDENT GIBIAN  
DEPUTY PRESIDENT HAMPTON  
DEPUTY PRESIDENT FAROUQUE

SYDNEY, 1 SEPTEMBER 2025

*Appeal against decision [\[2025\] FWC 1346](#) of Deputy President Millhouse at Melbourne on 14 May 2025 in matter number AB2024/747 – Appeal from dismissal of a stop bullying application – Full Bench handed down decisions on 4 July 2025 with respect to representation and on 5 August 2025 dismissing the appeal – Subsequent application by the respondents for confidentiality orders relating to the names of individuals subject of application – Application also made by the appellant for his name to be de-identified in the decisions of the Full Bench – Commission not satisfied there are grounds for making the orders sought – Futility of making orders some time after publication of decisions – Applications dismissed.*

## Introduction

[1] On 5 August 2025, the Full Bench handed down its decision in relation to an appeal by Joseph Osure against a decision of Deputy President Millhouse to dismiss his application for an order to stop bullying under s 789FC of the *Fair Work Act 2009* (Cth) (the **Act**).<sup>1</sup> The Full Bench granted permission to appeal but dismissed the appeal. The Full Bench had earlier published a decision in relation to the appeal granting permission for legal representation.<sup>2</sup>

[2] The respondents to the appeal were the National Disability Insurance Agency and two individuals, Zoe Honner and Kent Hua. On 18 August 2025, a solicitor for the respondents communicated to the chambers of Vice President Gibian requesting that the names of Ms Honner and Mr Hua be redacted, or given pseudonyms, in the published decisions of the Full Bench. The associate to Vice President Gibian responded on the same day indicating that, on the basis set out in the email from the respondents' solicitor, the Full Bench was not minded to make the proposed change to the published decisions, but indicated that a formal application for a confidentiality order could be made and would be considered by the Full Bench.

[3] On 26 August 2025, the respondents made an application for orders under s 594(1) of the Act. The orders sought are as follows:

1. That the Commission de-identify Zoe Honner and Kent Hua from the name of the published decision [\[2025\] FWCFB 135](#) dated 4 July 2025.
2. That the Commission de-identify Zoe Honner and Kent Hua from the name of the published decision [\[2025\] FWCFB 168](#) dated 5 August 2025, and from paragraphs 2, 3, 4(q) and 4(r) in the decision.
3. Any person provided a copy of either of the above decisions by the Commission prior to the Persons Named being de-identified to destroy and not distribute any copy of either of those decisions.

[4] The application indicates that, in the proceedings at first instance before Deputy President Millhouse, the solicitor representing the respondents made an oral request that the names of Ms Honner and Mr Hua not be used in the decision the Deputy President published in relation to the application. There is no transcript of the hearing before the Deputy President available to the Full Bench. The application indicates that the audio recording of the hearing records the solicitor saying:

If the Commission is minded to order that the matter be dismissed, we respectfully submit that it would be appropriate to use discretion to not name the Persons Named in the Application for the purpose of confidentiality given that there would be no finding against them and all it could do would be potentially harm their own reputations. The recent decisions of Bigdeli and also the Meagher decision provide examples of instances where the Commission has opted to take that course.

[5] The application later describes this as the “de-identification order”. That is not accurate. As we understand it, no order was sought by the respondents or made by the Deputy President. However, in her decision, the Deputy President described the application as naming two co-workers that Mr Osure contends bullied him at work and, throughout the decision, refers to the co-workers as the “Persons Named”.<sup>3</sup>

[6] Orders 1 and 2 seek that the names of the two named employees be de-identified in the two decisions of the Full Bench. The orders are sought under s 594(1) of the Act which permits the Commission to prohibit or restrict the publication of various matters including “the whole or any part of its decisions or reasons”. The Commission may make such an order if it is “satisfied that it is desirable to do so because of the confidential nature of any evidence, or for any other reason”. The section confers a broad discretion to make a confidentiality order if the Commission considers it desirable to do so for any reason.<sup>4</sup>

[7] Subsequently, on 27 August 2025, Mr Osure also filed an application for orders under s 594(1) of the Act to the effect that his name be de-identified in the two Full Bench decisions and that any person provided a copy of either of the decisions prior to his name being de-identified is to destroy and not distribute any copy of either of the decisions. In his application, Mr Osure notes the application made by the respondents for Ms Honner and Mr Hua’s names to be de-identified in the Full Bench decisions and says that, to ensure fairness and avoid discriminatory treatment of the parties, that the same ruling on the de-identification request should be applied to him.

### **Application by the respondents**

[8] There are four reasons given by the respondents for seeking the orders in their application. The first reason is, the respondents submit, that by opting to provide the two named employees with pseudonyms in her decision, Deputy President Millhouse granted the respondents' request not to be identified and that the Full Bench gave no indication at the appeal hearing, or otherwise, that the effect of "the de-identification order" would not continue. The respondents submit that, by naming Ms Honner and Mr Hua in the Full Bench decisions, the Commission "has regrettably nullified the benefit of the previously exercised de-identification from the First Decision".

[9] This is an unfortunate submission which cannot be accepted. It is inaccurate in a number of respects. As we have observed, the Deputy President made no order with respect to confidentiality or the identification of the two named employees. There is no order that has been "nullified" by the decisions of the Full Bench. In any event, the respondents made no request of, or application to, the Full Bench that the two named employees not be identified in the appeal decision. The respondents did not bring the Full Bench's attention to the request they had made to the Deputy President. As the respondents were aware, no transcript of the proceedings before the Deputy President was before the Full Bench and there was no means by which the Full Bench could have been aware of the oral request made by the respondents at first instance. It is quite unsatisfactory to suggest that the Full Bench should have given some indication that a non-existent "de-identification order" would not continue. No such order exists, and the Full Bench had no knowledge that the issue had been raised. If the respondents wished the two named employees not to be identified in the decision on appeal, it was incumbent upon them to make an appropriate application to the Full Bench at least by the time of the appeal hearing. The respondents did not do so even after the publication of the decision of the Full Bench with respect to representation.

[10] The second reason given is that the respondents submit that identifying the two named employees in the Full Bench decisions risks damaging their reputations. The respondents submit that, because of the jurisdictional nature of the hearing at first instance and issues on the appeal, the two named employees were not given the opportunity to present evidence to disprove the allegations raised by Mr Osure. In summary, the respondents submit that the two named employees should not be associated with allegations of bullying which they deny without the opportunity to defend themselves.

[11] There will be some matters before the Commission, including in the anti-bullying jurisdiction, where there will be good reason to make orders restricting or prohibiting publication of evidence, or identification of the persons involved, having regard to the circumstances of the case including the nature of the allegations, the situation of the parties and the status of proceedings. Similarly, the Commission might choose not to use the names of individuals in a published decision if persuaded that is the appropriate course. However, mere embarrassment or distress, or possible damage to reputation, has not generally been regarded as sufficient to justify non-publication orders. In *Mac v Bank of Queensland* [2015] FWC 774; (2015) 247 IR 274, Hatcher VP (as his Honour then was) said in relation to proceedings in the Commission's anti-bullying jurisdiction:<sup>5</sup>

In relation to the anti-bullying jurisdiction established by Pt 6-4B of the FW Act, it is apparent that the purpose of the legislation, namely to ensure that workers can continue in their engagements at work free from the risk to health and safety caused by workplace bullying, would be defeated if the public disclosure of sensitive information during the course of anti-

bullying proceedings would be likely to have the effect of rendering the relevant worker's continuing engagement unviable. However it is equally apparent that, in accordance with the open justice principle, it is not sufficient to justify the making of a non-disclosure order merely that allegations have been made which are embarrassing, distressing or potentially damaging to reputations. In an anti-bullying matter, as with other types of proceedings before the Commission such as unfair dismissal remedy applications, the findings of the Commission concerning allegations which have been made will usually appropriately resolve concerns about embarrassment, distress or damage to reputation. If findings are made that an applicant's allegations of bullying behaviour are unfounded, then the position of persons alleged to be the perpetrators of such bullying will be vindicated and the outcome will redound upon the applicant. However if allegations of bullying are found to be substantiated, then public identification of the perpetrators of that bullying is normally appropriate. In either case, the public scrutiny involved will have a deterrent effect that is in the public interest — in the former case against the making of unfounded allegations and in the latter case against engagement in bullying behaviour.

[12] The fact that potentially embarrassing allegations raised in court or tribunal proceedings are untested is also not generally regarded as, in itself, sufficient to justify their existence being shielded from public view.<sup>6</sup>

[13] Ms Honner and Mr Hua are identified in the appeal decision as the persons named by Mr Osure in his application. However, because of the nature of the issues raised in the appeal, it was only necessary to describe the allegations made by Mr Osure in general terms. It would be apparent to any reasonable reader of the Full Bench decision that the Commission had made no findings adverse to the two named employees and that the allegations raised by Mr Osure are contested by the NDIA. The appeal decision records that the NDIA contends that the actions of which Mr Osure complained constituted reasonable management action undertaken in a reasonable manner.<sup>7</sup> A reasonable reader of the appeal decision would not infer anything other than that Ms Honner and Mr Hua were involved in complaints by an employee of the NDIA which are disputed by the NDIA and would understand that the NDIA believes the actions complained of were reasonable. Whilst we appreciate that the two named employees may be upset by being the subject of complaints by Mr Osure which are recorded in a decision of the Commission, that fact is not, in our opinion, sufficient to justify the orders sought by the respondent in the circumstances of this matter.

[14] The third reason given by the respondents is that nothing about removing the names of the two named employees from the title of the Full Bench decisions would cause public confidence in the Commission to be impacted, in the way envisioned in *Application by the United Nurses of Australia* [2025] FWC 239.<sup>8</sup> The submission misunderstands the principle of open justice. There are some proceedings before the Commission in which, because of their nature or the circumstances surrounding the proceedings, transparency will be of particular significance. However, public confidence in the processes of courts and tribunals is maintained by those processes generally being public and open to scrutiny unless good reason is shown to justify a different course being adopted. A confidentiality or non-publication order cannot be justified simply by an assertion that public confidence in the Commission will not be detrimentally impacted if such an order is made in a particular case.

[15] The fourth reason advanced by the respondents is that the appeal decision purports to reproduce the allegations of bullying as contained in the decision of the Deputy President but uses the names of the two named employees rather than referring to Ms H and Mr H.<sup>9</sup> The

relevant passage in the appeal decision reproduces the summary of the complaints made by Mr Osure provided by the Deputy President but uses the names of the two named employees. That was done in circumstances in which no application or request was made in relation to the use of the individuals' names.

[16] Finally, it is appropriate to observe that the third order sought by the respondent is that any person provided with a copy of either of the decisions by the Commission is to destroy and not distribute any copy of either of those decisions. The Commission is required to publish most of its decisions on its website.<sup>10</sup> The representation decision has been on the Commission's website since 4 July 2025 and the appeal decision since 5 August 2025. Decisions of the Commission are also picked up by, and publicly available on, Austlii and a range of other legal databases. It is unnecessary to consider whether an order of the type sought is within the power of the Commission. Even if it is, we do not consider it would be practical or appropriate to make such an order. We do not understand how such an order could practically be enforced or effective. That order, and an order seeking to prohibit publication of the names of the two named employees, is likely to now be futile. It is, in short, too late for the respondents to now seek orders restraining publication of the Full Bench decisions which have already been widely disseminated.

### **Application by the appellant**

[17] It appears from the terms of the application that the primary motivation for the application was to ensure fairness as between Mr Osure and the respondents. That is, Mr Osure says that, if the names of Ms Honner and Mr Hua are to be de-identified, it is fair for the same step to be taken with respect to him. In circumstances in which we have determined that the orders sought by the respondents should not be made, it may be that the primary basis for Mr Osure's application falls away. However, it is nonetheless appropriate to consider other grounds given by Mr Osure in support of his application.

[18] Mr Osure submits that he could not make the present application earlier as it would have been prejudicial to his case, identification of his name may cause damage to his reputation and that removal of his name from the Full Bench decisions would not have any impact on public confidence in the Commission. For the same reasons we have given with respect to the respondents' application, we are not satisfied that these grounds justify making orders de-identifying Mr Osure's name in the Full Bench decisions. We also note that Mr Osure is identified in the decision of the Deputy President and reiterate the difficulty, and likely futility, of seeking to constrain publication of decisions of the Commission a considerable time after they have been published and made available on the Commission's website.

### **Conclusion and disposition**

[19] For these reasons, the applications for orders under s 594(1) of the Act by the respondents and the appellant are both dismissed.



VICE PRESIDENT

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<sup>1</sup> *Osure v National Disability Insurance Agency* [2025] FWCFB 168.

<sup>2</sup> *Osure v National Disability Insurance Agency* [2025] FWCFB 135.

<sup>3</sup> *Osure v National Disability Insurance Agency* [2025] FWC 1346 at [1].

<sup>4</sup> See, for example, *Santos WA Energy Ltd v Whittaker* [2024] FWCFB 231 at [23]-[24]; *Application by the United Nurses of Australia* [2025] FWC 239 at [9]-[10].

<sup>5</sup> *Mac v Bank of Queensland* [2015] FWC 774; (2015) 247 IR 274 at [9]. See also *Re Corfield* [2014] FWC 4887 at [21]-[32]; *Hankin v Plumbers Supplies Co-Operative Ltd T/A Plumbers Supplies Co-Op* [2014] FWC 8402 at [24]-[27]; *Zirk-Sadowski v University of New South Wales* [2022] FWCFB 188 at [29].

<sup>6</sup> *Llewellyn v Nine Network Australia Pty Limited* [2006] FCA 836; (2006) 154 FCR 293 at [27] (Rares J); *Rush v Nationwide News Pty Ltd* [2018] FCA 357; (2018) 359 ALR 473 at [189]-[194] (Wigney J); *Ferguson v Tasmanian Cricket Association (t/as Cricket Tasmania)* [2021] FCA 1507 at [5]-[6] (Mortimer J); *Vardy v Titan Cranes and Rigging Pty Ltd* [2024] FCA 1410 at [34]-[39] (Shariff J); *Application by the United Nurses of Australia* [2025] FWC 239 at [16]-[17].

<sup>7</sup> *Osure v National Disability Insurance Agency* [2025] FWCFB 168 at [5].

<sup>8</sup> By reference to *Application by the United Nurses of Australia* [2025] FWC 239 at [11].

<sup>9</sup> *Osure v National Disability Insurance Agency* [2025] FWCFB 168 at [4].

<sup>10</sup> *Fair Work Act 2009* (Cth), s 601(4).