



# DECISION

*Fair Work Act 2009*

s.394 - Application for unfair dismissal remedy

**Mr Amru Mohamed Didi**

**v**

**The Grove Children's Centre Pty Ltd ATF The Grove Children's Centre**

**Unit Trust**

(U2025/17843)

COMMISSIONER REDFORD

MELBOURNE, 29 APRIL 2026

*Application for an unfair dismissal remedy; dismissal harsh, unjust and unreasonable; compensation ordered*

[1] Mr Amru Mohamed Didi has made an application in the Fair Work Commission seeking a remedy in relation to unfair dismissal. Mr Didi's employment was terminated by The Grove Children's Centre Pty Ltd (**Grove CC**) in circumstances which I consider to be extremely harsh. Arising from events described below, Mr Didi, who is of Maldivian heritage, was told by managers at Grove CC that he had not upheld its centre's value of "inclusivity" and that "inclusivity" means being inclusive of all opinions, "including racist and Nazi opinions". If, to a person of Mr Didi's background and circumstances this directive was not humiliating enough, his employment was then summarily terminated by Ms Daniela Abboto, the "Approved Provider" of Grove CC, without so much as a conversation with him. The termination has had a significant effect on Mr Didi, who had worked for Grove CC since March 2021 as a well-regarded and competent early childhood teacher. Mr Didi lost his job, his relationships with children, parents and colleagues and likely suffered unwarranted reputational damage. His dismissal was unfair, and he will be awarded compensation pursuant to the Act, for the reasons set out below.

## **Background**

[2] The application was filed on 10 November 2025 pursuant to s 394 of the *Fair Work Act 2009* (Cth) (**the Act**). There appears to be no basis upon which it is said that Mr Didi 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. Grove CC is not a small business within the meaning of s 23 of the Act.

[3] The application was the subject of a hearing conducted in the Commission on 18 February 2026 to determine its merits and if necessary, the question of remedy. Mr Didi

appeared for himself at the hearing. I granted Grove CC 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 Crocker of Counsel appeared for Grove CC.

[4] Mr Didi gave evidence at the hearing. So too did Ms Abboto, who is the “Approved Provider” of the Grove, and Ms Skordos who is an employee of Grove CC.

[5] Grove CC made a number of objections to the evidence tendered by Mr Didi. I determined not to have regard to a statement Mr Didi filed, apparently made by a Ms Williams, an employee of Grove CC, which was objected to because Ms Williams was not available to confirm or answer questions about this statement. On this basis, I decided not to have any regard to the statement. I have also considered several other objections made by Grove CC in relation to the weight that should be attached to the evidence objected to, which is reflected in my findings of fact below.

[6] I have set out below a summary of the key aspects of the matter which constitute my findings of fact in relation to it.

### **The incident leading to dismissal**

[7] Grove CC is an early childhood education and care (ECEC) provider. After having migrated to Australia from the Maldives in 2015, Mr Didi commenced working for Grove CC as an early childhood educator on 1 March 2021 - first as a casual support educator and then later, from 24 January 2022, as an early childhood teacher. At the time of his dismissal Mr Didi was a “senior” member of the Grove CC staff.

[8] Ms Skordos is an early childhood educator who worked with Mr Didi at Grove CC. On 31 August 2025, Ms Skordos attended a protest rally held in Melbourne called “March for Australia”. There is no suggestion that her attendance had anything to do with her work, or Grove CC, and occurred on the weekend. The protest, which is discussed in more detail below, was the subject of publicity for reasons that included the attendance at the rally of people identifying as “neo-Nazis”.

[9] Mr Didi somehow became aware that Ms Skordos attended the March for Australia protest. He said he overheard her talking about it to another colleague at work and provided in his evidence some detail as to the nature of the conversation he says he overheard. He said among other things he heard Ms Skordos tell the colleague that she was at the very front of the rally shouting “Aussie, Aussie, Aussie”<sup>1</sup>. Mr Skordos denies having spoken to anyone at work about her attendance at the rally<sup>2</sup>. This discrepancy is not particularly material – there is no doubt somehow Mr Didi knew Ms Skordos had attended the protest. Ms Skordos does not dispute she attended. Indeed, it emerged in oral evidence that Ms Skordos had taken up a position at the front of the protest and had filmed some of it for her social media account.

[10] On 20 October 2025, an altercation took place between Ms Skordos and Mr Didi at work about her attendance at the protest. There is a difference in their evidence as to precisely what was said during this altercation.

[11] The nub of the disagreement is whether Mr Didi called Ms Skordos a neo-Nazi and a racist because she attended the protest, or whether he said words to the effect that attending the protest made it look like she was a neo-Nazi or racist, thereby associating her with such people. Ms Skordos says Mr Didi said she was a neo-Nazi at least twice<sup>3</sup>, a racist once<sup>4</sup>, and said that if she marched with neo-Nazi's she is one<sup>5</sup>. Mr Didi claims he did not say this, but rather that if she went to the protest organised by racists and neo-Nazi's "its not a good look"<sup>6</sup> and "makes you look like one of them"<sup>7</sup>.

[12] In his account of the altercation, Mr Didi said it occurred after Ms Skordos joined a conversation he was having with some other employees in the staff room. He said he asked Ms Skordos if she attended a protest the day before, to which she said she did not, because she was not feeling well. Mr Didi said he asked Ms Skordos if she did not go because she was not feeling well, "and not because this is a Nazi, racist protest?"<sup>8</sup>. Mr Didi said Ms Skordos said it was an anti-immigration protest, not a Nazi protest. Mr Didi said that they were racist protests, because they had been attended by "famous Neo-Nazi's and far right groups" and that "neo-Nazis" had spoken at the protests, displayed racist signs and banners and had attacked Aboriginal people at Camp Sovereignty"<sup>9</sup>. Mr Didi said Ms Skordos said that "Australia needs to stop immigrants from coming into the country because there is no place to put them, and immigration is ruining the country"<sup>10</sup>. Ms Skordos denies making this statement<sup>11</sup>.

[13] There appears no doubt that during the altercation Ms Skordos did not deny attending a "March for Australia" protest and in fact admitted she did so. She denies she attended the protest because it was an "anti-immigration protest" but does say her attendance "related to concerns about mass migration pressures such as housing and safety"<sup>12</sup>. It is also the case that, in so far as there was a suggestion or assertion that she is a neo-Nazi, she denies it, and disassociates herself from any such association. I accept entirely that Ms Skordos is not a neo-Nazi and accept her stated refutation of neo-Nazi views.

[14] Other Grove CC employees were present during part of the conversation between Ms Skordos and Mr Didi. None of these people gave evidence in this matter. Ms Skordos said they looked "visibly uncomfortable" during the incident and that one of the people present was Jewish<sup>13</sup>. Ms Skordos said that Mr Didi said to these people words to the effect that Ms Skordos "hated them" and wanted them deported<sup>14</sup>. Mr Didi denies having said this<sup>15</sup>. Mr Didi said that when Ms Skordos made comments to a negative effect concerning immigration, he said "I am an immigrant, does that mean you don't want me here either" and that the other people present said they were immigrants to Australia too<sup>16</sup>.

[15] Mr Didi said that after the exchange described above, break time was coming to an end, and the other employees left the staff room. He said that Ms Skordos continued the conversation, and told Mr Didi about her diverse background, "including about some of her family also being immigrants to Australia". He said Ms Skordos sought to continue the conversation and was speaking "quite loudly"<sup>17</sup>. Mr Didi said he "cut Stella off, because I needed to return to work in the planning room and the conversation had become heated at this point. I said to Stella, there is no point talking about this any further, but Stella, if you march with a bunch of self-proclaimed racists and Neo-Nazis and proudly talk about this at work, it makes you look like one of them". Mr Didi said Ms Skordos then left the staff room<sup>18</sup>.

[16] There is a difference between Mr Didi and Ms Skordos as to the tone of the conversation. Ms Skordos said Mr Didi spoke in a loud voice making gestures with his hands<sup>19</sup>. Mr Didi says he was calm<sup>20</sup>.

[17] Mr Didi said he intended what he said to be educative – for the purposes of alerting Ms Skordos as to how her conduct might be perceived. Mr Didi sought to place this motivation within the context of the Grove’s policies and procedures, which include a commitment to “inclusivity” (among other things) in circumstances where such sentiment is likely important within the early educational setting.

[18] Ms Skordos said in her evidence that she felt targeted, humiliated, deeply upset and overwhelmed by Mr Didi’s accusations. She appears to resent what she thought had been said to her, in part because she and her family are migrants to Australia, and some of her family members are partnered with migrants.

[19] I do not consider there is any basis upon which to impugn the credibility of either Ms Skordos or Mr Didi in relation to the manner in which they gave their evidence. In their written evidence in particular, both set out their conflicting view of events clearly. In their oral evidence, I consider Mr Didi’s account was clearer. I do note below that fairly immediately, Ms Skordos conveyed her version as to what was said to her manager, both orally and in writing. But in the circumstances, I consider it is entirely possible Ms Skordos heard or interpreted a more direct form of accusation than was actually expressed by Mr Didi. I consider it more likely Mr Didi told Ms Skordos that by associating herself with neo-Nazi’s and racists at a protest such as the one she attended, she would look like or appear to be one of them, but that what Ms Skordos heard or interpreted was that she was being told she was a neo-Nazi and a racist. In this regard, I consider Mr Didi’s evidence as to the distinction between these two alternative formulations to have been consistent and clear, having confirmed in cross examination that he understood he is alleged to have said the more direct formulation of the assertion, but not appearing at any stage to resile from his evidence – that he did not make these direct comments<sup>21</sup>. Ms Skordos’ oral evidence was less clear. In her evidence, I asked Ms Skordos about the distinction between these two formulations – whether she was told she was a racist or neo-Nazi, or whether she was told she looked like one. Ms Skordos seemed somewhat confused by this question. In relation to the proposition Mr Didi may have said “you look like one” she said, “I don’t know what they look like”<sup>22</sup> – evincing her apparent confusion at the distinction. She did not however resile from her evidence that Mr Didi did not say “you look like one, he said you are one”. But the manner in which Ms Skordos answered my questions in this regard leads me to the view that it is more likely Mr Didi’s account of what he said reflects the accurate version, notwithstanding that Ms Skordos believes what was said to be a more direct attribution. It is for these reasons I find that Mr Didi’s formulation of what he said is to be preferred, to the extent it conflicts with Ms Skordos’s version.

[20] For reasons I will expand upon below, I do not consider that this matter turns entirely on the distinction between these two formulations of what was said. Clearly, Ms Skordos believed Mr Didi had associated her with neo-Nazis, and had done so in front of her colleagues, and she took offence. I do not consider Mr Didi’s conduct was aggressive, but it was challenging.

[21] I consider it to have been established on the evidence that, whatever was said precisely by Mr Didi and Ms Skordos to one another, it was a two-way conversation, not a conversation where one was on offense and the other sat passively. It involved Mr Didi communicating his unhappiness that his colleague would attend such a protest and Ms Skordos defending her right to do so. Ms Skordos conveyed her concerns as to “mass migration pressures”, and this caused Mr Didi further upset, which he expressed. On the evidence before me, I do not consider the tone of the conversation rose to a level of aggression or threat, but it was unpleasant. I do not accept Mr Didi said to the other people present, that Ms Skordos “hated them”, and consider Ms Skordos’ evidence in this regard to have been coloured by her resentment at what she thought had been said to her. In this regard, it should be noted that the evidence before me is only comprised of the account of Mr Didi and Ms Skordos and not any of the other people who may have been present.

[22] Ms Skordos said after the altercation she went to seek the assistance of the Operations Manager, Ms Shannon Owen-Abbotto (not to be confused with the “Approved Provider”, Ms Daniella Abbotto). She said she was emotional when she spoke to Ms Owen-Abbotto<sup>23</sup>. She said she told Ms Owen-Abbotto that Mr Didi had called her racist and neo-Nazi in front of her colleagues, and this caused her distress<sup>24</sup>. She said Ms Owen-Abbotto told her to take some time to calm down and to put an account of the conversation in writing. Ms Skordos said she did this, and an email she appears to have sent later that morning was provided in evidence. This email said Mr Didi had accused her of being a racist and Nazi which she found deeply offensive. It also said others were present and that she remained respectful during the conversation.

### **The March for Australia protest**

[23] I have considered it necessary in this matter to have some regard to the nature of the protest Ms Skordos attended, which was the subject of the altercation between her and Mr Didi, which led to his dismissal. In this regard, I consider it appropriate to have regard not just to the nature of the protest itself, but the way in which it was portrayed within the Australian community<sup>25</sup>. Mr Didi (and indeed many others) did not attend the protest – they saw it and read about it on television or in print media or online.

[24] It is upon this portrayal of the protests that people who took offence to them – like Mr Didi – base their upset as to the fact these protests occurred (and may continue to occur) and what is said and done at them.

[25] Those who have chosen to associate themselves with these kinds of protests – like Ms Skordos – by attending them, engaging with them through their social media or talking about them afterwards – associate themselves not just with the protests as they occur on the day, but with how they are portrayed.

[26] The protest Ms Skordos attended was one of a series held in several Australian capital cities on 31 August 2025. The protests were organised by a group called “March for Australia”. A website called “March for Australia” says<sup>26</sup>:

*“For years, Australia’s unity and shared values have been weakened by policies and movements that set Australians against one another. Our streets have seen rising displays of anti-Australian sentiment, imported political conflicts, and a growing loss of public trust—while rapid, poorly managed population change has strained the social fabric that once held our communities close. This march is a stand for the people, culture, and nation that shaped Australia - and for the right of Australians to determine the future of their own country.”*

[27] Some news reports associated the protests or their organisers with “white nationalist ideas” despite reporting that “March for Australia” maintains that its opposition to current immigration levels is not “far-right”<sup>27</sup>. Some reports describing the Melbourne protest, attended by Ms Skordos, say that about an hour before the protest was due to start, “a hundred or so men, clad in black, strode across the Princes Bridge in a bloc, weaving through the large crowd that had already gathered under a sea of Australian flags”. The reports suggested people described as neo-Nazi’s “led” the march<sup>28</sup>.

[28] A Mr Thomas Sewell spoke to the rally in Melbourne. Mr Sewell is reported to have been a “far right extremist who leads the National Socialist Network, a neo-Nazi group”<sup>29</sup>. Mr Sewell is reported to have said, among other things, “Australia is beset on all sides by ginormous empires of the third world and we allow ourselves to be replaced and displaced in this land, if we don’t maintain our demographics, if we don’t stop immigration, our death is certain”<sup>30</sup>.

[29] There was evidence before me, which was not contested, that Ms Skordos took up position at the protest near the front, and filmed things which included Mr Sewell’s speech. Ms Skordos said she was live-streaming his speech to her Tik-Tok account<sup>31</sup>.

[30] As was further publicised, after the protest wound up it is alleged that a group of about fifty men, dressed in black, went to a site known as “Camp Sovereignty” - a camp in the Melbourne CBD at which indigenous people were gathered to publicise particular issues – and were alleged to have disrupted fixtures on the site, and were said to have begun “violently swinging sticks and poles at camp activists”<sup>32</sup>. Other reports carried allegations from people present, who say they were physically assaulted by the men<sup>33</sup>. One of the men involved was alleged in media reports to have been Mr Sewell<sup>34</sup>.

[31] Several times in his evidence Mr Didi mentioned another incident, apparently involving people identifying themselves as neo-Nazi’s, which took place on 1 June 2025 at the Northland Shopping Centre in the north of Melbourne<sup>35</sup>. Mr Didi said when this incident occurred, he was living about 2 kilometres away from the Shopping Centre. News reports said that “members of the far-right extremist group, the National Socialist Network, gathered outside Northland Shopping Centre in Preston to stage a racist protest. Dressed in black and with their faces covered, the group unfurled a banner with offensive messaging — “Ban N-ers Not Machetes” — and filmed themselves chanting “fight back” in front of the shopping centre.”<sup>36</sup> Mr Didi said in his evidence that some of the actions of Neo-nazi groups in Melbourne in the lead up to the March for Australia protests were very upsetting for him, and that at the time of the Northland Shopping Centre protest, he was living two kilometres away<sup>37</sup>.

[32] I have said above – but it bears repeating – that Ms Skordos denies any suggestion or assertion that she is a neo-Nazi and disassociated herself from any such association and I accept that she is not a neo-Nazi and her stated refutation of neo-Nazi views.

### **The meeting between Mr Didi and Ms Owen-Abbotto and Ms De-Silva**

[33] In the early afternoon of the day of the altercation between Ms Skordos and Mr Didi, after Ms Skordos made her complaint, Ms Owen-Abbotto met with Mr Didi together with Ms Ruwani De-Siva, who is the Grove CC Director. Neither Ms Owen-Abbotto nor Ms De-Silva were called to give evidence in this matter.

[34] Grove CC did not seek to contradict Mr Didi's account of the meeting. His unchallenged account of what was said in the meeting, which I accept, is as follows:

- (a) *Shannan said to me, Amru lets have a conversation, do you know what I am about to talk about?*
- (b) *I said that I think I do have an idea.*
- (c) *Shannan said, you have been quite challenging for us lately, haven't you? Is that why you have had this chat with Stella, because you are disgruntled? Stella has told us that you called her a racist and a Nazi, and she is very upset about that.*
- (d) *I replied that this is not a correct description of what happened. I told Shannan about the timeline and the lead up to it, including the other comments I had heard Stella make about her participation in the August rally and the anti-immigration statements I had heard her make.*
- (e) *Shannan said that she didn't know any details about Stella's participation in the protests, or that she had been talking about these things in the workplace.*
- (f) *Shannan then again put to me that I had called Stella a racist and a Nazi.*
- (g) *I replied that what I said was if you march with a bunch of self-proclaimed racists and Nazis and proudly talk about that at work, it makes you look like one of them.*
- (h) *Shannan then replied that this was just my own opinion that it was a racist/Nazi march, and that Stella might have different views and opinions about it.*
- (i) *I said, it has been fairly well documented in the media that some of the people involved in the marches and who gave speeches at them were famous Neo-Nazis who have openly called to do some abhorrent violent things.*
- (j) *Shannan said that she doesn't keep up with or care for these things and does not read the news.*

- (k) *Shannan said that I had not upheld the centre values and philosophy.*
- (l) *I said that I was upholding the centre values, to which Shannan asked, which values?*
- (m) *Shannan then instructed Ruwani to print out the Centre philosophy poster and she placed the poster on the table and asked me to point out the philosophy that I am upholding.*
- (n) *I said that I was upholding the "Inclusivity" principle, that we have families and children at the centre with diverse backgrounds, and that these families may not be comfortable having an educator talking about these anti-immigration views that are not inclusive*
- (o) *Shannan then said that these are just my opinions and that I wasn't being inclusive of Stella's opinions.*
- (p) *She then said that inclusivity means being inclusive of all opinions, including racist and Nazi opinions.*
- (q) *I found this comment very hard to hear. It was upsetting and distressing. I asked Shannan and Ruwani for a moment and went to leave the planning room.*
- (r) *Shannan said I could have two minutes break but needed to be back in the planning room by then.*
- (s) *I went to the bathroom to compose myself and then returned to the planning room.*
- (t) *Shannan then resumed the conversation and asked me to explain why I should not be inclusive of all opinions and views.*
- (u) *I said I was finding it hard to explain and talk about, because what's being spoken about is very personal to me because I have faced racism and this is about my humanity and dignity as a person. I told Shannan about how I had been facing racism from some of the Neo Nazi groups in my own community, such as the banner displayed at Northland earlier in the year.*
- (v) *I then asked Shannan for a support person.*
- (w) *Shannan immediately said, no you can't. She then said that Ruwani was here, she is your support person.*
- (x) *I replied that she is not my support person, she is not here to support me.*
- (y) *Shannan then asked who I wanted as a support person.*

(z) *I asked for Ellie Williams to be my support person.*

(aa) *Shannan then said that I couldn't have Ellie as my support person, because if she is on her break we shouldn't take up her personal break time, and if she is on the floor then we need her to be with the children.*

(bb) *Shannan then changed the conversation back to the topic of inclusivity, and from this point she ended up chatting in a more conversational, friendly manner.*

(cc) *After we discussed some more, I said to Shannan that it was not the best idea to speak with Stella about this topic in a shared space like the staff room, and that I could see how what I had said could hurt Stella's feelings. I said that my intention hadn't been to make Stella upset, but to educate her and help her understand a different point of view on the topic because it is something I care and am passionate about, as well as in the best interest of my colleagues, children and the centre.*

(dd) *Shannan thanked me for sharing my understanding and knowledge with her.*

(ee) *I do not recall Ruwani speaking at all during the conversation*

[35] Mr Didi said that he went on his break at this point, and when he returned, he had a further conversation with Ms Owen-Abbotto about plans for the following year, including which kindergarten room Mr Didi would like to teach<sup>38</sup>.

[36] Mr Didi said in his evidence “I was extremely disappointed and found it very distressing and hurtful that Shannan declared verbatim: “inclusivity means being inclusive of all opinions, including racist and Nazi opinions”<sup>39</sup>.

### **The termination of Mr Didi’s employment**

[37] The next day, 21 October 2025, was Mr Didi’s rostered day off so he was not at work, but he received an email from Ms De Silva asking him to attend a meeting the next day. He attended a meeting the following day, 22 October 2025, at 8:00AM with Ms Owen-Abbotto and Ms De Silva. Ms Howard attended as Mr Didi’s support person. Ms Owen-Abbotto said that after investigating the incident with Ms Skordos it had been decided that his employment was terminated effective immediately. He was handed a letter to that effect.

[38] Ms Daniella Abbotto, the Approved Provider of the Grove CC, gave evidence that she made the decision to terminate Mr Didi’s employment for the reasons set out in the termination letter. The termination letter said, in summary:

- (a) That in the discussion with Ms Owen-Abbotto, Mr Didi had admitted to telling Ms Skordos she was a “neo-Nazi” and racist, “among other things”.
- (b) That his comments were not welcomed by Ms Skordos and caused her extreme distress.

- (c) That his language directed to Ms Skordos was completely unacceptable and constitutes serious misconduct.
- (d) That the conduct caused a serious an imminent risk to both the health and safety of a person and Grove CC's reputation.
- (e) That Mr Didi is entitled to hold his own views on political issues but not entitled to use "abhorrent and offensive language towards a colleague".

[39] In her evidence, Ms Abbotto conceded that whilst she had decided to terminate Mr Didi's employment, she did so without talking to him, to Ms Skordos or to any of the people who may have witnessed the altercation<sup>40</sup>. She said she relied on her "investigation team"<sup>41</sup> – which appears to have been Ms Owen-Abbotto and Ms De Silva.

[40] In cross examination, Ms Abbotto was asked what if anything was said to parents of children who attended the Grove following Mr Didi's dismissal. Ms Abbotto's answers were not entirely clear on this (hampered to some extent by the form of the questions posed by Mr Didi in cross examination). However, I understood Ms Abbotto's evidence to be that following his dismissal, parents had asked about Mr Didi's whereabouts, and it was necessary to say something to the effect that his employment had been terminated abruptly<sup>42</sup>. I did not understand the evidence to rise any higher than that – that for example any specific aspersion was cast on Mr Didi's character – but also that the information provided to parents was not simply neutral. I will return to the question as to the extent it can be concluded some damage has been done to Mr Didi's reputation below.

[41] Ms Abbotto explained in her evidence that the Grove have several policies and procedures relevant to this matter. These include a Handbook which says, among other things, that every employee has the responsibility to take reasonable care for their own health and safety and the health and safety of other employees and people who may be affected by their actions, and that principles underpin the "Grove's Code of Conduct" which include that employees must use courteous and appropriate verbal and non-verbal communication, must work co-operatively to support one another in an uplifting and positive manner, and must treat each other with respect. The Handbook also says that when interacting with one another, employees must be respectful, courteous, sensitive, tactful and considerate, and respect one another, and not approach one another in a confrontational manner. It also says the Grove CC will not tolerate bullying, harassment, discrimination or victimisation between employees including abusive, insulting or offensive language and that it is all employees' responsibility to treat everybody they encounter in a respectful and professional manner. Grove CC also has Respect Policy, which says "employees will ... foster a positive organisational culture, rooted in mutual respect, inclusivity, and collaboration<sup>43</sup>; approach differences of opinion with professionalism, employing constructive communication to resolve conflicts"<sup>44</sup>. Grove CC also has a Mental Health Wellbeing and Safety Policy, which says that the policy requires that "educators' model respectful interactions with each other and a positive approach to mental health and wellbeing; educators take reasonable care that their actions do not affect the health and safety of other people in the workplace; there is a culture for respect, fairness and equity; and strategies are implemented to promote positive conflict resolution and to prevent and respond to bullying, discrimination and harassment"<sup>45</sup>, Ms Abbotto also referred in her evidence

to the Early Childhood Australia Code of Ethics. This Code says, that “in relation to colleagues, employees will use constructive processes to address differences of opinion in order to negotiate shared perspectives and actions”<sup>46</sup>. Ms Abbotto also referred to the Victorian Teaching Profession’s Code of Ethics, which says “the values that underpin the teaching profession are integrity, respect and responsibility. These values are demonstrated by maintaining a professional relationship with colleagues, acting with compassion and holding colleagues in high regard”<sup>47</sup>.

### **The Union visit**

[42] To complete the narrative in this matter, it is necessary to take something of a tangent, to an incident Mr Didi described occurring some days previously.

[43] On 17 October 2025, a Union official from the United Workers’ Union – “Faith” - visited Grove CC. This occurred at Mr Didi’s request. Mr Didi spoke with the official during his lunch break, in the staff room. Mr Didi says that during his conversation with the Union official, Ms De Silva was present. Mr Didi said at one point Ms De Silva said loudly she would “not stand by silent” while the official “lies about Daniella” (a reference to Ms Abbotto). Mr Didi said the Union official was able to calm the situation down and he left the staff room. Mr Didi said he said to Ms De Silva that he found it “very unprofessional and embarrassing the way she had spoken to Faith and I”.

[44] Mr Didi submits, in effect, that I should infer that his eventual termination of employment was motivated, at least in part, by retaliation for his having “coordinated” the Union visit<sup>48</sup>. In this regard, he relies on the “extremely short timeframe (3 business days) between the union activity and the summary dismissal”<sup>49</sup>. He also appears to rely on a comment made to him during the meeting he had with Ms Owen-Abbotto and Ms De Sliva, in which Ms Owen-Abbotto said “you have been quite challenging for us lately, haven’t you?”.

[45] In her oral evidence, Ms Abbotto, who was the person who made the decision to terminate Mr Didi’s employment, said that there was information communicated to her involving the Union visit, but “none of it was concerning”<sup>50</sup>.

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

[46] 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 Commission considers relevant.

[47] I am required to consider each of these factors, to the extent they are relevant to the factual circumstances before me<sup>51</sup>.

**Was there a valid reason for dismissal related to Mr Didi’s capacity or conduct?**

[48] It is well established that in order to be a valid reason, the reason for the dismissal should be “sound, defensible or well founded” and should not be “capricious, fanciful, spiteful or prejudiced”<sup>52</sup>.

[49] In *Rode v Burwood Mitsubishi*<sup>53</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>54</sup>.

[50] 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>55</sup>. A reason not of sufficient gravity to justify dismissal is not sound, defensible or well-founded<sup>56</sup>.

[51] However, the Commission will not stand in the shoes of the employer and determine what the Commission would do if it was in the position of the employer<sup>57</sup>.

***Grove CC’s submissions – valid reason***

[52] Grove CC submitted that the use of abusive and offensive language directed towards another employee, especially when it is targeted, is a valid reason within the meaning of s 387(a) of the Act<sup>58</sup>. It said Mr Didi’s conduct could be described as such, that that “given the current social and political climate, the level of offense caused is to be expected”. It said the conduct

was “deeply offensive” to Ms Skordos . It said it was compounded by both Ms Skordos’ own personal circumstances and “workplace circumstances (where several of Ms Skordos’ colleagues have immigrated to Australia and at least one is Jewish)”<sup>59</sup>. It said Mr Didi, having repeated the allegations several times in front of co-workers and further contending that Ms Skordos “wanted them (in effect) ‘out’ of the country” was “unacceptable”<sup>60</sup>.

[53] Grove CC also contended that the conduct was “antithetical” to Grove CC’s values and applicable policies and procedures<sup>61</sup>.

[54] Grove CC’s submissions appear to be based, to a large extent, on a finding it says I should make – that Mr Didi said Ms Skordos *was* a racist or neo-Nazi, not just that she might look like one. It accepted it had put its case on this “all or nothing proposition”<sup>62</sup>. It says the distinction between these two formulations is not semantic<sup>63</sup>, and appears to submit by implication that the formulation it contends for is more likely to be a valid reason for dismissal than the alternative.

[55] Grove CC also said that, to the extent it is said by Mr Didi that the reason for his termination of employment was not valid because it was motivated to some extent by retaliation arising from the earlier Union visit, that there is no evidence that these matters had anything to do with the termination of Mr Didi’s employment, and cannot impugn the validity of the reason for his dismissal.

***Valid reason: consideration***

[56] For the reasons set out below I do not accept Mr Didi’s submission, that considerations relating to his Union activity invalidates the reason for his dismissal. However, I do not consider that Grove CC’s reason for the dismissal of Mr Didi is valid, nor did it have a valid reason for his dismissal, for two reasons in particular. First, I consider that the reason for the dismissal was not sound or well-founded, because it was arrived at by the decision maker based on misinformation. Second, I consider that taken in context, the conduct that did occur was not of sufficient gravity to justify dismissal, and is thus not sound, defensible or well founded.

***The reason for the dismissal was based on misinformation and mischaracterised the nature of and effect of Mr Didi’s conduct.***

[57] It must be born in mind that it was Ms Abbotto who made the decision to terminate Mr Didi’s employment. Ms Abbotto’s evidence was that her decision for doing so was “for the reasons set out in my letter date 22 October 2025”. While when considering whether there was a valid reason for dismissal, the Commission’s inquiry is not confined simply to the reason the employer gave for the dismissal, it is appropriate to consider the basis for Ms Abbotto’s decision<sup>64</sup>.

[58] Ms Abbotto’s letter said that in his discussion with Ms Owen-Abbotto, Mr Didi admitted that he told Ms Skordos she was a neo-Nazi and a racist. But on Mr Didi’s own unchallenged account of that meeting, it is apparent he did nothing of the sort. Mr Didi’s position has been clear throughout – that he did not tell Ms Skordos she was a neo-Nazi or a racist – but said she

may be perceived as one by her attendance at the protests. Accordingly, at no stage in his conversation with Ms Owen-Abbotto and Ms De Silva did he “admit” he told Ms Skordos she was a neo-Nazi and a racist.

**[59]** Ms Abbotto made this mistake because she based her decision entirely on the report she received from what she described as her “investigation team” – Ms Owen-Abbotto and Ms De Silva - rather than having the basic common decency to speak to Ms Didi himself before deciding to terminate his employment. This error resulted in a flaw in her reasoning.

**[60]** The letter also says Ms Skordos was caused “extreme distress” and that the conduct was a “serious and imminent risk to the health and safety” of a person (obviously referring to Ms Skordos).

**[61]** But on her evidence, Ms Abbotto did not speak to Ms Skordos either. Again, she appears to have based these characterisations of Mr Didi’s conduct and its impact on Ms Skordos on what she was told by Ms Owen-Abbotto and Ms De Silva, not on her own assessment as to the effect of the conduct. In my view, having heard Ms Skordos’ evidence, I consider that while she did take offence as a result of Ms Didi’s conduct during their altercation, to characterise it as “extreme distress” is untenable. It was not suggested, for example, that Ms Skordos was unable to return to work that day (after having made her complaint to Ms Owen-Abbotto) or was otherwise incapacitated. There is no evidence before me of any ongoing effect for Ms Skordos. She was offended, and to some extent upset, but not in “extreme distress”.

**[62]** Ms Abbotto also characterised Mr Didi’s conduct as causing a “serious and imminent” risk to the health and safety of a person – undoubtedly referring to Ms Skordos. A “serious and imminent risk” to health and safety is a phrase used on occasion in the Australian industrial context – referred to, for example, in the definition of serious misconduct in regulation 1.07 of the *Fair Work Regulations 2009*. It is a composite phrase, and while the “seriousness” of the conduct may attach either to the potential consequences of the conduct or the likelihood of the risk materialising, it connotes something more than where the consequences are only slight – something more like “really significant”<sup>65</sup>.

**[63]** For Ms Skordos, being involved in the altercation with Mr Didi upset her, but neither the consequences nor the risk can, on the evidence before me, be described as “really significant”. Discussion, commentary, and things people say in the workplace can cause risk to health and safety. This is more likely when such conduct is targeted or aggressive. This was not a stand-up fight. It was, as I have characterised it, an unpleasant and uncomfortable two-way conversation.

**[64]** Ms Abbotto also characterised Mr Didi’s conduct as causing serious and imminent risk to the reputation of Grove CC. There appears to me to be no basis whatsoever for this assertion.

**[65]** Ms Abbott made these mischaracterisations as to the nature of Mr Didi’s conduct, upon which she based her decision to terminate his employment, because she spoke to neither of the people involved in the incident. Her decision was therefore not “well-founded” or “sound”.

***Conduct not of sufficient gravity to justify dismissal***

[66] As explained above, I consider that on the evidence Ms Skordos thought Mr Didi called her a neo-Nazi and racist, but in actuality Mr Didi did not do so, and instead, associated her with being a neo-Nazi and a racist by saying that her attendance at the protest, at which there were Nazi's and racists present, "made her look like one". I accept the distinction is not "semantic". But I do not consider the distinction to be crucial. On either formulation Mr Didi's conduct had the capacity to cause Ms Skordos offence, and it did so.

[67] However, as I have observed above, the altercation was not one in which there was an aggressor and a non-aggressor, but rather it was a two-way conversation in which things were said by both parties which caused offence to the other.

[68] Mr Didi's conduct must be assessed in this context. And it is with this context in mind that I do not consider the validity or otherwise of the reason for Mr Didi's dismissal turns on whether he told Ms Skordos she was a neo-Nazi or racist, or whether he said words to the effect that she was associated with such people. Rather, I consider that what Mr Didi said was unpleasant in the circumstances, probably unnecessary, but taking into account the context, and Ms Skordos' own conduct, not of a nature to justify dismissal.

[69] Below, I observe that the effect over comments later made to Mr Didi, that he should tolerate the views of Nazi's or racists, to be particularly offensive given his heritage. I do not however consider the same can be said of the conduct Ms Skordos was subjected to with regards to her heritage, or the heritage of anyone else present, or what might be said about the current political climate in Australia. To suggest, as Grove CC does, that Ms Skordos offence was "compounded" by her personal circumstances (a reference to her heritage as an migrant) or because other employees were present who were themselves immigrants is a submission of little merit. There was evidence before me, which was uncontested, that Ms Skordos stood not far away from an actual self-proclaimed Nazi, filming him speak and posting it to her social media, apparently without taking the "deep offence" she claims to have experienced as a result of Mr Didi's comments.

[70] I was taken by Grove CC to the decision of Gostencnik DP (as he then was) in *Baldwin v Scientific Management Associates (Operations) Pty Ltd*<sup>66</sup>. This decision is one of a number of decisions of the Commission which explore the extent to which offensive comments made in the workplace might constitute a valid reason for dismissal. Many of these decisions, including *Baldwin*, involve a profane or otherwise inappropriate statement made by a person directed against another in an attacking manner. The altercation between Mr Didi and Ms Skordos is different. Things of offense were said, but not by way of attack, they were said through discussion – albeit an unpleasant workplace discussion – but they were not abusive.

[71] Below, I discuss how I consider that the harshness of Mr Didi's dismissal is accentuated because the circumstances of his dismissal are worse for him, than they would be for a person of different background and circumstances. This should not be confused with a determination that Mr Didi's conduct should be judged by a different standard as to whether it constituted a valid reason for his dismissal. In my view, Mr Didi did engage in conduct which caused offense to another employee and was unpleasant. However, the conduct he engaged in, which involved

an altercation with another employee, was when the context of that altercation is taken into account not of a nature sufficient to justify the termination of his employment and was not therefore a valid reason for his dismissal.

***Breach of policy and serious misconduct***

[72] Grove CC submit that Mr Didi's conduct was "antithetical to The Grove's values and applicable policies and procedures"<sup>67</sup>. While the termination letter does not refer specifically to policy, it says that Mr Didi is "not entitled to use abhorrent and offensive language towards a colleague" - likely a reference to the policies referred to in Ms Abbotto's evidence. This particular submission was not expanded upon at hearing where, to a large extent, Grove CC sought to rely on its written submissions. The submission, and Ms Abbotto's assertion in the letter, is based on the proposition that Mr Didi engaged in the more direct formulation of his statements towards Ms Skordos that she asserts – but that he denies.

[73] Whether even on Ms Skordos' version, Mr Didi's language could be characterised as "abhorrent and offensive" is questionable. But in circumstances where, as I have explained, I prefer the version of Mr Didi's conduct asserted by him over Ms Skordos' version, Grove CC's submission that his conduct was in breach of its policies is considerably weakened.

[74] Even if it could be said that a person working at the Grove CC who says to a colleague words to the effect that "if you march with a Nazi, you look like one" is a breach of policies such as its Handbook, its Code of Conduct or its Mental Health Wellbeing and Safety Policy, I do not consider this provides Grove CC with a valid reason to terminate Mr Didi's employment. Conduct engaged in by an employee that is inconsistent with an employer's lawful policies might often constitute a valid reason for dismissal, but not always, and regard must be had to the circumstances<sup>68</sup>. In the circumstances before me, the two-way conversation I have described that ensued between Mr Didi and Ms Skordos may have amounted to conduct engaged in by Mr Didi whose inconsistency with Grove CC's policies is incidental at best, not wilful (in the sense of any breach) and not of a kind that amounted to conduct inconsistent with his contract of employment

[75] The termination letter provided to Mr Didi characterised his behaviour as "serious misconduct". In its submissions, Grove CC did not expand on this proposition. For the reasons outlined above, I do not consider Mr Didi's conduct constituted misconduct, serious or otherwise.

***The Union visit***

[76] I do not consider the evidence supports the submission of Mr Didi, that the reason for the termination of his employment was not valid, because it was based at least in part on retaliation for his Union activity. The submission is based on the proposition that I should draw an inference from the proximity in time between the Union visit and the termination of Mr Didi's employment, informed to some extent by the rather cryptic (and unexplained) comment made by Ms Owen-Abboto to him that he was being "rather challenging" lately. However, Ms

Abbotto's evidence in this regard, that, as the decision maker, this played no part in her thinking defeats any such inference being drawn.

***Conclusion: valid reason***

[77] The absence of a valid reason for the termination of Mr Didi's employment relating to his capacity or conduct weighs in favour of a determination that his dismissal was unfair.

**Was Mr Didi notified of the reason for dismissal?**

[78] 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>69</sup>.

[79] In this matter, Mr Didi was involved in the incident with Ms Skordos outlined above on 20 October 2025, and later that day had the meeting with Ms Owen-Abbotto and Ms De Silva also described. The following day was his rostered day off, and then on 22 October 2025 when he arrived at work, he was required to attend another meeting with Ms Owen-Abbotto and Ms De Silva. He was told his employment was terminated and given the letter from Ms Abbotto. He returned his keys and other items belonging to Grove CC and was escorted off the premises.

[80] Thus, Mr Didi learned of the reason for his dismissal when he read the letter, at or likely soon after this meeting, in which his employment was terminated. He was not notified of the reason before the decision was made or communicated to him. These circumstances weigh in favour of finding that the termination of Mr Didi's employment was harsh, unjust and unreasonable.

**Was Mr Didi given an opportunity to respond to the valid reason?**

[81] 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>70</sup>.

[82] 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>71</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>72</sup>.

[83] In the circumstances as related above, this clearly did not happen in Mr Didi's case. He was not given a chance to respond to the reason for his dismissal. This weighs in favour of finding that the termination of Mr Didi's employment was harsh, unjust and unreasonable.

**Did Grove CC unreasonably refuse to allow Mr Didi to have a support person present to assist at discussions relating to the dismissal?**

[84] In the discussion with Ms Owen-Abbotto and Ms De Silva on 20 October 2025, Mr Didi asked that a support person be present. Ms Owen-Abbotto said “no you can’t” and suggested that Ms De Silva was Mr Didi’s support person. Mr Didi said that she was not his support person, and when asked who he wanted as a support person, nominated a colleague, Ms Williams. Ms Owen-Abbotto said that he could not have Ms Williams as a support person because if she was on her break, her personal break time should not be taken up, and if she was “on the floor” then she needed to be with the children. There was no evidence that any effort was made to check with Ms Williams as to whether she was on her break and willing to attend the meeting or otherwise engaged.

[85] In my view, this meeting was of the type envisaged by s 387(d) of the Act, because it involved discussions which related to the eventual dismissal of Mr Didi only two days later – indeed the meeting was specifically about the incident for which he was later dismissed.

[86] There is no doubt Mr Didi requested a support person – thus this is the scenario in which s 387(h) of the Act is described as being a “relevant consideration” by the Explanatory Memorandum to the *Fair Work Bill 2008*<sup>73</sup>.

[87] On the evidence before me, Ms Owen-Abbotto’s refusal to allow Mr Didi to have a support person present, when he requested it, was cursory and dismissive. There is no evidence before me to support the notion that the colleague Mr Didi requested support him could not have been asked to attend and been facilitated to do so for a short period of time.

[88] Grove CC submitted that that it was not unreasonable for it to refuse to allow Mr Didi to have Ms Williams as his support person because, “she was, at the time of the meeting, caring for children at the service and/or on her break”<sup>74</sup>. The form of this submission, using as it does the conjunctive-disjunctive coordinator “and/or”, serves to emphasise the fact that no-one actually knows whether Ms Williams was on her break, or “caring for children”, or otherwise engaged, or otherwise available – because no-one checked.

[89] In my view the evidence supports the conclusion that Mr Didi did request to have a support person present during this meeting, that it did involve discussions relating to his dismissal, that Grove CC refused to allow him to have a support person present and did so unreasonably.

[90] This matter weighs in favour of a determination that the dismissal of Mr Didi’s employment was harsh, unjust and unreasonable.

### **Was Mr Didi warned about unsatisfactory performance before the dismissal?**

[91] Mr Didi was not dismissed relating to his work performance. This matter is of neutral weight in my consideration of this matter.

**To what degree would the size of Grove CC’s enterprise or the absence of human resources management specialists or expertise would be likely to impact on the procedures followed in effecting the dismissal?**

[92] Among the factors the Commission is to consider in determining whether a termination of employment is harsh, unjust or unreasonable is 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 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<sup>75</sup>.

[93] Grove CC submitted that it is not a large and sophisticated employer and the Commission should have regard to this in assessing the termination procedures<sup>76</sup>.

[94] This submission is not without merit. Grove CC is not a large employer. It does have what appear to be reasonably well-developed human resources policies and procedures, but the incompetent approach to the termination of Mr Didi's employment is indicative of a significant lack of human resource expertise at Grove CC.

[95] However, 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>77</sup>. Several of the particular failings with respect to the procedures followed in effecting Mr Didi's dismissal do not appear to me to arise from a lack of human resources expertise: they occurred because of a failure to act with a basic standard of decency. A lack of human resources expertise does not excuse the clumsy and supercilious directive that Mr Didi should be inclusive of the views of Nazi's. It also does not excuse or explain the failure by Ms Abbotto – the decision maker – to even speak to Mr Didi about the conduct upon which she based her decision to terminate his employment.

[96] I do not consider the factors set out in ss 387(f) and (g) weigh against a finding that the termination of Mr Didi's employment was unfair.

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

[97] I consider several further matters should be considered, pursuant to s 387(h) of the Act in relation to the termination of Mr Didi's employment.

#### ***Summary dismissal***

[98] A termination of employment occurring summarily may be a factor taking into account by the Commission in assessing the harshness of a dismissal<sup>78</sup>.

[99] Mr Didi submitted the summary nature of his dismissal made his dismissal particularly harsh, also taking into account he was denied a notice period of payment in lieu of that period<sup>79</sup>. I accept this submission and it weighs further in favour of the conclusion that his dismissal was unfair.

#### ***The comments made by Ms Owen-Abbotto leading into the termination of employment***

[100] I have described the nature of the “March for Australia” protests above, including as to how they were portrayed publicly, and were seen by people such as Mr Didi. Mr Didi’s evidence was that these matters were “extremely disturbing and upsetting to me”<sup>80</sup>. I accept this evidence. In circumstances where Mr Didi immigrated to Australia when he was 15 years of age from the Maldives, and made a life for himself in Australia as a person from a South-Asian, non-English speaking background, it is reasonable to conclude the protests negatively impacted upon him – particularly the involvement of people such as neo-Nazi’s, who subscribe to and promulgate racist views.

[101] I therefore consider the directive given to Mr Didi by his centre manager, Ms Owen-Abbotto, that he be “inclusive of all opinions, including racist and Nazi opinions” to be extraordinarily insensitive, humiliating and harsh – accentuated by Mr Didi’s heritage – which was known to Ms Owen-Abbotto. This damage was then reinforced by Grove CC management, through a decision to summarily terminate Mr Didi’s employment, perfunctorily effected not by the person who made the decision (Ms Abbotto) but again through Ms Owen-Abbotto and Ms De Sliva.

[102] I consider these circumstances weigh further in favour of a conclusion that the Mr Didi’s dismissal was harsh.

*Impact of the dismissal on Mr Didi’s personal and economic circumstances*

[103] Given that Mr Didi’s employment was terminated so abruptly it was likely impossible to avoid the circumstances of his dismissal causing innuendo and speculation about him within the Grove CC and surrounding community. Mr Abbotto said in her evidence that families of children attending the centre were communicated “appropriate details to your sudden departure”, and that she did not feel it appropriate to “provide context unnecessarily, to also protect your confidentiality of such matters”. She said families that “did express particular concern as to your sudden departure were personally spoken to, to ensure and to provide confirmation that your dismissal was not in relation to a matter of any heinous nature such as child related issues or concerns”<sup>81</sup>. She said further “there was appropriate communications that were released to families around your sudden departure, which is our consistent practice to those families, and we were very mindful, as we always are, to ensure that we protect your confidentiality. So our approach was respectful, it was considerate, and to those families that did raise individual concern we addressed those independently.”<sup>82</sup>

[104] Mr Didi submitted that the dismissal is harsh in light of the current employment context for male early childhood educators in Australia<sup>83</sup>. On the basis of Ms Abbotto’s evidence, I consider Grove CC attempted to handle the matter with a level of sensitivity, but I also consider there is merit in Mr Didi’s submission that the nature of the dismissal likely did harm to his reputation, making the impact of the dismissal more acute in circumstances where he is a male educator working in a female dominated sector.

[105] At hearing, Mr Didi said that he has been unable to secure new employment in the early childhood education and care sector.

[106] All of this is particularly unfortunate. I consider the evidence supports the notion that Mr Didi was a reasonably senior and well-regarded member of his profession. Even in the face of having been subjected to what I consider to have been humiliating treatment by Grove CC, he conducted himself with dignity, even (after having been told to more tolerant to Nazi's) conceding that "it was not the best idea to speak with Stella about this topic in a shared space like the staff room, and that I could see how what I had said could hurt Stella's feelings."<sup>84</sup>

[107] It is well established that the effect of the dismissal on the personal or economic situation of an employee may be taken into account in the Commission's determination of whether the termination is harsh, unjust or unreasonable<sup>85</sup>. I consider that the economic impact of his sudden unemployment, coupled with the likely impact upon his reputation in the sector adds to the harshness of the termination of Mr Didi's employment.

**Is the Commission satisfied that the dismissal of Mr Didi was harsh, unjust or unreasonable?**

[108] Several of the factors set out in s 387 of the Act weigh in favour of the conclusion that the termination of Mr Didi's employment was unfair – some particularly so. None weigh against this conclusion. Having considered each of the factors set out in s 387 of the Act, I am satisfied that the termination of Mr Didi's employment was harsh, unjust and unreasonable.

**Remedy**

[109] Being satisfied that Mr Didi made an application for an order granting a remedy under s 394, was a person protected from unfair dismissal, and was unfairly dismissed within the meaning of s 385 of the Act, I may, subject to the Act, order Mr Didi's reinstatement, or the payment of compensation to Mr Didi.

[110] I must not order the payment of compensation to Mr Didi 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<sup>86</sup>.

**Is reinstatement appropriate?**

[111] Mr Didi does not seek reinstatement, and it is opposed by Grove CC. I find in these circumstances that reinstatement is inappropriate.

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

[112] Mr Didi has suffered financial loss in circumstances where I have found he was unfairly dismissed. Whilst it does not automatically follow that a payment of compensation is appropriate<sup>87</sup>, Mr Didi has plainly suffered financial loss as a result of the dismissal, and 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?**

[113] 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 Mr Didi in lieu of reinstatement including:

- a. the effect of the order on the viability of Grove CC;
- b. the length of Mr Didi's service;
- c. the remuneration that Mr Didi would have received, or would have been likely to receive, if he had not been dismissed;
- d. the efforts of Mr Didi (if any) to mitigate the loss suffered because of the dismissal;
- e. the amount of any remuneration earned by Mr Didi 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 Mr Didi 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.

[114] I consider each of these matters below.

**Effect of the order on the viability of the enterprise.**

[115] The onus is on Grove CC to provide evidence as to the likely effect that an order of compensation will have on the viability of the business<sup>88</sup>. There was no such evidence. I do note that Grove CC is not a large business, so presumably, an order of compensation will have some impact on its business. But in the absence of any evidence as to this impact relating to its "viability" I do not consider it appropriate to change or reduce the amount of compensation I intend to order in this matter having regard to this factor.

**Length of Mr Didi's service**

[116] Mr Didi was employed at Grove CC for about four and-a-half years. This is not an insignificant length of service and weighs in favour of an order of compensation being made in this matter.

**Remuneration that Mr Didi would have received, or would have been likely to receive, if he had not been dismissed.**

[117] In determining the remuneration that Mr Didi would have received, or would have been likely to receive, I am required to address myself to the question of whether if Mr Didi'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>89</sup>.

[118] Grove CC submitted that if its factual case was established, it is reflective of Mr Didi being a person to engage in “very heated exchanges”<sup>90</sup>. Presumably, I am to conclude from this proposition that had Mr Didi’s employment not been terminated, it would not have continued for an extended period of time, because he would likely have engaged in further “heated exchanges”, eventually leading to the end of his employment.

[119] I do not consider this submission is supported by the evidence. I do not consider, on the evidence, that Mr Didi was a person who was frequently involved in “very heated exchanges”. I do not consider the incident with Ms Skordos to have been a “very heated exchange”. There was no evidence before me of any other incident like this one. Mr Didi presented as having a calm and considered demeanour.

[120] The incident with Ms Skordos is not one, in my view, that signalled a deterioration in working relationships such that it might threaten the viability of Mr Didi’s ongoing employment. I note in particular that in his meeting with Ms Owen-Abbotto, Mr Didi very quickly expressed an understanding that he may have hurt Ms Skordos’ feelings, even in the face of the offensive things that had been said to him in that meeting, which suggests to me the likelihood that Mr Didi would have had the maturity and emotional intelligence to overcome the incident with Ms Skordos and repair his relationship with her.

[121] Mr Didi said that in his conversation with Ms Owen-Abbotto, she said “you have been quite challenging for us lately”. But there is no evidence before me as to what this comment meant, and the evidence that is before me suggests that Mr Didi was a reasonably senior educator within the Grove CC’s staff and well regarded.

[122] There was also some evidence that later on 20 October 2025, in a subsequent conversation with Ms Owen-Abbotto, there was a discussion with Mr Didi about which kindergarten room he would like to teach the following year, and which educators he would like to have in his room.

[123] Mr Didi submitted that a reasonable prediction as to how long he may have continued to work at Grove CC, had he not been dismissed, is two years<sup>91</sup>.

[124] In all the circumstances, I consider that it reasonable to surmise that Mr Didi’s employment would have continued for the rest of 2025, and in 2026 he would have returned to take responsibility for a kindergarten room or program at Grove CC. as was discussed with Ms Owen-Abbotto. There is no evidence before me to support a suggestion that Mr Didi would not have continued to work throughout 2026 to deliver that program to the end of the year. I consider it appropriate to predict that Mr Didi would have continued to work for at least a further 14 months at Grove CC, had his employment not ended through dismissal.

[125] Mr Didi asserted that his ordinary weekly wage was \$1,579.28 per week and no issue appeared to be taken with that assertion. Using this amount as the basis of the calculation, the

remuneration Mr Didi would have been likely to receive working for Grove CC for a further 14 months is \$88,439.00 gross (plus superannuation). I note that this calculation does not take into account Award increases in Mr Didi's remuneration that would have occurred in 2026. As will become evident, this is unlikely to affect the ultimate calculation and the figure I have calculated is sufficient as an indicative amount, to undertake the assessment of compensation that should be awarded to Mr Didi.

### **Efforts of Mr Did to mitigate the loss he suffered because of the dismissal**

[126] Mr Didi's evidence was that following his dismissal, he has applied for a number of positions in the ECEC sector. In their closing submissions, Grove CC characterised his evidence as indicating he had made on average about one application per week in the four months that had elapsed since dismissal<sup>92</sup> (which I consider is accurate, on Mr Didi's evidence). Mr Didi said he had applied for a range of positions, including lower qualified early childhood teacher, agency and casual jobs<sup>93</sup>.

[127] It was put to Mr Didi in cross examination that he could have applied for more positions, to which he conceded that he could have<sup>94</sup>. In its submissions, Grove CC said that Mr Didi's attempts at mitigating his loss were such that it is a reason the "compensation cap might be reduced"<sup>95</sup>.

[128] Grove CC also referred to the fact that it had made an "open offer" to Mr Didi to resolve this matter, which had not been accepted. I will deal further with this "open offer" below. To some extent, as I understand it, Grove CC says that Mr Didi's refusal to agree to this offer was further failure to mitigate the loss he suffered because of the dismissal.

[129] There is no single specific approach or formula as to the discretion the Commission exercises in considering the effort of an Applicant to mitigate their loss suffered because of a dismissal<sup>96</sup>. The reasonableness of the efforts taken to mitigate loss depend on the circumstances of the case<sup>97</sup>.

[130] I did not consider Mr Didi's "concession" that he could have applied for more jobs than the number he did apply for to be anything other than a statement of the obvious. In my view, his efforts to secure another job – making on average an application each week – were entirely reasonable efforts to mitigate his loss arising from the dismissal.

[131] The proposition that I should consider Mr Didi's refusal to accept an offer of settlement as an unreasonable failure to mitigate his losses would, if the submission has any merit at all, require me to engage in an inquiry as to the reason for his refusal to agree. There is no evidence before me as to why Mr Didi refused the offer. I cannot do anything but infer, based on the urging of Grove CC, that it was unreasonable that he refused the offer. I do not consider it appropriate that I do so.

[132] There is no basis to discount the compensatory amount to be ordered to Mr Didi arising from his efforts to mitigate the loss arising from dismissal.

**Amount of remuneration earned by Mr Didi from employment or other work during the period between the dismissal and the making of the order for compensation.**

[133] At hearing, Mr Didi said he had not earned any income since the termination of his employment. On 22 April 2026 I contacted the parties and asked Mr Didi to provide information about whether he had earned any income since the hearing. Grove CC was afforded the opportunity to comment on Mr Didi's reply. Mr Didi said he has not earned any income since the termination of his employment. Grove CC had no comment about this information.

[134] On this basis, there is no remuneration amount earned by Mr Didi since his dismissal to take into account.

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

[135] The Order I intend to make in this matter will be expressed such that it must be complied with within 14 days. It appears unlikely Mr Didi will earn any income during this period.

**Other relevant matters and misconduct.**

[136] As I understood his submissions, Mr Didi said that the dismissal of his employment was extremely harsh, and the Commission's order of compensation should reflect the egregiousness of the termination of his employment. The amount ordered by the Commission must not include a component by way of compensation for shock, distress or humiliation, "or other analogous hurt", caused to the person by the manner of the person's dismissal.<sup>98</sup> I have not included any component in the calculated amount in respect of these matters.

[137] As mentioned above, Grove CC submitted that in circumstances where it has made an "open" offer of settlement to Mr Didi, that has been refused, the amount of compensation ordered to Mr Didi should be discounted, having regard to his efforts to mitigate his loss (discussed above) and also having regard to s 392(2)(g) of the Act, which provides that in determining an amount of the purposes of a compensation order, the Commission should take into account all the circumstances of the case, including "any other matter that the FWC considers relevant". It submitted that putting the Respondent to the cost it has occurred in defending the proceeding, and causing the Commission to give its time to hear the matter is in these circumstances "to be discouraged" and the sensible resolution of matters to be encouraged<sup>99</sup>.

[138] I do not accept this submission. Sections 399A and 610 of the Act deal with the question of costs. And I do not consider it appropriate, nor do I think there is sufficient evidence before me to allow me to engage in a subjective analysis of the basis upon which Mr Didi has refused an offer of settlement in this matter such that it might ground the notion that his refusal was unreasonable, and should lead to a discount in the amount of compensation I intend to award in this matter. I do not consider this matter relevant to the formulation of the order of compensation I intend to make in this matter.

[139] Section 392(3) of the Act provides that if the Commission is satisfied that the misconduct of a person contributed to the employer's decision to dismiss them, the amount otherwise ordered in relation to compensation should be reduced by an appropriate amount.

[140] Grove CC submitted that any amount of compensation awarded to Mr Didi in this matter should be reduced, because he engaged in misconduct within the meaning of s 392(3) of the Act.

[141] The term "misconduct" as it is used in s 392(3) is not defined. In *Butterfly Systems Pty Ltd v Sergeev*<sup>100</sup>, a Full Bench of the Commission appeared to approve the notion that misconduct "connotes positive and intentional wrongdoing whereas other grounds for dismissal, such as incompetence and neglect, do not involve intentional misconduct". It is also necessary that the Commission be satisfied the misconduct contributed to the employer's decision to dismiss<sup>101</sup>.

[142] I am not satisfied that Mr Didi engaged in misconduct, which contributed to his employer's decision to dismiss him, such that the amount of compensation I intend to award in this matter should be reduced. I accept that the conduct Grove CC attributed to Mr Didi contributed to its decision to dismiss him. But as I have explained above, this conduct was misconstrued by Ms Abbotto, and the conduct she thought Mr Didi engaged in did not occur. In my view, and for the reasons set out above, the conduct he did engage in was not, when examined in context, "positive and intentional wrongdoing" and was not misconduct

#### **Application of the *Sprigg* formula.**

[143] Below, I adopt the *Sprigg* formula to calculate the amount of compensation which should be awarded to Mr Didi in respect to this matter<sup>102</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**

[144] I have estimated that Mr Didi would have remained employed by Grove CC for at least a further 14 months. The remuneration Mr Didi would have received or would have been likely to have received during this period is at least \$88,439.00 gross plus superannuation.

## **Step 2**

[145] At hearing, Mr Didi confirmed he had not earned any income since the termination of his employment. As I have explained above, Mr Didi has since confirmed he has not earned any income since hearing. There is no amount to deduct, in the form of monies earned since termination.

## **Step 3**

[146] The application of the *Sprigg* formula in this matter does not involve a significant exercise in speculation. There is a sound basis to forecast that, but for his dismissal, Mr Didi would have continued in his employment for the rest of 2025 and, throughout 2026. I do not consider it appropriate to apply a discount to the amount of compensation I have calculated for contingencies. In this regard, I note the submissions made by Grove CC as to Mr Didi's efforts to mitigate his loss arising from dismissal, but for the reasons explained above, do not consider this matter warrants a discount from the calculated amount. For the reasons set out above, I do not consider it appropriate or necessary to discount the amount for any other reason, including misconduct.

[147] I note that even if I am wrong about my view that there need be no deduction for contingencies, given the anticipated period of employment and the operation of the compensation cap, a deduction would likely not have any impact on the Order I consider it is appropriate to make in this matter.

## **Step 4**

[148] I have considered the impact of taxation but have elected to settle a gross amount of compensation, plus superannuation, and leave taxation for determination.

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

[149] The compensation cap<sup>103</sup> in this matter is the total amount of remuneration received by Mr Didi or to which he was entitled in the 26 weeks immediately before the dismissal. At \$1,579.28 per week this is \$41,061.28.

[150] The application of the compensation cap therefore requires a reduction in the calculated amount to \$41,061.28.

### **Is the level of compensation appropriate?**

[151] 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>104</sup>, taking into account the operation of the compensation cap.

[152] The application of the *Sprigg* formula has resulted in an outcome where Mr Didi would be awarded compensation of \$41,061.28, plus superannuation, taking into account the operation of the cap.

[153] 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**

[154] Given my findings above, I will make an Order that Grove CC must pay Mr Didi \$41,061.28 less taxation as required by law, plus a superannuation contribution into his nominated fund of \$4,927.35, within 14 days of the date of the Order.

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



COMMISSIONER

*Appearances:*

*M. Didi* appearing for himself

*A. Crocker*, of Counsel, for the Respondent

*Hearing details:*

2026  
Melbourne  
18 February

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- <sup>1</sup> Witness Statement of Amru Mohamed Didi 23 January 2026 [11] – [14]
- <sup>2</sup> Witness Statement of Stella Skordas, 10 February 2026, [36]
- <sup>3</sup> Witness Statement of Stella Skordas [19(a)], [22]
- <sup>4</sup> Ibid [19](a)
- <sup>5</sup> Ibid [19(b)], [22], [30]
- <sup>6</sup> Witness Statement of Amru Mohamed Didi [25(l)]
- <sup>7</sup> Ibid [28(d)]
- <sup>8</sup> Ibid [25(a) – (c)]
- <sup>9</sup> Ibid [25(e)]
- <sup>10</sup> Ibid [25(f)]
- <sup>11</sup> Witness Statement of Stella Skordas [37(c)]
- <sup>12</sup> Ibid [21(b)]
- <sup>13</sup> Ibid [24]
- <sup>14</sup> Ibid [23]
- <sup>15</sup> Supplementary Statement of Amru Mohamed Didi, 17 February 2026, [36]
- <sup>16</sup> Witness Statement of Amru Mohamed Didi [25(h), (i)]
- <sup>17</sup> Ibid [25(a) – (a)]
- <sup>18</sup> Ibid [25(d)]
- <sup>19</sup> Witness Statement of Stella Skordas [20]
- <sup>20</sup> Supplementary Statement of Amru Mohamed Didi [26]
- <sup>21</sup> Transcript PN200 – PN210
- <sup>22</sup> Transcript PN449
- <sup>23</sup> Witness Statement of Stella Skordas [32]
- <sup>24</sup> Ibid [33]
- <sup>25</sup> Some of the media reports were referred to in Mr Didi’s submissions: Applicant’s Outline of Submissions [20] I have also considered it appropriate to take what is sometimes referred to as “judicial notice” of several of these and other media reports, whose existence is not reasonably open to question: see *Gattellaro and Another v Westpac Banking Corporation* [2004] HCA 6 [15] – [19]
- <sup>26</sup> March for Australia (Web Page, 29 April 2026) <[March for Australia](#)>
- <sup>27</sup> ABC News. (27 August 2025). Investigation finds links between white nationalist views and March for Australia Organisers: <https://www.abc.net.au/news/2025-08-28/who-is-behind-march-for-australia-anti-immigration-rallies/105657548>
- <sup>28</sup> The Guardian. (2 September 2025). How neo-Nazis used the shield of ‘ordinary mums and dads’ anti-immigration rallies to sell white supremacy: [How neo-Nazis used the shield of ‘ordinary mums and dads’ anti-immigration rallies to sell white supremacy | Far right | The Guardian](#)
- <sup>29</sup> SBS News. (31 August 2025). Arrests made as protesters clash at anti-immigration rallies — as it happened. <https://www.sbs.com.au/news/live-blog/march-for-australia-anti-immigration-rallies-live-blog/pv3zoq0p5>
- <sup>30</sup> SBS News. (1 September 2025). Thousands rally against immigration with neo-Nazis taking the spotlight: [Thousands rally against immigration with neo-Nazis taking the spotlight | SBS News](#)
- <sup>31</sup> Transcript PN414
- <sup>32</sup> The Guardian. (1 September 2025). Neo-Nazis attack indigenous protest site after anti-immigration rally in Melbourne as officer allegedly assaulted in Sydney: [Neo-Nazis attack Indigenous protest site after anti-immigration rally in Melbourne as officer allegedly assaulted in Sydney | Australian immigration and asylum | The Guardian](#)

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- <sup>33</sup> NITV (SBS). (4 September 2025) ‘We were terrorised’: Teacher describes brutal neo-Nazi assault at Camp Sovereignty: [‘We were terrorised’: Teacher describes brutal neo-Nazi assault at Camp Sovereignty | SBS NITV](#)
- <sup>34</sup> ABC News (4 September 2025) Seven men charged over Camp Sovereignty attack, Neo-Nazi leader held in custody: [Seven men charged over Camp Sovereignty attack, Neo-Nazi leader held in custody - ABC News](#)
- <sup>35</sup> Witness Statement of Amru Mohamed Didi [9]
- <sup>36</sup> Neos Kosmos (3 June 2025). Neo-Nazis target Northland Shopping Centre after gang brawl: [Neo-Nazis target Northland Shopping Centre after gang brawl - Neos Kosmos](#)
- <sup>37</sup> Witness Statement of Amru Mohamed Didi [8] – [9]
- <sup>38</sup> Ibid [35]
- <sup>39</sup> Supplementary Statement of Amru Mohamed Didi [41]
- <sup>40</sup> Transcript PN311 – PN312, PN 319
- <sup>41</sup> Transcript PN308
- <sup>42</sup> Transcript PN347 - 349
- <sup>43</sup> Witness Statement of Daniela Abbotto, 11 February 2026 [12(a)]
- <sup>44</sup> Ibid at [11(c)]
- <sup>45</sup> Ibid at [12 (a)-(d)]
- <sup>46</sup> Ibid at [13(b)]
- <sup>47</sup> Ibid at [14]
- <sup>48</sup> Outline of Submission in Reply Amru Mohamed Didi, p.4
- <sup>49</sup> Ibid
- <sup>50</sup> Transcript PN374
- <sup>51</sup> *Sayer v Melsteel Pty Ltd* [2011] FWA 7498 [14]
- <sup>52</sup> *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371 [373]
- <sup>53</sup> Print R4471
- <sup>54</sup> *Edwards v Giudice* [1999] FWC 1836 [7]
- <sup>55</sup> *Raj Bista v Glad Group Pty Ltd t/a Glad Commercial Cleaning* [2016] FWC 3009 [34]
- <sup>56</sup> *Kylie Smith v Bank of Queensland Ltd* [2021] FWC 4 [124], [126]
- <sup>57</sup> *Walton v Mermaid Dry Cleaners Pty Ltd* (1996) 142 ALR 681 [685]
- <sup>58</sup> The Grove’s Outline of Submissions, 11 February 2026, [28]
- <sup>59</sup> Ibid [29]
- <sup>60</sup> Ibid [30]
- <sup>61</sup> Ibid [31]
- <sup>62</sup> Transcript PN639
- <sup>63</sup> The Grove’s Outline of Submissions [32] – [33]
- <sup>64</sup> *MM Cables v Zammit* AIRC Full Bench Print S8106
- <sup>65</sup> *Laing O’Rourke Australia Management Services Pty Ltd v Haley* [2024] FCA 1323 [562] – [564]; citing *Civil Aviation Safety Authority v Boatman* [2006] FCA 460 per Madgwick J [44]
- <sup>66</sup> [2014] FWC 5174
- <sup>67</sup> The Grove’s Outline of Submissions [31]
- <sup>68</sup> *Reece Goodsell v Sydney Trains* [2023] FWC 3209; *Sydney Trains v Gary Hilder* [2020] FWC 1373; *Mt Arthur Coal Pty Ltd t/a Mt Arthur Coal v Jodie Goodall* [2016] FWC 5492 [63]; *B, C and D v Australian Postal Corporation T/A Australia Post* [2013] FWC 6191 [36]; [48] – [51]
- <sup>69</sup> *Newton v Toll Transport* [2021] FWC 3457 [182]
- <sup>70</sup> *Crozier v Palazzo Corporation* (1996) 98 IR 137 [73]
- <sup>71</sup> *RMIT v Asher* (2010) 194 IR 1 [14] – [15]

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- <sup>72</sup> *Gibson v Bosmac Pty Ltd* (1995) 60 IR 1 [7]
- <sup>73</sup> Explanatory Memorandum, *Fair Work Bill 2008* [1541]; see also *Richardson v MPB (WA) Pty Ltd (as trustee for the Sun Laundry Services Unit Trust)* [2020] FWCFB 2219 [42]
- <sup>74</sup> The Grove's Outline of Submissions [39]
- <sup>75</sup> *Fair Work Act* ss 387(f) and (g)
- <sup>76</sup> The Grove's Outline of Submissions [42]
- <sup>77</sup> *Pecker Maroo Verano Pty Ltd v Stevens* [2024] FWCFB 147 [110]
- <sup>78</sup> *Department of Employment and Workplace Relations v Oakley* (2004) 137 IR 321; AIRC [PR954267](#) [45]
- <sup>79</sup> Applicant's Outline of Submissions [58]
- <sup>80</sup> Witness Statement of Amru Mohamed Didi [8]
- <sup>81</sup> Transcript PN347
- <sup>82</sup> Transcript PN349
- <sup>83</sup> Applicant's Outline of Submissions [60]
- <sup>84</sup> Witness Statement of Amru Mohamed Didi [33(cc)]
- <sup>85</sup> *Ricegrowers Co-operative v Schliebs* [PR908351](#) (AIRC FB Duncan SDP, Cartwright SDP, Larkin C, 31 August 2001) [26]
- <sup>86</sup> *Fair Work Act 2009* s 390(3)
- <sup>87</sup> *Nguyen v Vietnamese Community in Australia t/a Vietnamese Community Ethnic School South Australia Chapter* [2014] FWCFB 7198 [9]
- <sup>88</sup> *Vickery v Assetta* [2004] FCA 555; *D.A. Moore v Highpace Pty Ltd* (1998) Print Q0871
- <sup>89</sup> *He v Lewin* [2004] FCAFC 161 [58]
- <sup>90</sup> Transcript PN725
- <sup>91</sup> Witness Statement of Amru Mohamed Didi [65(a)]
- <sup>92</sup> Transcript PN732
- <sup>93</sup> Transcript PN248
- <sup>94</sup> Transcript PN732
- <sup>95</sup> Transcript PN732
- <sup>96</sup> *Rohan Veal v Sundance Marine Pty Ltd as trustee for Sundance Unit Trust T/A Sundance Marine* [2013] FWCFB 5205
- <sup>97</sup> *McCulloch v Calvary Health Care Adelaide* [2015] FWCFB 2267 [57]
- <sup>98</sup> *Fair Work Act* s 392(4)
- <sup>99</sup> Transcript PN733 – PN734
- <sup>100</sup> [2015] FWCFB 1033 [37]
- <sup>101</sup> *Ibid* [35]; see also *Castaway Paper Products Co Pty Ltd v Miloskovski* [2025] FWCFB 195 [70]
- <sup>102</sup> *Sprigg v Paul's Licensed Festival Supermarket* (1998) 88 IR 21
- <sup>103</sup> *Fair Work Act 2009* s 392(5) and (6)
- <sup>104</sup> *Double N Equipment Hire Pty Ltd t/a A1 Distributions v Humphries* [2016] FWCFB 7206 [17]
- <sup>105</sup> [PR798016](#)