



# DECISION

*Fair Work Act 2009*

s.536LU - Application for an unfair deactivation remedy

**Zeeshan Aslam Khan**

v

**Portier Pacific Pty Ltd**

(UDE2025/185)

COMMISSIONER SLOAN

SYDNEY, 12 JANUARY 2026

*Application for an unfair deactivation remedy – applicant was protected from unfair deactivation – complaints of alleged sexual misconduct – Digital Labour Platform Deactivation Code applied – Code not complied with – deactivation unfair – order for reactivation made – parties to confer on calculation of quantum of order to restore lost pay*

[1] In November 2022, Zeeshan Aslam Khan began working as a delivery person for Portier Pacific Pty Limited (“Uber Eats”), picking up and delivering food and groceries to consumers on the Uber Delivery Platform. On 29 July 2025, Uber Eats terminated his access to that platform.

[2] On 1 August 2025 Mr Khan made an application under section 536LU of the *Fair Work Act 2009* (“Act”)<sup>1</sup> for an unfair deactivation remedy. He sought an order that his access to the Uber Delivery Platform be reinstated and that Uber Eats pay him the remuneration he lost because of the deactivation.

[3] Uber Eats opposed the application. In summary, it contended that Mr Khan’s deactivation was consistent with the Digital Labour Platform Deactivation Code (“Code”), and that as a result the Commission could not be satisfied that it was an unfair deactivation.<sup>2</sup> In the alternative, Uber Eats submitted that the deactivation was not unfair.

## Determination

[4] I find that Mr Khan was unfairly deactivated. I have determined that it is appropriate that I exercise my discretion to make an order for Mr Khan’s reactivation, together with an order that Uber Eats make a payment to Mr Khan for the remuneration he lost, or is likely to have lost, because of the deactivation.

[5] These are my reasons.

## The relevant factual context

[6] Mr Khan provided written evidence in support of his case. Uber Eats relied on a statement of Emilee Fairlie, Senior Manager, Industrial Relations at Uber Australia Pty Ltd. Each of Mr Khan and Ms Fairlie gave additional oral evidence at the hearing.

***Mr Khan’s engagement with Uber Eats***

[7] Mr Khan first began performing work through the Uber Delivery Platform on 23 November 2022. He did so under a “delivery person agreement” with Uber Eats and its affiliated entities. He subsequently entered into two further such agreements, the most recent being dated 12 May 2024 (“Delivery Person Agreement”).<sup>3</sup>

[8] The Delivery Person Agreement required Mr Khan, when providing delivery services, “at all times do so safely and in a professional manner with due skill, care, courtesy and diligence” and to comply with the Uber Community Guidelines Australia and New Zealand (“Community Guidelines”).<sup>4</sup> It provided that Mr Khan’s access to the “Uber Driver App” could be restricted and removed immediately if he violated the Community Guidelines or engaged in conduct which had the potential to cause issues that could detrimentally impact the reputation, good name or brand of Uber Eats and its affiliates.<sup>5</sup>

[9] Mr Khan accepted that he was aware of these provisions of the Delivery Person Agreement.

[10] The Community Guidelines include the following:<sup>6</sup>

“Our guidelines were developed to help make every experience feel safe, respectful and positive. ...

...

**Treat everyone with respect**

...

... We believe that everyone should feel supported and welcomed when interacting with others in the Uber community. That’s why we’ve created standards and policies on physical contact, inappropriate conduct and sexual assault and misconduct, threatening and rude behaviour, post-trip contact, discrimination and property damage.

...

**Inappropriate conduct and sexual assault and misconduct**

We all value our personal space and privacy. It’s OK to chat with other people. But please don’t comment on someone’s appearance or ask whether they are single or about their personal circumstances. Be mindful that people may not appreciate being asked about their personal life, including about children, work, where they live or their relationship status.

Sexual assault and sexual misconduct of any kind is prohibited. Sexual assault and misconduct refers to sexual contact or behaviour without explicit consent of the other person.

Personal space and privacy should be respected at all times. The following list provides examples of inappropriate conduct but is not exhaustive:

- Do not engage in behaviours or make comments that could make people feel uncomfortable.
- Do not ask personal questions (for example, about relationship status or sexual orientation). Certain conversations that could be perceived as harmless can be offensive. Avoid discussions about your own or someone else's sex life, using explicit language, or making jokes about sex.
- ...
- Do not flirt (for example, nonverbal [e.g., nudges, whistles, winks], suggestive flirting, or being too physically close).
- ...
- Any sexual conduct. Uber has a no-sex rule regardless of whether you know the person or they give you their consent. This includes activities such as sexual intercourse, masturbation or touching or exposure of sexual body parts.

...

### **How Uber enforces our guidelines**

Losing access to the Uber Marketplace Platform may be disruptive to your life or to your business. That's why we believe it is important to have clear standards that explain the circumstances in which you may lose access to the Uber Marketplace Platform. If you violate any applicable terms of your contractual agreement with Uber, or any other applicable policies, any one of these Community Guidelines or any additional policies and standards that are communicated by Uber to you from time to time, you can lose access to all or part of the Uber Marketplace Platform. ...”

[11] Mr Khan accepted that he was familiar with the terms of the Community Guidelines.

[12] I note for completeness that Uber Eats placed reliance on a document titled “Understanding why driver partners and delivery people lose account access” dated 27 August 2023. Uber Eats submitted that the document “provides additional information about the most common reasons why Delivery People lose access to their accounts, how to avoid it and what to do if it occurs”.<sup>7</sup> Ms Fairlie stated that she had reviewed and was familiar with the terms of that document. However, there is no evidence that it had been brought to Mr Khan's attention. I have given the document no weight.

## ***Reports concerning Mr Khan's behaviour***

### **2024 Complaint**

[13] On 22 August 2024, Uber Eats received a message from a person ("First User") to whom Mr Khan was said to have made a delivery ("2024 Complaint"). The message was in these terms:<sup>8</sup>

"wanted money, then said he would give me \$100 to kiss him and wouldnt take no for an answer and refused to leave and then continued to call me once i had closed the door" (reproduced verbatim)

[14] On the same day, Uber Eats sent a message to Mr Khan informing him that it had received "some concerning feedback from one of [his] trips regarding inappropriate behaviour" and that his "access to the app" had been "temporarily blocked" while the matter was reviewed.<sup>9</sup> Three minutes later, Mr Khan responded by asking why his account was on hold. There is no evidence that Uber Eats provided a substantive answer to that question.

[15] Between 22 and 23 August 2024, Uber Eats sent several messages to the First User seeking further information regarding the complaint. It also made several unsuccessful attempts to reach them by telephone.

[16] On 22 August 2024 the First User wrote: "hello i was sexually harassed do not care" *[sic]*. On 23 August 2024 they wrote: "like i already made a police report. and his reviews are low so hes obviously been doing this before" *[sic]*.

[17] On 23 August 2024 the First User sent a further message to Uber Eats in these terms:<sup>10</sup>

"oh would much rather communicate through email thank god. \n\nnumm what happened basically, the deliver driver had called me 2 times while waiting at my door (i specify to leave it) and forced me to come out to collect or else it would be cancelled. i open the door and he shows me money in his hand and asks if i want money and I say no, and he keeps asking if ill kiss him for money. he hasnt yet given me my food so i have to actually reach out towards him to take it from him. \nhe then steps towards me to show me his bank account and the money in it continuously asking for favours. i close the door on him and he calls me again once more and stands there for another 2 mins before leaving. he also sent a message thru the app &#34;em here 🤪&#34; which was just weird in itself." (reproduced verbatim)

[18] On 24 August 2024, Uber Eats sent a message to Mr Khan in these terms ("First Warning"):

"Hi Zeeshan Aslam Khan , This is [name redacted by Uber Eats] from the Community Operations team at Uber. As you may have already read in-app, following the review of the feedback that was received, I am letting you know that your access to the Uber app is now active. If you have not yet read this, please go to the homescreen of the Driver app, tap on the 'Acknowledge Community Guidelines' section, read the information

provided and then tap on the ‘I confirm my reacknowledgement’ button. As mentioned, we received a concerning report from a customer on a recent delivery that you may have made unwanted sexual comments. Please be aware that if we receive further complaints of inappropriate behaviour that breaches our Community Guidelines, either individually or establishing a pattern of inappropriate behaviour while using the Uber app, we may have to review your access to the app in accordance with the agreed-to Terms & Conditions. Ensuring that our users are safe and comfortable while using the Uber app is important to us, and by continuing to use the app, you confirm that you have reread and reacknowledged the Community Guidelines. Thank you for your understanding.” (reproduced verbatim)

[19] I observe that despite the terms of the First Warning, there is no evidence that Uber Eats “mentioned” to Mr Khan that the 2024 Complaint concerned an allegation that he “may have made unwanted sexual comments”. The only evidence as to what Mr Khan was told in relation to the 2024 Complaint prior to the First Warning is that he may have engaged in “inappropriate behaviour”.

[20] In any event, Mr Khan acknowledged that he received the First Warning and that he had reviewed the Community Guidelines as it required him to do.

### 2025 Complaint

[21] On 16 July 2025, Uber Eats received a message from a person (“Second User”) to whom Mr Khan was said to have made a delivery (“2025 Complaint”). The message was in these terms:<sup>11</sup>

“Delivery driver asked if I was alone at 1am on a dark road, if I had family near by and asked me for my Snapchat so he could try add me. He is Indian and I felt incredibly unsafe.”

[22] On 17 July 2025, Uber Eats sent a message to Mr Khan informing him that it had received a “concerning report from [his] customers from a recent delivery regarding inappropriate behaviour” and that his access to the “Uber app” had been “temporarily removed” while the matter was investigated.<sup>12</sup> Mr Khan responded by asking “can you tell [me] about that issue [?]”.<sup>13</sup> There is no evidence that Uber Eats provided a substantive written response to that request.

[23] On 18 July 2025, without having spoken to or received further information from the Second User, and without having spoken to Mr Khan, Uber Eats sent a message to the Second User in these terms:<sup>14</sup>

“Hi [name redacted by Uber Eats], Thanks for letting us know about this incident. We’re sorry to hear that the delivery person may have asked personal questions that made you feel unsafe. This is not the experience we want you to have. User safety is important to us here at Uber and *this behaviour will not be tolerated*, so we’re happy you reached out to us. We will be looking into this incident and *take the appropriate steps to ensure that this experience doesn’t happen again*. Our technology is a two-way street for both riders

and driver-partners, and driver-partners that behave inappropriately may have their access removed. *Because of this, we've gone ahead and refunded the full amount of this rider payment. ...*" (emphasis added, otherwise reproduced verbatim)

[24] On 19 July 2025, a member of the "Uber Safety Team", whose identity Uber Eats did not disclose, placed a call to Mr Khan. Uber Eats' written record of that conversation includes the following:<sup>15</sup>

“UBER OK. Thank you so much for that. So Zeeshan, I'm just calling in relation to the feedback that we recently received. This is regarding that you may have asked personal questions which made the consumer feel uncomfortable. Do you remember anything like this?

DRIVER OK. Hmm. Can you tell like which of the deliveries so I can actually tell you about it?

UBER OK. What I can tell you is just the date when it happened, but I cannot go far beyond that. So this happened July 16<sup>th</sup>. Do you remember anything that will trigger a report like this?

DRIVER Yes. July 16, it was Wednesday and is it the customer female?

UBER I cannot. I cannot say that.

DRIVER Yeah, I think so because I think.

UBER But what I can, but what I can tell you is that the consumer felt uncomfortable with the personal questions that was asked during the delivery.

DRIVER Well, because as you see my profile, I'm doing Uber Eats and keep improving my ratings and like everyone happy with me. Like maybe one of the customer on 16<sup>th</sup> of July like maybe they are getting late because I was always on time, but maybe sometime in the night time there do not appear to be sober like I try to maintain a distance, but still they are angry. Like I don't know why. *So I think on 16<sup>th</sup> of July like I think one of the customer was like it doesn't appear to be in like OK condition like I was thinking like he was having some drink or anything.* So I properly followed the Uber guidelines. I maintain the distance and I, because you know in the in the night time there's darkness and also I also keep the torch with me. *So I like even go to the door and drop that Uber order, and then I come back like I didn't talk because I think, the customer was talking something, but I didn't respond to anything. I said that's your order, you have a good night and then just come back. But I think the like customer was not in, you know proper condition like he was, he was like doesn't appear to be sober.* This this also happens sometime before as well, because in the night time they are like not much every person not much like that but sometimes the customer appear to be aggressive due to sometimes we get late because there are many people also waiting at the stores, so we get late orders and then deliver to the customer. But so that's why sometimes customers become aggressive and then they in the aggressive they, they report our profile recently like one time also happened to me. So customer reported and

then directly I called to Uber and tell them that the customer was aggressive like it doesn't appear to be so. So that's the issue. Other than that there was no, no other reason.

UBER           OK, OK. I will be taking note of that. And if ever like that happens, when you mentioned that some of the customers are aggressive because of the late delivery, then please let us know so we can also take the appropriate actions on our end. OK.

DRIVER        Yeah...

UBER           So OK, so I will be taking into consider we will be taking into consideration everything that you have shared with me. I will put that in the review of this incident. As at this time, your account is still temporarily placed on hold while we are doing a review of this incident, but since I already got you on the line, we will expedite this and I will get back to you as soon as possible. I cannot give you an exact time, timeframe for this, but rest assured that we will get back to you as soon as possible, OK." (emphasis added, otherwise reproduced verbatim)

[25]   In considering this exchange, it is relevant that the Second User was a woman.<sup>16</sup>

[26]   At 12.00:58am on 20 July 2025, Uber Eats sent a message to Mr Khan in the following terms ("Second Warning"):<sup>17</sup>

"Hi Zeeshan,

This is Patrick from the Community Operations team.

A customer has provided feedback that you may have asked personal questions that made them feel uncomfortable on a recent delivery on 16th of July, which is a breach of Uber's Community Guidelines.

If you disagree with this feedback and have any information to share with us, please do so by replying to this message and our specialised team will take it into account.

Anyone who accesses the Uber app is required to follow our Community Guidelines. Serious or repeated claims of sexual misconduct or reports of inappropriate commentary made may result in the removal of your access to the Driver app.

To know more about the reasons that can lead to the removal of access to the Uber Driver app, please refer to the 'Help keep one another safe' section, specifically 'Be alert' in the Uber Community Guidelines. We also have a course explaining the Community Guidelines that you might find helpful, click here to learn more.

You may seek assistance or support from a person (other than a lawyer acting in a professional capacity) in relation to this message.

We take the safety and well-being of all users seriously, so we hope you understand our position.

This is to let you know that your access to the Uber app has been reactivated. Due to the nature of the report, standard safety measures were taken while we reviewed the matter at hand.

Ensuring that our users are safe and comfortable while using the Uber app is important to us, and we appreciate you for understanding our position. Thank you for your cooperation.”

***Mr Khan’s deactivation***

[27] At 1.24pm on 20 July 2025, the same day on which it issued the Second Warning, Uber Eats sent Mr Khan a message containing a preliminary deactivation notice. The preliminary deactivation notice stated in part:<sup>18</sup>

“Hi Zeeshan Aslam Khan,

This is Navya from the Community Operations Team.

You’re receiving this message because a review of your account found that you have previously been reported for multiple instances of sexual misconduct – asking favours and asking personal questions, which is a direct violation of your agreement with Uber and we are considering terminating your access to the Uber Driver app.

Please note that when we were made aware of these previous reports, we also made sure to notify you, these were sent on the following dates:

1. **17th July 2025:** Notified you of a report that you may have asking personal questions on 16th July 2025.
2. **22nd august 2024:** Notified you of a report that you may have soliciting sexual act on 22nd august 2024.

You should be able to find these in the Messages section of the Uber Driver app. You may also find other safety related notifications we have sent you in the past.

Reports of behaviour of this nature extremely concerning and are in violation of our Uber Community Guidelines, before a final decision is made, we are providing you with the opportunity to respond to this preliminary deactivation notice. During this period, we have suspended your access to the platform...

Your Options:

**Respond to this Notice:** You may provide an explanation or relevant information regarding the flagged activity. Please respond using the link below within 7 days from the date of this notice to ensure your input is considered.

**Request a Discussion:** You may also request a discussion with a representative of Uber Eats. If you wish to do so, please submit your request using the link below within 2 days.

...

[Click here to respond to this notice](#)

[Click here to request a discussion ...](#)” (reproduced verbatim)

[28] On 21 July 2025, Mr Khan provided a written response to the preliminary deactivation notice and also requested a discussion. His written response included the following:<sup>19</sup>

“I am writing to respectfully address a recent issue regarding the temporary ban on my Uber account, which occurred on July 17. I was deeply concerned to see the restriction placed on my account, as I have always strived to maintain the highest standards of professionalism and service while working with Uber since 2022. Following the ban, I received a call from Uber Support on July 18, during which I explained the situation. That day my uber account back to Active status and than today 20th july again account banned due to the recent flag report. *i want to tell you that the customer was not in normal condition and was visibly upset at the time of the delivery and not looking sober. Despite this, I maintained a respectful distance, completed the delivery as required.* To my surprise, I later found that a complaint had been filed against me, leading to the suspension of my account. I would like to highlight that I consistently follow Uber’s community guidelines and take pride in my work.” (emphasis added, otherwise reproduced verbatim)

[29] On the same day, a person from “Uber Support”, whose identity Uber Eats did not disclose, called Mr Khan. Uber Eats’ transcript of the conversation which followed records Mr Khan making the following statements:<sup>20</sup>

“...So at that time, like that customer on 16 of July, like not was looking in the proper condition, not looking as sober and was looking upset, and like the customer was saying some [00:02:26] but I didn’t listen to, I always do the [00:02:29] like everyone quiet and dark and everything like that, so always maintain the distance. I properly like handed over the food and then I stand back to the other deliveries, so like there was nothing, any sort of you know comments from my side, because I facing the [00:02:50] like customers and the nighttime sometime they feel less [00:02:54], so they are usually like this, but they never do that, but next day I see that the customer reported such type of thing, but the customer was not looking sober, like customer was very upset and saying some word...

...

Customer was looking upset, having anger and something like that. Due to like maybe he’s been having drinks or maybe having feeling that order is late or something like that.” (reproduced verbatim)

[30] On 29 July 2025, Uber Eats sent Mr Khan a final deactivation notice, which stated in part:<sup>21</sup>

“Hello Zeeshan aslam khan,

After carefully reviewing your account and the information you submitted as part of your response, we’ve decided to terminate your access to the Uber Driver app for the reasons outlined in the preliminary deactivation notice previously sent to you. This decision is final.

...

This deactivation will take effect immediately upon receipt of this email.” (reproduced verbatim)

### **Threshold matters**

[31] It is uncontroversial that Mr Khan was deactivated on 29 July 2025 and that his annual rate of earnings was less than the contractor high income threshold. He was able to make his application.<sup>22</sup>

[32] Before I can consider the merits of Mr Khan’s application, however, I am required to decide three matters:<sup>23</sup>

- (1) whether the application was made within the statutory time period;<sup>24</sup>
- (2) whether Mr Khan was a person protected from unfair deactivation;<sup>25</sup> and
- (3) whether the deactivation was consistent with the Code.

[33] There was no controversy about the first two matters. I find that:

- (1) Mr Khan filed his application within the statutory time period. It was made on 1 August 2025, two days after his deactivation; and
- (2) Mr Khan was an employee-like worker who performed work through or by means of Uber Eats’ digital platform, and who had been doing so on a regular basis for a period of at least six months at the time of his deactivation.

[34] There was, however, significant dispute between the parties as to whether the deactivation was consistent with the Code. If it was, Mr Khan will not have been unfairly deactivated.<sup>26</sup> Mr Khan’s deactivation will have been consistent with the Code if, at the time of the deactivation, Uber Eats complied with the Code in relation to the deactivation.<sup>27</sup>

### ***The deactivation was not consistent with the Code***

[35] For the reasons which follow, I find that the deactivation was not consistent with the Code.

### **Section 8 of the Code**

**[36]** Before deactivating an employee-like worker, a digital labour platform operator must give the worker a deactivation warning stating that the worker risks being deactivated for a reason related to the worker’s conduct or capacity.<sup>28</sup> The deactivation warning must:<sup>29</sup>

- (1) specify the reason for the warning (relating to the worker’s conduct or capacity);
- (2) state that the worker risks being deactivated from the digital labour platform if the reason for the warning is not remedied or repeated, or another conduct or capacity issue arises; and
- (3) state that the worker may seek assistance or support from a person (other than a lawyer acting in a professional capacity).

**[37]** The deactivation warning must also include sufficient information so that a reasonable person in the worker’s position can understand the matters in the deactivation warning.<sup>30</sup>

**[38]** Uber Eats submitted that the First and Second Warnings met the requirements of section 8 of the Code. I do not agree.

**[39]** The First Warning was sent to Mr Khan in response to an allegation that Mr Khan had offered the First User money to kiss him. However, that allegation was never squarely put to him. On 22 August 2024 he was told only that Uber Eats had received “feedback...regarding inappropriate behaviour”. He was not told what he allegedly did, despite asking for such an explanation. The First Warning referred to Uber Eats having received a “concerning report” that Mr Khan “may have made unwanted sexual comments”. While the 2024 Complaint might fall within that description, it is put at such a high level as to be of no assistance in understanding the substance of the complaint.

**[40]** The Second Warning suffers from similar deficiencies. When Uber Eats initially informed Mr Khan about the 2025 Complaint, it told him only that a report had been received “regarding inappropriate behaviour”. When Mr Khan spoke with the person from the Uber Safety Team on 19 July 2025, he was told that he “may have asked personal questions which made the consumer feel uncomfortable”. However, the Uber Eats representative expressly refused to provide any details other than the date on which the delivery had occurred. It is clear from the transcript of the conversation that Mr Khan then sought to recall any incident on that date which might have prompted a complaint, and described one involving a belligerent and potentially inebriated male customer. It would have been apparent to the Uber Eats representative – and any person who may have reviewed the transcript of the conversation before the Second Warning was issued – that Mr Khan was making a stab in the dark. More particularly, it ought to have been obvious that the incident he recounted was not that described in the 2025 Complaint.

**[41]** In the circumstances, I fail to see how either the First or Second Warnings included sufficient information to enable a reasonable person in Mr Khan’s position to understand the reason for which each warning was being issued. It follows that I am not satisfied Uber Eats complied with the requirements of section 8 of the Code.

### **Uber Eats' reliance (in the alternative) on the exception in section 9 of the Code**

[42] Uber Eats submitted that to the extent that the “First and Second Warnings are held to not strictly comply with the Code,...the exception under subsection 9(1) of the Code is enlivened due to the [2024 Complaint and 2025 Complaint] satisfying subsection 9(2) of the Code”.<sup>31</sup> Those sections of the Code provide that a digital labour platform operator is not required to give a worker a deactivation warning if the operator believes on reasonable grounds that the matter relating to the worker’s conduct or capacity is such that it warrants immediate modification or suspension of the worker’s access to the platform, or it is not reasonable to expect the operator to allow the worker to continue to perform work through the platform.

[43] The obvious difficulty for Uber Eats is that it *did* issue what it relied on as being compliant deactivation warnings. On their terms, each of the First and Second Warnings confirmed that Mr Khan’s access to the Uber Delivery Platform had been reactivated. They each anticipated that Mr Khan would continue to work as a delivery person for Uber Eats. Uber Eats obviously *did not believe* that the matters alleged against Mr Khan warranted the immediate modification or suspension of his access to the Uber Delivery Platform or that it was not reasonable to expect Uber Eats to allow him to continue to perform work through the platform.

[44] In response to questions from me at the hearing, Ms Fairlie gave evidence to the effect that the decision to reactivate Mr Khan’s access to the Uber Delivery Platform on 20 July 2025 and the one to issue the preliminary deactivation notice the same day were made by separate “teams” within Uber Eats.<sup>32</sup> To my mind that is of little consequence. Whatever may be Uber Eats’ inner workings, its decision to issue the Second Warning is at odds with its submission that section 9(1) of the Code was “enlivened”.

[45] I am not satisfied that Uber Eats established that the exception in section 9 of the Code applies.

### **The merits of the application**

[46] Having determined that Mr Khan’s deactivation was not consistent with the Code, it is necessary to consider whether Mr Khan’s deactivation was unfair. In doing so, I am required to take into account:<sup>33</sup>

- (1) whether there was a valid reason for the deactivation related to Mr Khan’s capacity or conduct; and
- (2) whether any relevant processes specified in the Code were followed; and
- (3) any other matters I consider relevant.

### *No valid reason for deactivation*

[47] In determining whether there was a valid reason for Mr Khan’s deactivation, I am guided by the principles set out by the Full Bench in *Mohammad Shareef Hotak v Rasier Pacific Pty Ltd*<sup>34</sup> (“*Hotak*”), namely:

- (1) In cases relating to alleged conduct, the Commission must make a finding, on the evidence provided, whether, on the balance of probabilities, the conduct occurred.
- (2) It is not enough for a digital labour platform operator to establish that it had a reasonable belief that the worker engaged in particular conduct.
- (3) The digital labour platform operator bears the evidentiary onus of proving that the conduct on which it relies took place.
- (4) In cases where allegations of serious misconduct are made, the principles set out in *Briginshaw v Briginshaw*<sup>35</sup> apply so that findings that a worker engaged in the misconduct alleged are not made lightly.
- (5) It is necessary to consider whether the digital labour platform operator had a valid reason for the deactivation of the employee-like worker, although it need not be the reason given to the worker at the time of the deactivation.
- (6) A “valid” reason for deactivation is one that is “sound, defensible or well founded” and not “capricious, fanciful, spiteful or prejudiced.” A reason that is “valid” will involve something more than a minor failing or trivial misdemeanour, and must be of sufficient gravity or seriousness to justify deactivation.

### **The reason for deactivation given in the final deactivation notice**

[48] The final deactivation notice informed Mr Khan that Uber Eats had “decided to terminate [his] access to the Uber Driver app for the reasons outlined in the preliminary deactivation notice”. The preliminary deactivation notice referred to Mr Khan having “previously been reported for multiple instances of sexual misconduct – asking favours and asking personal questions”. That statement requires examination.

[49] Taking Uber Eats’ evidence at its highest, in 2024 Mr Khan solicited a kiss from the First User in return for payment and continuously asked her for “favours”. The First User did not describe the nature of the “favours”, so in the absence of anything else I am left with the request for a kiss. Such conduct could be said to have involved sexual behaviour without the First User’s explicit consent. On that basis, it would amount to “sexual misconduct” within the meaning of the Community Guidelines.

[50] As to the 2025 Complaint, whether “asking personal questions” is sexual in nature, much less whether it amounts to sexual misconduct, will depend on the questions being asked and the context. It would have been odd and perhaps threatening for Mr Khan to have commented about the Second User being alone at 1.00am on a dark road, to have asked if she

had family nearby or to have requested her Snapchat details, had he done so. But there was nothing necessarily sexual about it.

[51] It follows that the contention in the preliminary deactivation notice that Mr Khan had been reported for *multiple* instances of *sexual misconduct* is simply incorrect. It is not borne out even by Uber Eats' evidence.

### **The reasons for deactivation relied on by Uber Eats at the hearing**

[52] The only evidence that Uber Eats led regarding Mr Khan's behaviour related to the 2024 Complaint and the 2025 Complaint. I observe that in its Form F89A Response to Mr Khan's application, Uber Eats contended that the reasons for the deactivation included an "Additional Consumer Complaint" from January 2025.<sup>36</sup> However, Uber Eats led no evidence in respect of that alleged complaint. I have disregarded it.

[53] In essence, Uber Eats submitted that Mr Khan's conduct as alleged in the 2024 Complaint and 2025 Complaint provided a valid reason for his deactivation. That is, *in combination* the alleged conduct, noting the First and Second Warnings, warranted his deactivation. As observed in *Hotak*, I must make a finding, on the evidence provided, whether, on the balance of probabilities, the conduct occurred.

#### *Uber's reliance on the messages from the First User and Second User*

[54] In large part, Uber Eats relied on the Commission accepting as true the messages that the First User and Second User sent to it. In support of that position, it relied on neither of the First User or Second User having "fraudulent indicators". Ms Fairlie explained that concept as follows:<sup>37</sup>

"The Respondent has processes in place that evaluate the veracity of complaints made by users of the Uber Delivery Platform. This includes assessing whether a complainant has a pattern of bad faith reporting, referred to as 'fraudulent indicators'. When the Respondent conducted a review of each of the following complaints made against the Applicant, no fraudulent indicators were identified on behalf of the relevant complainants."

[55] In her oral evidence, Ms Fairlie gave the following additional explanation:<sup>38</sup>

"So once the respondent receives a complaint – the respondent receives a complaint from a customer one of the checks that is done is to review that customer's details to try and understand, and guess it's a way to verify whether it's a vexatious or otherwise false complaint. So they look back at is what we call fraudulent indicators. ...And that will look at the appeals that the adjustments and appeasements that a customer has raised. So have they, for example, raised a lot of complaints in order to obtain refunds in a certain period? So the system will automatically flag where that has occurred. But also there will be a bit of a look back to see does this customer have the history of raising complaints in general or in similar – sort of a similar nature to the one that the team is considering at the time."

[56] I accept that the absence of “fraudulent indicators” is a matter that the Commission might take into account in deciding whether to accept the evidence of an Uber Eats customer. It would, however, be a step too far to suggest that their absence necessarily means that the customer is being truthful. After all, as a matter of logic, any “fraudulent indicators” must have their genesis in a first complaint.

[57] Uber Eats further submitted:<sup>39</sup>

“The Uber Delivery Platform provides options for Users to make complaints. This is an important part of protecting the health and safety of Users as well as supporting the reputation of the Uber Delivery Platform. The Respondent takes measures to verify complaints including speaking with the complainant when required and reviewing its own data where relevant or possible. This ensures the validity of complaints. The Respondent may take action based on the complaints but does not request that any complainant provide statements or give evidence about their complaint.

In this regard the Respondent protects the privacy of its Users, a matter which is reflected in section 17 of the Code. This is also important to the reputation of the Respondent in that Users should have the ability to make reports about conduct on the part of Delivery People which threaten their safety and expect that the Respondent will take action to avoid the conduct being repeated without the User being required to make a statement or give evidence.”

[58] It is of course important that the health and safety of Uber Eats’ users is protected. Uber Eats also has a legitimate interest in protecting the reputation of the Uber Delivery Platform.

[59] However, section 17 of the Code is directed towards safety and security, not privacy. The section provides that nothing in Part 2 of the Code “requires a digital labour platform operator to disclose any information about an individual *if the operator considers, on reasonable grounds, that the disclosure may pose a risk to the safety or security of the individual*” (my emphasis). The section does not require Uber Eats to adopt a position that no user will or need ever be required to make a statement or give evidence. That is a commercial or policy position that it can choose to take, but it may have implications for proceedings such as these.

[60] It follows that I am not willing to assume the veracity of the information that each of the First User and Second User provided to Uber Eats. I am also not willing to assume that requiring them to give evidence would have posed a risk to their safety or security.

*Did Mr Khan engaged in the conduct alleged in the 2024 Complaint?*

[61] The allegation at the heart of the 2024 Complaint is a serious one. The question is whether that allegation has been proven to my reasonable satisfaction.<sup>40</sup>

[62] Mr Khan denied engaging in the conduct alleged in the 2024 Complaint.

[63] Uber Eats' case rested primarily on the initial message that the First User sent to Uber Eats on 22 August 2024, and the one they sent the following day in response to Uber Eats' requests for further information. The second message is consistent with the first, and does not appear to contain any obvious exaggeration of the initial complaint. The fact that the First User was willing to respond to Under Eats' requests for additional information, and the consistency between the messages, lends veracity to the First Report. I have regard also to the lack of "fraudulent indicators" for the First User.

[64] Further, Uber Eats relied on information from a software system that it uses called "Chronicle", which captures trip data for deliveries. The Chronicle data revealed that Mr Khan was at the "drop off location" for the First User for approximately five minutes and two seconds. Ms Fairlie stated that it would be "quite uncommon" for a delivery person to wait at a person's residence for such a period of time and that this "aligned with the complainant's version of events".<sup>41</sup> I accept that is the case, but note that the data can speak only for the time that Mr Khan was in the vicinity of the drop off point for the First User. It says nothing as to what, if any, conversation that he had with them.

[65] In summary, Uber Eats received a complaint from a user with no history of making unmeritorious complaints. It sought to verify the complaint by requesting further information. The user provided that information, while being under no obligation to do so. The Chronicle data provided some corroboration for the user's version of events. Despite having some misgivings as to the First User not being available to be tested on their version of events, I am satisfied, very much on balance, that Mr Khan engaged in the conduct alleged in the 2024 Complaint.

*Did Mr Khan engaged in the conduct alleged in the 2025 Complaint?*

[66] On its terms, 2025 Complaint concerned Mr Khan engaging in behaviours or making comments that made the Second User feel uncomfortable, and involved him asking her personal questions. To that extent, it alleged "inappropriate conduct" within the meaning of the Community Guidelines.

[67] Mr Khan denied engaging in that conduct.

[68] The only evidence in support of the 2025 Complaint is the message from the Second User to Uber Eats of 16 July 2025. Uber Eats responded with a message – relevantly identical to the one it had first sent in response to the 2024 Complaint – inviting the Second User to reply if she felt "more information could be useful". There is no evidence of a response from the Second User or of any other attempts by Uber Eats to verify the complaint.

[69] I am not satisfied that the conduct alleged in the 2025 Complaint occurred. The single message from the Second User, even in the absence of "fraudulent indicators", is an insufficient basis on which to find that the allegations comprising the 2025 Complaint have been proven.

[70] I observe further that the fact that a user is made to feel uncomfortable, or that a delivery person asks them a personal question, cannot *of itself* be enough to warrant deactivation. Much will depend on the context and the relevant conduct or question. The behaviour alleged against Mr Khan (assuming it to have taken place) might reasonably have caused the Second

User to feel uncomfortable, but shorn of context it is difficult to know what seriousness to lend it. I observe parenthetically that the Second User's discomfort appears to have been caused at least in part by Mr Khan's race, not just his conduct.

*Conclusion - there was no valid reason for the deactivation*

[71] I have found that Mr Khan engaged in the conduct alleged in the 2024 Complaint. That conduct was objectively serious. However, Uber Eats did not deactivate him for that conduct. Although it can be presumed to have accepted the veracity of the 2024 Complaint, it restored Mr Khan's access to the Uber Driver Platform, subject to the First Warning.

[72] The deactivation was triggered by the 2025 Complaint, in light of the 2024 Complaint and the First Warning. But as I am not satisfied that Mr Khan engaged in the conduct alleged in the 2025 Complaint, the premise of the deactivation falls away.

[73] I further observe that even were I to have accepted that Mr Khan engaged in that conduct, I do not consider that it would have warranted his deactivation, despite the First Warning. On the evidence available to me, it simply lacks the necessary objective seriousness.

[74] It appears that Uber Eats initially appeared to share that view. From its evidence, Uber Eats can be presumed to have accepted the veracity of the 2025 Complaint. However, notwithstanding the First Warning, Uber Eats did not move to deactivate Mr Khan. Instead, it reactivated his access to the Uber Driver Platform, subject to the Second Warning.

[75] Evidently, Uber Eats changed its position. On the same day that it issued the Second Warning it issued the preliminary deactivation notice. However, its reasons for doing so remain opaque.

[76] For these reasons, I find that Uber Eats has failed to provide a sound, defensible or well founded reason for Mr Khan's deactivation. I find that there was not a valid reason for Mr Khan's deactivation.

*Non-compliance with Code processes*

[77] I have determined already that Uber Eats failed to comply with section 8 of the Code.

*Other relevant matters*

[78] The evidence reveals a significant denial of procedural fairness for Mr Khan. I note the following matters in particular:

(1) In relation to the 2024 Complaint:

- (a) Mr Khan was provided only with the vaguest of descriptions as to what he was alleged to have done. Uber Eats' reference in its message to Mr Khan of 22 August 2024 to "feedback...regarding inappropriate behaviour" was too broad to be of any assistance to him. The invitation in that message for Mr Khan to respond with "any additional information or questions regarding the reported

incident” was hollow in the absence of details of the incident. Significantly, that is the only evidence of Mr Khan’s views on the incident being sought.

- (b) Yet Mr Khan did ask a question: “can you please explain why the account is on hold[?]”. There is no evidence that Uber Eats provided a substantive answer.
- (c) Uber Eats’ reference to “unwanted sexual comments” in the First Warning would similarly have given Mr Khan no inkling as to what was alleged against him. Fairness required that the allegation that he had solicited a kiss from a customer in return for payment to have been put squarely to him.
- (d) Mr Khan was not made aware that Uber Eats was relying on the Chronicle data or given an opportunity to respond to the conclusions that Uber Eats apparently drew from it.

(2) In relation to the 2025 Complaint:

- (a) As with the 2024 Complaint, Mr Khan was initially informed only that Uber Eats had received a “report...regarding inappropriate behaviour”. To invite Mr Khan to provide “any information as to why this feedback may have been received” is meaningless without context.
- (b) This was compounded by the way in which the person from the Uber Safety Team conducted their conversation with Mr Khan on 19 July 2025. They referred to feedback that Mr Khan “may have asked personal questions that made a consumer feel uncomfortable”, and asked oblique questions such as “Do you remember anything like this?” and “Do you remember anything that will trigger a report like this?”
- (c) Further, in that conversation Mr Khan was refused any information which may have allowed him to properly respond to the allegation. He was provided only with the date on which the conduct allegedly occurred. The assistance that this would have given to Mr Khan has to be considered in light of his evidence that he made 15 to 20 deliveries that night.
- (d) Mr Khan was left to guess as to what might have prompted the complaint. It is clear from the record of the conversation on 19 July 2025 that Mr Khan was groping to recall any incident on 16 July 2025 that might have prompted a customer to complain about him. He recounted an exchange with a belligerent and possibly inebriated male customer. Despite that incident bearing no resemblance to the one described in the 2025 Complaint, the Uber Eats representative did nothing to suggest to Mr Khan that he was “barking up the wrong tree”.
- (e) In any event, the language of the message that Uber Eats sent to the Second User on 18 July 2025 suggests that it had determined that Mr Khan had engaged in the conduct alleged against him, before having heard from Mr Khan.

## (3) In relation to the preliminary deactivation notice:

- (a) Uber Eats again changed its description of the allegations against Mr Khan – wrongly, for the reasons I have explained – to “multiple instances of sexual misconduct – asking favours and asking personal questions”, including “soliciting [a] sexual act”. However, it once again failed to provide any information to enable Mr Khan to understand and properly respond to the allegations against him.
- (b) There is no evidence to support the statement in the preliminary deactivation notice that Uber Eats had notified Mr Khan on 22 August 2024 that he may have been “soliciting [a] sexual act”. That particular allegation seems to have been put to Mr Khan for the first time in the preliminary deactivation notice. But again, there was no information as to the “sexual act” that he was said to have solicited and how he allegedly did so. Given that the Community Guidelines refer to “sexual conduct” as including “sexual intercourse, masturbation or touching or exposure of sexual body parts”, what would a person in Mr Khan’s position have understood by allegations that he had solicited a “sexual act”? The potential breadth of the term called for the allegations to be put to him squarely.
- (c) The representative from Uber Support provided no clarifying or additional information to Mr Khan during their conversation on 21 July 2025. They said only that the purpose of the call was to give *Mr Khan* the opportunity to share any information *he had* regarding the restriction on his account.<sup>42</sup>
- (d) Mr Khan’s written response to the preliminary deactivation notice of 21 July 2025, and his comments during his conversation with the person from Uber Support on the same day, continued to be premised on the misunderstanding that the 2025 Complaint had arisen following his interaction with a potentially inebriated male customer. It ought to have been apparent to Uber Eats that Mr Khan was not responding to the circumstances of the 2025 Complaint. Once again, though, Uber Eats did nothing to correct him or to provide him with additional information to enable an informed response.

[79] During the hearing I asked Ms Fairlie some questions in relation to the conversation that Mr Khan had with the person from Uber Safety Team on 19 July 2025. I asked in particular why Mr Khan could not have been told that the incident he described appeared unrelated to the 2025 Complaint. Ms Fairlie stated:

“I know our agents are trained to be extremely cautious with customer data and I think that would be the root cause of how this conversation would have – or the way that these questions would have been put to Mr Khan. The way that you phrased it in terms of guiding him towards another incident, that may have occurred on the same date, is a possible alternative. So that that’s something that Uber could have done. But, yes, as it currently stands the agents are very protective of trying of identifying complainants specifically, given delivery people typically do deliver food to people’s houses. And so there is quite a concern on behalf of Uber of giving rise to any sort of retaliation risk.”

**[80]** I understand the concerns raised by Ms Fairlie. It is right for Uber Eats to seek to ensure the safety and welfare of users. However, there must be a balance, which reflects that delivery persons should be able to properly respond to complaints and to protect their livelihood. If the “extreme caution” exercised by Uber Eats is reflected in the way in which it treated Mr Khan, it results in no meaningful information being provided to the delivery person. Allegations are put at an entirely unhelpful and unfair level of generality.

**[81]** Mr Khan gave the following evidence, which I accept:<sup>43</sup>

“...I was not provided with a detailed explanation of the allegations, and details about the complainant, or clarification of the specific delivery trip(s) involved. This lack of transparency severely restricted my ability to respond effectively or present relevant information in my defense *[sic]*.”

### ***Conclusion***

**[82]** Uber Eats failed to comply with the processes specified in the Code. There was no valid reason for the deactivation. The process by which Uber Eats substantiated the allegations against Mr Khan and ultimately decided to deactivate him lacked transparency and fairness. Mr Khan’s deactivation on 29 July 2025 was unfair.

### **Remedy**

#### ***Reactivation***

**[83]** Mr Khan seeks reactivation. The Commission may order a person’s reactivation if:<sup>44</sup>

- (1) the person has made an application under section 536LU;
- (2) the Commission is satisfied that the person was protected from unfair deactivation at the time of being deactivated; and
- (3) the Commission is satisfied that the person has been unfairly deactivated.

**[84]** Given my earlier findings, all of these preconditions are met in this case.

**[85]** An order for reactivation must be one that requires the digital labour platform operator who operated the digital labour platform at the time of the deactivation to take measures to restore the person to the position they would have been in but for the deactivation, including by reinstating the person’s access to the digital labour platform.<sup>45</sup>

**[86]** In all of the circumstances of this case, I am satisfied that it is appropriate that I exercise my discretion to order Mr Khan’s reactivation. To ensure that his access to the Uber Delivery Platform is restored on terms to place him in the position he would have been in but for the deactivation, the orders will be in these terms:

1. Pursuant to section 536LP(1) of the *Fair Work Act 2009* (“Act”), the Fair Work Commission orders that Portier Pacific Pty Ltd (“Uber Eats”) must reinstate Zeeshan

Aslam Khan's access to the digital labour platform that Uber Eats operates on the basis that:

- (a) for the purposes of section 536LD(c) of the Act, Mr Khan is deemed to have performed work through or by means of Uber Eats' digital labour platform on a regular basis during the period from 20 July 2025 to the date on which his access to the digital labour platform is reinstated; and
- (b) Uber Eats offers to Mr Khan that he be engaged on the same terms and conditions as those on which he was engaged by Uber Eats immediately before his deactivation on 29 July 2025.

2. Uber Eats must comply with Order 1 by no later than 19 January 2026.

[87] The requirement in paragraph 1(a) above is necessary to restore Mr Khan to the position he would have occupied but for his deactivation on 29 July 2025. At that time, he was protected from unfair deactivation under section 536LD, as he met the statutory criteria. Absent the inclusion of this requirement in my reactivation order, Uber Eats could deactivate Mr Khan shortly after he was reactivated, at a time when he would not yet have reacquired the statutory protection under section 536LD. Such an outcome would undermine the remedial purpose of the order and the protections afforded by the Act.<sup>46</sup>

#### *Order for lost pay*

[88] If it considers it appropriate to do so, the Commission may make any order that it considers appropriate to cause Uber Eats to pay to Mr Khan an amount for the remuneration he lost, or is likely to have lost, because of the deactivation.<sup>47</sup> Any such order must not, however, constitute the payment of compensation to Mr Khan.<sup>48</sup>

[89] Mr Khan seeks an order for lost pay. As there was no valid reason for Mr Khan's deactivation, I consider it appropriate to make that order.

[90] In determining the amount of any order, the Commission must take into account:<sup>49</sup>

- (1) the amount of any remuneration earned by Mr Khan from work of any kind during the period between the deactivation and the making of the order for reactivation; and
- (2) the amount of any remuneration reasonably likely to be earned by Mr Khan during the period between the making of the order for reactivation and the actual reactivation.

[91] In *Hotak* the Full Bench observed:

“[131] The purpose of an order to restore lost pay under s 536LQ(3)-(4) of the Act is to place an employee-like worker in the financial position they would have occupied had they not been unfairly deactivated. This will generally involve the following steps:

(a) **Assessing lost earnings:** Determine the amount of remuneration the worker would have earned from the digital labour platform operator during the period between deactivation and reactivation. In many cases, calculating the average of the worker's weekly earnings from the digital labour platform in the period leading up to the deactivation will provide a reasonable estimate of the earnings they would likely have received had they continued working.

(b) **Deducting substitute earnings:** Subtract any earnings the worker received from other employment or working arrangements during the period between deactivation and reactivation, but only to the extent that such work would not have been undertaken had the worker remained active on the platform. That is, if the worker had a second job and would, in the counterfactual scenario, have continued working in that job to the same extent, those earnings do not replace remuneration lost because of the deactivation.

There will need to be a slight adjustment to this calculation if the worker's actual reactivation takes place after an order for reactivation is made. In such circumstances, s 536LQ(4) of the Act requires that the Commission take into account:

(i) the amount of any remuneration earned by the person from work of any kind during the period between the deactivation and the making of the order for reactivation; and

(ii) the amount of any remuneration reasonably likely to be so earned by the person during the period between the making of the order for reactivation and the actual reactivation.

(c) **Deducting avoided expenses:** Subtract any expenses the worker would have incurred had they continued working through or by means of the platform during the period between deactivation and reactivation. This ensures that any order to restore lost pay under s 536LQ(3) of the Act is confined to 'remuneration lost, or likely to have been lost, because of the deactivation'."

[92] Consistent with that methodology, and with the way in which the Full Bench in *Hotak* applied it,<sup>50</sup> I find as follows:

- (1) An average of Mr Khan's weekly earnings from Uber Eats in the period leading up to 20 July 2025 – the date on which Uber Eats suspended his access to the Uber Delivery Platform – will provide a proper basis to calculate the earnings he would likely have received had he continued to work on the Uber Delivery Platform in the period between 29 July 2025 and the date on which his account is reactivated. I observe that after 20 July 2025 Mr Khan performed no work on the Uber Delivery Platform. His average earnings ought not be reduced as a consequence.
- (2) Had Mr Khan continued working on the Uber Delivery Platform during the period between his deactivation and his reactivation, he would have incurred expenses in

running his car (such as fuel expenses), and potentially fees charged by Uber Eats<sup>51</sup> and for “road, bridge and tunnel usage charges imposed by a toll operator”.<sup>52</sup>

[93] There is no evidence as to whether Mr Khan has received “substitute earnings”, as described in *Hotak*, since his deactivation. I am unable to make any findings in that regard.

[94] I am not able on the evidence to quantify the payment that I should order Uber Eats to make to Mr Khan. The appropriate course is to direct the parties to confer with a view to reaching agreement on the quantum of an order to restore lost pay for Mr Khan, on the basis that the methodology described in *Hotak* is used to calculate the quantum.

### **Order and directions**

[95] The order for Mr Khan’s reactivation, in the terms set out above, is issued concurrently with this decision in [PR795562](#).

[96] An order to restore lost pay will be made after the parties have been given an opportunity to confer in relation to the quantum of the order.

[97] To that end, I make the following directions:

- (1) The parties are to confer with a view to reaching agreement on the quantum of an order to restore lost pay for Mr Khan, using the methodology set out in *Hotak* to calculate the quantum, having regard to my findings at [92] above.
- (2) Uber Eats is to inform me, by email to my Chambers, of the outcome or status of the parties’ discussions (as the case may be) by no later than 4.00pm on 27 January 2026.



### COMMISSIONER

#### *Appearances:*

*Mr Z A Khan*, appeared for himself

*Ms C Murray-Baptista*, on behalf the Respondent

#### *Hearing details:*

21 October 2025

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<PR795561>

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<sup>1</sup> In this decision, unless otherwise stated, all references to legislation are to provisions of the Act

<sup>2</sup> Having regard to section 536LF(c)

<sup>3</sup> The Delivery Person Agreement is Exhibit A to Mr Khan's submissions and Annexure A to the Statement of Emilee Fairlie dated 25 September 2025

<sup>4</sup> Clause 5.1(l)

<sup>5</sup> Clause 14.2(b)(ii)

<sup>6</sup> Exhibit B to Mr Khan's submissions; Annexure B to the Statement of Emilee Fairlie

<sup>7</sup> Respondent's Outline of Submissions, 25 September 2025, par 9

<sup>8</sup> Statement of Emilee Fairlie, Annexure G

<sup>9</sup> Statement of Emilee Fairlie, Annexure I

<sup>10</sup> Statement of Emilee Fairlie, Annexure G

<sup>11</sup> Statement of Emilee Fairlie, Annexure J

<sup>12</sup> Statement of Emilee Fairlie, Annexure K

<sup>13</sup> Statement of Emilee Fairlie, Annexure K

<sup>14</sup> Statement of Emilee Fairlie, Annexure J

<sup>15</sup> Statement of Emilee Fairlie, Annexure M

<sup>16</sup> Statement of Emilee Fairlie, Annexure O (Digital Hearing Book page 184). See also Transcript at PN379

<sup>17</sup> Exhibit D to Mr Khan's submissions; Statement of Emilee Fairlie, Annexure K

<sup>18</sup> Exhibit D to Mr Khan's submissions; Statement of Emilee Fairlie, Annexure N

<sup>19</sup> Statement of Emilee Fairlie, Annexure O

<sup>20</sup> Statement of Emilee Fairlie, Annexure P

<sup>21</sup> Exhibit D to Mr Khan's submissions; Statement of Emilee Fairlie, Annexure Q

<sup>22</sup> Section 536LU(1) and (2)

<sup>23</sup> Section 536LW

<sup>24</sup> As prescribed by section 536LU(3)

<sup>25</sup> Within the meaning of section 536LD

<sup>26</sup> Section 536LF(c)

<sup>27</sup> Section 536LJ(3)

<sup>28</sup> Section 8(1) of the Code

<sup>29</sup> Section 8(2) of the Code

<sup>30</sup> Section 8(3) of the Code

<sup>31</sup> Respondent's Outline of Submissions, par 18(d)

<sup>32</sup> Transcript, PN392-PN395

<sup>33</sup> Section 536LH(1)

<sup>34</sup> [\[2025\] FWCFB 214](#) at [94]

<sup>35</sup> (1936) 60 CLR 336 at 361-362

<sup>36</sup> Digital Hearing Book, p 101

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<sup>37</sup> Statement of Emilee Fairlie, par 10

<sup>38</sup> Transcript, PN325

<sup>39</sup> Respondent's Outline of Submissions, pars 44 and 45

<sup>40</sup> See *Briginshaw v Briginshaw* (1936) 60 CLR 336 at 361-362

<sup>41</sup> Transcript, PN361

<sup>42</sup> Statement of Emilee Fairlie, Annexure P

<sup>43</sup> Statement of Zeeshan Asam Khan, 5 September 2025, par 3

<sup>44</sup> Section 536LP

<sup>45</sup> Section 536LQ(1)

<sup>46</sup> *Mohammad Shareef Hotak v Rasier Pacific Pty Ltd* [\[2025\] FWCFB 214](#) at [117]

<sup>47</sup> Section 536LQ(3)

<sup>48</sup> Noting the prohibition against such an order in section 536LP(3)

<sup>49</sup> Section 536LQ(4)

<sup>50</sup> [\[2025\] FWCFB 214](#) at [132]

<sup>51</sup> Clause 7.4(b)(iv) of the Delivery Person Agreement

<sup>52</sup> Definition of "Tolls" in clause 16.1 of the Delivery Person Agreement