FWC Bulletin

16 January 2025 Volume 1/25 with selected Decision Summaries for the month ending Tuesday, 31 December 2024.

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Registered Organisations Education Activities Calendar for 2025 published

09 Dec 2024

In December 2023, our General Manager, Murray Furlong, published the Registered Organisations Education and Engagement Strategy 2024–25. The purpose of the strategy is to set out our General Manager's approach to providing education, assistance and advice to registered organisations and their members.

As part of the strategy, our General Manager committed to publishing a calendar of education activities that we will produce, including materials, tools and live events. The calendar for 2025 has been published.

We thank the registered organisations who provided feedback through our Annual Education Survey, which contributes to informing our education priorities. It is because of their feedback that we can continue to improve our services, and help registered organisations voluntarily comply with their obligations under the *Fair Work (Registered Organisations) Act 2009*.

Read:

Registered Organisations Education Activities Calendar – 2025

Registered Organisations Education and Engagement Strategy 2024-25

Important changes to modern awards covering the aged care industry

13 Dec 2024

From 1 January 2025, there will be an increase to the minimum wages and changes to the classification structure for many aged care workers. The changes affect the following awards:

- *Aged Care Award 2010*
- *Social, Community, Home Care and Disability Services Industry Award 2010*
- *Nurses Award 2020*

The changes are the result of the end of the Work value case – Aged care industry major case.

Increases to minimum wages

In the Stage 3 decision of the Work value case – Aged care industry, an Expert Panel for pay equity in the Care and Community Sector determined that minimum wage increases will apply to:

- All workers covered by the *Aged Care Award 2010,* except Head chefs/cooks
- Home care workers providing services to an aged person covered by the *Social, Community, Home Care and Disability Services Industry Award 2010*

The increases will take effect from the first full pay period starting on or after **1 January 2025**. The amount of the increase varies according to an employee's award and classification. A further increase will apply for some direct care workers from the first full pay period starting on or after **1 October 2025.**

Coverage changes – Nursing assistants

From **1 January 2025**, nursing assistants who provide care services to aged persons in either the aged care industry or the home care sector under the *Nurses Award 2020* will have their award changed to either the *Aged Care Award 2010* or the *Social, Community, Home Care and Disability Services Industry Award 2010.* These employees will also receive an increase to their minimum wages.

New employee classification structure – Direct care workers

From **1 January 2025**, direct care workers in the *Aged Care Award 2010* and *Social, Community, Home Care and Disability Services Industry Award 2010*, as well as nursing assistants whose coverage has changed to these awards, will have a new, separate 6-level classification structure setting out the qualifications and experience defined at each level.

Date	Award changes summary
From 1 Jan 2025	**Aged Care Award 2010** • **Classifications:** New classification structure for direct care workers • **Coverage:** Coverage extended to Assistants in Nursing in residential aged care • **Wages (tranche 1):** Wage increases for most workers (direct and indirect) **Social, Community, Home Care and Disability Services Industry Award 2010** • **Classifications:** New classification structure for in-home aged care workers • **Coverage:** Coverage extended to Assistants in Nursing in in-home aged care • **Wages (tranche 1):** Wage increases for in-home aged care workers **Nurses Award 2020** • **Coverage:** Assistants in Nursing working in aged care removed from coverage
From 1 Oct 2025	**Aged Care Award 2010** • **Wages (tranche 2):** Further wage increases for some direct care workers **Social, Community, Home Care and Disability Services Industry Award 2010** • **Wages (tranche 2):** Further wage increases for some direct care workers

Aged care nurses under the Nurses Award 2020

These changes do not affect enrolled nurses or registered nurses working in aged care under the *Nurses Award 2020*. Changes to the *Nurses Award 2020* for these workers, including new classification structures and minimum wage increases, have been considered in the Work value case – Nurses & Midwives major case.

On 6 December 2024, the Expert Panel issued a decision [2024] FWCFB 452 that these changes would take effect from 1 March 2025. Further information will be announced when these changes have been finalised.

Updated awards

We aim to publish updated awards on 30 December 2024.

Further information

The Fair Work Ombudsman has more information on the changes to aged care awards and how they may affect you: visit Aged Care Work Value Case: Changes to awards .

Read:

- Aged Care Work Value Case: Changes to awards - Fair Work Ombudsman
- The decision summary of the Stage 3 decision
- The Stage 3 decision [2024] FWCFB 150
- 27 June 2024 decision [2024] FWCFB 298
- 11 September 2024 decision [2024] FWCFB 367
- Decisions, statements and determinations for the Work value case - Aged care industry

Changes to entry-level classifications in modern awards

16 Dec 2024

On 19 November 2024, an Expert Panel issued a decision [2024] FWCFB 438 to vary provisions in 47 modern awards which contain a rate of pay at the 'C14' rate, or below the 'C13' rate, to ensure they apply on a transitional basis only.

The Review of C14 and C13 rates in modern awards arose from the Annual Wage Review 2018-19 decision [2019] FWCFB 3500 and follows from the decision of 16 April 2024 [2024] FWCFB 213 which determined that:

- the lowest classification rate in any modern award applicable to ongoing employment should be at least the C13 rate (currently $915.90 per week)
- any classification rate below the C13 rate must be an entry-level rate operating for a limited period and provide a clear transition to a higher rate
- the transition period on a rate below the C13 rate should not exceed 6 months.

The decision concludes the review of C14 and C13 rates in the affected awards.

The changes to 45 of the awards take effect from **1 January 2025.** The changes to the *Horticulture Award 2020* and *Pastoral Award 2020* take effect from **1 April 2025**.

Updated Awards

We aim to publish updated awards on 30 December 2024.

Am I affected? Contact the Fair Work Ombudsman

The Fair Work Ombudsman has more information on how the changes may affect employees and employers: visit Changes to entry-level classifications in awards - Fair Work Ombudsman or contact them for further help.

Read:

- Review of C14 and C13 rates in modern awards | Fair Work Commission
- 19 November 2024 decision [2024] FWCFB 438

Model terms for enterprise agreements and copied State instruments

20 Dec 2024

Under the Closing Loopholes Act we are required to make new model terms for enterprise agreements and copied State instruments. The Full Bench has issued a statement with the draft terms for comment.

The President of the Commission issued a timetable to facilitate a comprehensive and inclusive consultation process on 26 September 2024. The consultation is to ensure that all stakeholders have an opportunity to contribute to the development of the model terms.

The draft terms published on 20 December 2024 consider the views of the peak councils and other interested parties who have made submissions during the consultation process.

Interested parties who wish to provide comment on the draft terms are requested to do so by **4:00pm (AEDT) on Friday, 31 January 2025**. Comments can be sent to the Chambers of Vice President Gibian at chambers.gibian.vp@fwc.gov.au.

Read the statement and draft terms:

- Statement: Model terms for enterprise agreements and copied State instrument (pdf)

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Education strategy 2025–28

20 Dec 2024

This strategy focuses on how we can best support new and existing users to access and understand our significantly expanded jurisdiction. It sets the direction for our ongoing education efforts over the next 3 years.

We encourage you to read our *Education strategy 2025–28* (PDF) for more information. Our education team is responsible for creating and maintaining our public facing digital education resources, delivered via:

- Online Learning Portal
- YouTube channel
- LinkedIn
- Facebook
- Instagram

The purpose of these resources is to:

- increase awareness of our role and tribunal functions (setting and varying minimum wages and modern awards, making minimum standards for some workers and contractors, facilitating collective bargaining, approving agreements, and dealing with disputes)
- build capability of the parties who use our services
- improve access to justice for the community, including culturally and linguistically diverse audiences and people with disability.

The education strategy is also available from the Engagement and Education section of our website.

Stay up to date

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Community engagement strategy

23 Dec 2024

We are committed to ensuring that people who access our services from all backgrounds are provided with access to justice. Our *Community engagement strategy 2025–27* supports access to justice for culturally and linguistically diverse (CALD) communities.

About the strategy

This strategy aims to enhance our engagement with migrant communities across Australia. It prioritises partnerships and collaboration with people, organisations and communities.

We developed it in consultation with CALD communities. We identified 6 priority areas:

- enhancing connections with CALD communities
- embedding and enhancing in-language resources
- tailored education and outreach
- improving CALD user experience and insights
- enhancing Commission processes to support CALD users
- raising cultural awareness across the Commission.

The focus areas will support us to address common barriers to engagement. The strategy integrates key recommendations regarding preferred communications channels, platforms and messaging.

You can read more about our findings in the *Community consultation report* (PDF).

Existing support and resources

The strategy will complement our existing support and resources. We have information in 28 community languages. This includes website information, animations and factsheets. These explain our role and the support we can provide.
See Information in your language.

In addition, we can provide interpreting services at each stage of our processes. This includes at hearings, conferences and conciliations. You can also use the Translating and Interpreting Service to contact us. See Help in your language.

Access the strategy

We encourage you to read our *Community engagement strategy 2025–27* (PDF) for more information.

It is available in the Engagement and education section of our website. You will also find our *Education strategy 2025–28* there. These complementary strategies will help to improve the experience of all people accessing our services.

Stay up to date

Stay up to date by subscribing to announcements or follow us on Facebook, Instagram and LinkedIn.

Applications to vary Early Childhood Education & Care supported bargaining agreement received

24 Dec 2024

On 10 December 2024, a Full Bench of the Commission approved the ECEC Multi-Employer Enterprise Agreement (PDF). This is a type of supported bargaining agreement. It applies to the employers listed in Part G of the agreement and their children's services and early childhood education sector employees.

This agreement can be varied to add employers and their employees to the coverage.

We have received applications to vary the agreement to add employers and we have updated our website content to provide more information about these applications. See Early Childhood education and care supported bargaining agreement.

To help you keep up to date with variations of the coverage of this agreement, we have created a new subscriber list, the ECEC supported bargaining agreement subscription list.

We will use this subscription list to alert users about new applications to vary the agreement that are received, and about how the Commission will deal with them. If the agreement is varied, we will use this subscription list to let you know. To receive updates subscribe to the ECEC supported bargaining agreement list .

Stay up to date by subscribing to Announcements or follow us on Facebook , Instagram and LinkedIn .

Decisions of the Fair Work Commission

The summaries of decisions contained in this Bulletin are not a substitute for the published reasons for the Commission's decisions nor are they to be used in any later consideration of the Commission's reasons.

Summaries of selected decisions signed and filed during the month ending Tuesday, 31 December 2024.

1 INDUSTRIAL ACTION – order against industrial action – consent – ss.604, 418 Fair Work Act 2009 – appeal – Full Bench – CFMEU and several employees of respondent (UGL) filed joint appeal against order of Commission stopping unprotected industrial action pursuant to s.418 – order required respondent's employees working on Cross River Rail project (CRR) in Brisbane to stop, not engage in and not organise certain specified types of unprotected industrial action – amended notice of appeal identified CFMEU and 90 UGL employees as appellants, pressing the following grounds for appeal: it was not open for Commission to make orders as they were ambiguous, Commission erred in assessing whether conduct amounted to unprotected action by failing to prompt respondent to prove that conduct did not fall within s.19(2)(c), Commission erred in construing s.19(2)(c) as requiring objective, imminent risk to health and safety rather than question as to whether evidence revealed reasonable concern about imminent risk held by employees, it was not open for Commission to find that industrial action was threatened, impending or probable, was being organised, or that the action described in the order had occurred, and that as Commission did not find industrial action was threatened, impending or probable or being organised, there was no basis for an order other than one requiring that the alleged action stop – Full Bench discussed factual background of matter – CRR project involves construction of 10.2km rail line including 5.9km tunnels running under Brisbane River and central Brisbane – CPB Contractors P/L (CPB) head contractor on project, and had been bargaining for two enterprise agreements (EAs) covering project employees, some represented by CFMEU – CFMEU represented employees had been taking protected industrial action since 30 April 2024, with CFMEU picketing at various CPB construction sites – respondent a subcontractor for CPB on project employing roughly 192 employees on project – covered by three EAs with a nominal expiry date of 31 January 2025, prohibiting those employees from engaging in industrial action until then by operation of s.417 – CFMEU picketing prevented UGL employees from attending work locations, following which CPB obtained interlocutory order from Federal Court on 1 May 2024 prohibiting CFMEU from obstructing, harassing or impeding movement of goods and people from CRR sites, and abetting any person to do so – further interlocutory orders made on 18 July 2024 restraining CFMEU from photographing or recording identity of anyone entering CRR sites and coming within 15m of entry to CRR sites – Full Bench observed no suggestion that interlocutory orders not complied with, but noted continued pattern of UGL employees regularly not attending work or performing duties, up until date Commission heard first instance matter – Full Bench summarised first instance proceedings – UGL sought orders under s.418 applying only to its workers on CRR project and not any specific union – CFMEU sent correspondence to Commission on morning of first instance

hearing, 7 August 2024, seeking to be heard in matter, and opposed orders along with AMWU and CEPU – Commission granted orders sought and published reasons for decision on 12 August 2024 – appellants sought stay of order pending determination of appeal – stay of entire order refused with regard to prospect of success and convenience, but partial stay granted with regard to order prohibiting organisation of industrial action and cl 4.1(c), which prohibited an employee from not attending work at a CRR site due to a health and safety concern arising from the existence or crossing of a picket at that site – joint correspondence from parties advised they had reached consent on matter: parties advised Full Bench that it should uphold appeal and dismiss matter upon rehearing – Full Bench considered request of consent position and refused it – Full Bench considered matter – noted jurisdictional fact enlivening duty under s.418(1) to make order; that it 'appears' to Commission that unprotected action is happening, threatened, impending or probable, or being organised, in that it can form opinion or reach state of satisfaction of such – on appeal, necessary for appellant to demonstrate error of law, principle, fact, that Commission failed to take into account relevant consideration or took into account irrelevant consideration, or made determinative outcome not reasonably available – appellants contended that Commission erred in law by 'failing to approach' question of requisite unprotected action on basis that UGL had to prove relevant conduct of appellants did not fall under s.19(2)(c) – Commission at first instance did not however state any proposition of law concerning onus contrary to appellants' contention, or at all, so alleged error of law therefore not apparent on face of decision but inferred from Commission's reasoning, rendering appeal ground problematic – appellants contended that once UGL had put sufficient evidence to raise issue of s.19(2)(c)'s applicability in first instance matter, it was for s.418 applicant to prove that s.19(2)(c) did not apply to conduct of respondents to that matter [*ABCC v Halloran*] – Full Bench considered precedent cited by appellants, which concerned proceedings brought in court by regulatory authority seeking imposition of pecuniary penalties for breach of s.417(1), which requires court to positively find that alleged industrial action has occurred – Full Bench noted that principles concerning question of onus in s.417 not necessarily applicable to s.418, listed distinguishing characteristics: s.418 powers exercisable by statutory tribunal and not court, may be made by Commission on its own initiative, are qualified with s.420's time constraint, and s.418 requires Commission to make order once it reaches state of satisfaction concerning alleged action, the actual or potential occurrence of action not jurisdictional fact upon which s.418 operates – Full Bench noted provisions of Act distinguishing Commission procedure from that of a court, observing legal onus of proof as articulated in matter cited by appellants cannot be applied without qualification to consideration required under s.418 – noting general principle that no party bears onus of truth in administrative tribunals not required to apply rules of evidence [*QAAH of 2004*] – Full Bench held it erroneous to constrain Commission's consideration under s.418 by reference to onus falling on particular parties, albeit that an applicant for order under s.418(1) bears some burden of persuading Commission to reach requisite state of satisfaction – Full Bench considered whether Commission finding of occurrence of action within meaning of s.19 was reasonably open – Full Bench rejected ground 3A of appeal, observing that no individual UGL employee gave evidence of WHS risk crossing picket line at first instance hearing, Commission therefore entitled to conclude that

s.19(2)(c) did not apply – Full Bench considered construction of s.19(2)(c) in respect of appeal ground 3B, which requires reasonable concern (being a subjective state of mind) of a risk to health and safety – appellants contended Commission 'implicitly' departed from this construction and approached matter searching for actual existing risk, rather than reasonable apprehension of risk – Full Bench considered additional principles of s.19(2)(c)'s construction: that alleged concern must actually and genuinely be held by the employees in question, that risk of concern must be 'imminent' and that action in question must be causally related to concern [*ABCC v CFMEU*] – Full Bench held that a detailed analysis of evidence supported Commission's conclusion that s.19(2)(c) did not apply; no UGL employee had raised concerns other than those 'blandly or broadly asserted in text messages' – messages exchanged showed certain CEPU delegate's conduct not based on genuine concern about WHS risk but motivated by industrial solidarity with CFMEU – Full Bench noted further that appellants provided no explanation as to any imminent WHS risk after interlocutory relief granted, and why employees refused to work on days where no picket line was in place – Full Bench rejected appellant contention that Commission at first instance required to make finding that each employee on CRR project had engaged in industrial action, as s.418 requires Commission be satisfied as to actual or potential occurrence of action by 'one of more employees'; evidence demonstrated that UGL employees were generally on various occasions refusing to work – rejecting grounds 3B and 3, Full Bench turned to ground 2(c), finding that cl 4.1(c) of order was ambiguous, served no purpose, and was not authorised by s.418(1) – Full Bench turned to ground 5 of appeal, that Commission erred in ordering UGL employees 'must not engage in or organise' action identified in order notwithstanding Commission's only finding was that action was occurring – Full Bench agreed that Commission not authorised to order appellants to 'not organise' action, as UGL did not contend action was being organised, did not name unions as respondents to application, and no evidence of organising was adduced; ground 5 upheld to that extent – Full Bench noted different position with respect to order that action 'not occur': whilst Commission did not state a finding that action was threatened, impending or probable, Full Bench gave some latitude to first instance decision due to short notice of matter and short statutory timeframes afforded by s.420(1) – Full Bench therefore not persuaded Commission failed to reach requisite state of satisfaction regarding industrial action being threatened, impending or probable to support making of 'not occur' order, citing explicit submission made by UGL in first instance matter – ground 5 not upheld in this respect – Full Bench noted parties' correspondence that appeal be upheld on ground 5, and s.418 application be dismissed on rehearing – Full Bench rejected this course, noting that appealable error by primary decision maker must have actually occurred, not arising merely by agreement, that ground 5 is only partly upheld along with ground 2(c), which would not substantially vitiate order – Full Bench noted that finding of any appealable error does not necessitate rehearing, and limited success of appeal suggested that appropriate course would be to vary parts of order not made in conformity with s.418 – Full Bench granted appeal on basis of identified errors, upheld appeal in respect of grounds 2(c) and ground 5 in part – order varied to remove words 'or organise' in cl4.1 and remove cl.4.1(c).

Appeal by CFMEU and Ors against order of Boyce DP of 7 August 2024 [[2024] FWC

2 REGISTERED ORGANISATIONS – registration – s.604 Fair Work Act 2009, s.18 Fair Work (Registered Organisations) Act 2009 (RO Act) – appeal – Full Bench – appeal lodged by Ambulance Employees Association of Western Australia Incorporated (AEA) who had applied for registration under s.18(b) RO Act as a federally registrable association of employees – objection to registration lodged by UWU – in first instance decision, application for registration dismissed by Commission following UWU application pursuant to s.587(1)(c), on basis that registration had no reasonable prospects of success – AEA originally formed by group of paramedics, ambulance officers, transport officers and communications staff employed by St John Ambulance Western Australia Ltd (St John's), the largest employer in the WA ambulance and patient transport industry – as an incorporated association, AEA has roughly 1079 members, 3 of whom no longer work for St John's yet are still members of the AEA – AEA did not apply for registration as an enterprise association under s.18(c) RO Act – UWU contended AEA could not be registered under s.19(1) RO Act as that section applied only to registration of organisations other than enterprise associations; UWU asserted that AEA was an enterprise association – at first hearing, Commission put aside UWU's objection and considered UWU's s.587(1)(c) application – Commission considered it common ground that AEA an enterprise association per s.18C(1) RO Act, and as consequence of changes in its membership, was no longer federally registerable – Commission did not accept AEA submissions that an enterprise association can apply for registration under either s.18(b) or (c) RO Act – Commission ultimately concluded requirements of s.19 could not be satisfied due to operation of words 'other than an enterprise association' which make clear an application can only be granted under s.19 if made by a non-enterprise association – noting public interest aspect, Full Bench granted permission for AEA to appeal decision, observing the appeal raised novel and important question in relation to requirements imposed by s.19 RO Act, and importance of rectification had AEA been wrongly prevented from being registered – Full Bench noted it unusual that application for registration dismissed by way of s.587(1)(c) application – observed that Commission was determining preliminary question as to ability to register – Full Bench considered it sufficient to determine whether Commission was correct to find that AEA could not be registered – Full Bench observed two grounds of appeal in AEA's written submissions: that Commission erred in finding the AEA an 'enterprise association' within meaning of s.18C(1) RO Act, and that Commission erred in finding application had no reasonable prospects of success as it is, in fact, a federally registrable association of employees for reasons advanced in relation to the first ground – Full Bench noted impediment to AEA's appeal; that AEA accepted at time of hearing that it was not a federally registerable enterprise association by way of its 3 members not employed by St John's, and that the words in parentheses in s.19(1) RO Act dictate that Commission must grant application for registration made by an association other than an enterprise association under that section – Full Bench

observed therefore that central issue to appeal was whether AEA is an 'enterprise association' under s.18C RO Act – AEA submitted that terms 'member' and 'members' in ss.18B and 18C RO Act do not require Commission to make finding of fact as to actual membership status of 'flesh and blood persons' who are members of association – AEA submitted, rather, that status of members answered by reference to AEA's eligibility rules; that AEA's rules do not limit membership to St John's employees but extend eligibility to 'employees in or in connection with the ambulance industry anywhere in the Western Australia and to persons who work in various occupations anywhere in Western Australia' – AEA submitted if assessment of membership made by reference to rules rather than actual persons, it is federally registerable under s.18B(1)(b) RO Act and not an enterprise association under s.18C(1) RO Act [*AEU v Lawler*] – UWU submitted that wording of ss.18C(1) and 18C(3)(a) RO Act does in fact require examination of actual 'flesh and blood' members – Full Bench found it appropriate to examine construction of s.18C RO Act – Full Bench observed reference to 'majority of the members' in s.18C RO Act invites numerical assessment of whether more than half of association's members work in same enterprise, a construction reinforced with regard to other parts of s.18C including (3) which proscribes federal registration if members do not fall into subparagraphs (a) to (d) – Full Bench rejected AEA's construction of s.18C(1) RO Act – Full Bench considered statutory history of provisions, with AEA submitting that *Work Choices Act 2006* did not displace precedent that AEA had cited [*AEU v Lawler*] – UWU disagreed – Full Bench found legislative changes do not permit inference to be drawn that Parliament intended to retain approach set by precedent as cited by AEA due to 'materially different' amendments – AEU submitted that adoption of rules-based analysis of membership [*AEU v Lawler*] avoids inconvenient and absurd consequences that would follow UWU's construction – Full Bench cited precedent that 'identification of possible anomalies or capricious consequences does not mean that the provision should be construed differently' [*Peter Greensill Family Company P/L*] – AEA submitted scenario in which an association with between 50% and 100% of members employed in same enterprise would be unregistrable, falling within definition of an "enterprise association" in s.18C(1) RO Act but not a federally registrable enterprise association by operation of s.18C(3)(a) – Full Bench noted variety of views as to whether consequences of interpretation anomalous or legitimate policy choice; that it is not appropriate for allegedly harsh interpretation to displace ordinary meaning of statute – Full Bench rejected submission that outcome of construction inconsistent with objects of RO Act, noting articulation of Parliamentary intention in s.5 RO Act does not guarantee registration to any association – Full Bench rejected AEA submission that first instance construction would open potential for an enterprise association registered under s.20 RO Act to be deregistered if a single member changed employment due to operation of s.171A(1)(c), which would terminate that person's membership, rather than the registration status of the organisation – Full Bench also rejected AEA's submissions that under first instance construction, day-to-day membership changes may affect organisation's ability to satisfy registration requirements – Full Bench noted that requirements for registration are to be assessed at time matter is determined by Commission and assumed that Parliament's intention was that subsequent changes to composition of membership inconsistent with continuing registration would be addressed by cancellation of registration under s.30 RO Act – Full Bench ultimately held that

potential consequences of their construction did not rise to absurdity upon which basis existed to rewrite definition of an enterprise association in s.18C(1) – Full Bench held that Commission's first instance construction correct, and that AEA could not satisfy requirements for registration.

Appeal by Ambulance Employees Association of Western Australia against decision of Colman DP of 17 June 2024 [[2024] FWC 1573] Re: United Workers' Union

C2024/4538 [2024] FWCFB 451
Gibian VP Sydney 6 December 2024
Dean DP
Wright DP

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3 CONDITIONS OF EMPLOYMENT – occupational health and safety – s.229 Work Health and Safety Act 2011 – applicant was a Health and Safety Representative – issued two Provisional Improvement Notices (PINs) under s.90 of the WHS Act against respondent – PINs required respondent to improve manual handling practices at a post office and eliminate manual handling risks at customer's premises – respondent requested that Comcare review PINs – review resulted in cancellation of PINs – Comcare upheld decision following internal review requested by applicant – application to Commission seeking external review of Comcare's internal review – Commission considered nature of review and proper approach to applications under s.229 – considered that review was a hearing de novo – Commission to consider matters afresh, allowing parties to present fresh evidence and arguments [*Australia Post*] – determined Commission review to be conducted in same manner as functions exercised under *Fair Work Act 2009* – observed Commission may confirm, vary or set aside internal review decision and make new decision in substitution: s.229(3) WHS Act – noted purpose of WHS Act tied to principle 'so far as is reasonably practicable workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work': s.3(2) WHS Act – found that duty in s.19 of the WHS Act was not being complied with – Commission accepted that Applicant's PIN met statutory prerequisites and that applicant held a reasonable belief that respondent had contravened s.19 by failing to eliminate manual handling risks – PIN identified use of Unit Load Devices as a measure to prevent contravention risks – Comcare decisions set aside – respondent ordered to replace certain van services with truck services – respondent to liaise with Comcare to ensure any health and safety risks associated with the introduction of the truck service be minimised – ordered steps necessary to make the change be completed by 20 January 2025 – new truck service to commence by 1 February 2025.

Delany v Comcare, Australian Postal Corporation

C2024/3959 [2024] FWC 3482
Slevin DP Sydney 13 December 2024

Other Fair Work Commission decisions of note

Appeal by Ridings against decision of Deputy President Lake of 12 July 2024 [[2024] FWC 1845] re Fedex Express Australia P/L T/A Fedex

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CONDITIONS OF EMPLOYMENT – flexible working arrangement – discrimination – ss.65B, 604 Fair Work Act 2009 – appeal – Full Bench – appellant sought permission to appeal first instance decision to resolve flexible working arrangement dispute – appellant has carer's responsibilities for wife and two children – appellant worked part-time under two sequential flexible working arrangements – appellant primarily worked from home – following COVID respondent required staff complete minimum of three days in office per week – appellant used various leave entitlements to avoid working in office – appellant made third flexible working arrangement request to work one day in office – request rejected – appellant made fourth request, seeking to work from home full time (fourth request) – fourth request rejected – rejection of fourth request spurred appellant's first instance s.65B application – at first instance Commission found fourth request validly made – whether respondent's refusal compliant with s.65A(3) considered – Commission found benefits of working in office made out, but respondent failed to account for any detriment arising if fourth request granted – Commission arbitrated dispute per s.65C – noted Commission must take account of 'fairness between the parties', being balancing needs of employers with right of employee to access flexible working arrangements under NES – dispute determined at first instance – flexible working arrangement order requiring 1 day in office per week (Order) made with caveat – appellant entitled to access statutory leave, however if appellant failed to attend office after two consecutive weeks respondent could lawfully direct appellant to attend office – Order valid for three months to function as trial arrangement – appellant contended Commission made three errors of law and 11 errors of fact – permission to appeal required – permission to appeal considered – Full Bench considered alleged errors of law – summarised first ground as contention Commission erred ordering appellant work one day in office because inconsistent with earlier finding respondent's rejection of fourth request not supported by reasonable business grounds – Full Bench stated this ground of appeal premised on misunderstanding of statutory requirements and relationship between ss.65A, 65B and 65C – noted s.65C sets out requirements for dealing with dispute via arbitration – observed Commission not compelled to make an order consistent with earlier finding regarding an employer's flexible working arrangement refusal – Commission required to 'take into account fairness between employer and employee' – Full Bench held fact Commission found respondent's refusal was not supported by reasonable business grounds did not compel order be made consistent with that finding – second alleged error of law swiftly rejected, noting [*Maxxia*] did not stand for proposition appellant advanced – third alleged error considered – summarised as contention Commission's Order directly or indirectly discriminatory toward appellant – appellant suggested discrimination arose from Order's failure to uphold his rights as a full-time carer – Full Bench set aside clear tension between claimed full-time caring responsibilities and contractual obligation with respondent – Full Bench considered objects of Act – observed primary object of providing 'balanced framework for cooperative and productive workplace relations' – further noted while Act generally remedial legislation, objects do not establish framework that prioritises interests of employees over those of employers – whether order discriminatory considered – 'discrimination' not defined in Act – Full Bench guided by definition in *Disability Discrimination Act 1992* (Cth) – accepted appellant's status as carer for wife and children afforded him protections against direct and indirect discrimination – for Order to be directly discriminatory appellant needed to show being required to attend office one day per week had effect of treating him (in capacity as carer) less favourably than other persons without a disability would be treated in circumstances not materially different – Full Bench found evidence demonstrated contrary outcome – Order treated appellant more favourably than persons without a disability in respondent's workforce as it allowed working from home three days per week, contrary to respondent's normal requirement employees attend office minimum of three days per week – whether indirectly discriminatory considered – Full Bench not satisfied necessary elements of establishing indirect discrimination definition met – Full Bench agreed with Commission's finding requirement to attend office 1 day per week for three-month trial period was reasonable in circumstances – held Commission had not fallen into error – each of appellant's 11 alleged errors of fact considered and rejected – Full Bench noted appeal exists for correction of error – held appellant failed to advance any matter disclosing appealable error and not in public

interest to grant permission to appeal – permission to appeal refused.

C2024/5176		[2024] FWCFB 473
Clancy DP Anderson DP Masson DP	Melbourne	24 December 2024

Sabag v D&T Hydraulics and Engineering P/L

TERMINATION OF EMPLOYMENT – merit – s.394 Fair Work Act 2009 – applicant terminated from mechanical engineer role – applicant specialises in 3D modelling – his 'Roy Method' is a technique for 3D automation and 3D modelling created prior to employment – applicant took leave to go to Israel following October 2023 attack – applicant took a second period of leave to Israel in April 2024 following the death of a close relative – applicant was working remotely whilst overseas – evidence submitted that while respondent begrudgingly approved the leave, seven-hour time difference was difficult to manage – applicant returned to work and the engineering team had a meeting to clarify department goals, including discussion on Roy Method and if multiple engineers could use it simultaneously – applicant submitted a 'professional argument' occurred – respondent submitted applicant was aggressive, questioned the credentials of his colleagues, stated he did not trust another colleague to do the modelling and asked if the manager was 'against him' – manager had set a goal for engineering team and day after the team meeting manager proposed to set up a 'war room' – 'war room' was where team would move their desks into one office to focus on the goal – applicant was only team member who did not move his desk – applicant did not support the concept, he was offended by the term 'war room' due to his connection to the ongoing Israel-Palestine conflict – applicant did not move his desk on the next work day – the manager and the applicant had a meeting, there was discussion of the applicant's behaviour at team meeting and refusal to move his desk – respondent submitted applicant became aggressive and accused manager of lying – applicant was advised his employment was terminated following argument between the two men – applicant submitted he was told he could follow a performance improvement plan for three-months or respondent would pay one month notice – applicant submitted he did not accept plan and was terminated by manager – HR manager emailed applicant a termination letter indicating he was terminated for serious misconduct, one weeks' notice paid – two reasons for dismissal: caused serious and imminent risk to the health and safety of a person/s Fellow coworkers felt unsafe by the aggressiveness nature in which you were engaging; and refused to carry out a lawful and reasonable instruction to move office space to sit with the team – respondent submitted there were concerns with the applicant's performance – whilst overseas applicant was unable to efficiently work collaboratively with the team and he showed limited competency in areas of mechanical engineering outside of modelling – Commission must consider s.387 – valid reason must be 'sound, defensible or well-founded', should not be 'capricious, fanciful, spiteful or prejudiced' [*Selvachandran*] – entire factual matrix must be considered [*ATO v Shamir*] – respondent submitted applicant's behaviour at the team meeting was an imminent threat to coworkers and that he was aggressive to the point they felt unsafe – Commission found applicant was ardent, strident and forceful in his communication however no evidence provided to show personal invective used or personal threats – found applicant's behaviour to be unprofessional and warranted disciplinary action but was not a serious or imminent risk to health and safety – held conduct not serious misconduct – found respondent's request for applicant to move his desk was lawful and reasonable – applicant did not follow lawful and reasonable direction – noted 'war room' was poor phrasing given the respondent's knowledge of the applicant's connection to Israel – found there was a valid reason for dismissal – found at time of termination applicant did not know the specific reason for dismissal – this weighed in favour of harsh, unjust or unreasonable finding – Commission considered if dismissal was a proportionate response to conduct [*Sydney Trains v Hilder*] – no show cause notice, no chance to correct or adapt conduct – labelling of conduct as 'serious and imminent risk to health and safety' was not supported by evidence – held dismissal was harsh and unjust but not unreasonable – dismissal found to be unfair –

compensation appropriate remedy – [*Sprigg*] principles applied – Commission found employment would have lasted further 12 weeks – deductions and contingencies applied – compensation of $20,000 awarded.

U2024/7256		[2024] FWC 3336
Lake DP	Brisbane	3 December 2024

Al Bankani v Western Sydney Migrant Resource Centre Ltd

TERMINATION OF EMPLOYMENT – costs – ss.394, 440A Fair Work Act 2009 – applicant successful in her unfair dismissal claim – prior to hearing and Commission's determination she had made a *Calderbank* offer to respondent to accept 12 weeks' pay to resolve claims – respondent rejected offer – applicant awarded 75% of her lost renumeration which was significantly more than her offer – applicant made costs application against respondent – applicant argued respondent's refusal to accept her offer was an unreasonable act and contrary to *Calderbank* principles – respondent argued its rejection of offer not unreasonable, reasonable for it to defend proceedings, against public interest to award costs in this matter – Commission found applicant's reliance on *Calderbank* principles misplaced – the rejection of a *Calderbank* offer is not assumed or equated to be an unreasonable act under s.400A – rejection of settlement offer could be an unreasonable act or omission but Commission must consider terms of s. 400A: whether a party 'caused those costs to be incurred because of an unreasonable act or omission. in connection with the conduct or continuation of the matter' – some factors supported finding that respondent acted unreasonably: respondent had ample time to consider applicant's offer, offer represented considerable compromise, respondent's case was weak, final offer was clear in its terms – other factors supported finding respondent did not act unreasonably: offer made late in the proceedings, respondent had engaged actively in attempting to settle application during proceedings – Commission found that where both parties actively attempt to resolve claim difficult to argue that a party was acting unreasonably by rejecting an offer – Commission not satisfied respondent acted unreasonably – costs application dismissed.

U2022/2111		[2024] FWC 3363
Easton DP	Sydney	3 December 2024

Patial v Kailash Lawyers P/L

CASE PROCEDURES – no reasonable prospects of success – ss.587, 603 Fair Work Act 2009 – in 2021 applicant alleged he was dismissed unfairly – applicant subsequently had unfair dismissal applications dismissed by 8 different members of the Commission across 6 decisions published between 2021 and 2023 – applicant also unsuccessfully challenged outcomes in Federal Court and High Court – on 20 November 2024 applicant made new application – application sought to revoke previous decisions on basis of "errors on the face of the record", errors in quantifying costs, that misleading information was provided by the respondent in earlier proceedings and procedural fairness not provided – application made under ss.603 and 607 – Commission found s.607 not applicable – noted parameters for s.603 in [*Grabovsky*] where Ross J noted: "The power to vary or revoke a decision has generally only been exercised where there has been a change in circumstances […] or, where the initial decision was based on incomplete or false information […]. As a general proposition applications to vary or revoke a decision should not be used to re-litigate the original case" – Commission sent email to applicant on 21 November 2024 inviting him to discontinue application or explain how s.603 applied by 29 November – applicant filed amended Form F1s relating to previous matters – Commission found no provisions listed in amended F1s provided standing to make an application or revoke earlier decisions – observed if applicant could demonstrate application under s.603 had reasonable prospect of success then s.587 would not apply – s.587 gives Commission power to dismiss an application: on its own initiative; to deal with matters that should not be litigated as they have no reasonable prospect of success; or to avoid protracted hearings on an interlocutory basis – Commission noted s.587(1)(c) sets

lower bar than common law for 'no reasonable prospect of success' test – noted exercise of s.587 should be used with caution – prior authority noted – applicant must be able to put case to decision-maker for consideration [*Hempenstall*] – Commission must at minimum request applicant expand on aspects of application in doubt [*SZBEL*] – appropriate to direct applicant to relevant terms of legislation [*Jones*] – procedures should be fair and adapted to circumstances [*Galloway*] – Commission further noted s.587 should be seen in conjunction with cost provisions in ss.611 and 400A – applicant observed to have long history of litigation with attempts to improperly reagitate earlier failed appeals – s.603 cannot be used to "usurp" appeal process – Commission disagreed with applicant that "thorough examination of the substantive evidence and relevant legislative provisions" required – applicant invited to show evidence application properly made – argued s.603 permits Commission to revoke or vary a decision where it is necessary to address procedural irregularities, breaches of fairness, correct errors or respond to public interest considerations – Commission found applicant's submission and construction of s.603 wrong – these functions available on appeal – s.603 did not enable applicant to relitigate case or appeal earlier decisions – Commission found no basis that s.603 engaged – noted applicant had opportunity to put case forward – satisfied application had no reasonable prospects of success within meaning of s.587(1)(c) – application dismissed under s.587(3)(a).

C2024/8266 [2024] FWC 3388
Easton DP Sydney 5 December 2024

Association of Professional Engineers, Scientists and Managers Australia (Collieries' Staff Division) t/a Collieries' Staff and Officials Association v Wollongong Resources P/L

CONDITIONS OF EMPLOYMENT – stand down – judicial power – s.526 Fair Work Act 2009 – respondent operated underground coal mine – fictional ignition common and well-known hazard in underground coal mining industry – frictional ignition event occurs when heat caused by friction or striking between two materials ignites a fuel – following fifth frictional ignition event in 18 months NSW Government Resources Regulator (Regulator) issued respondent with a Final Prohibition Notice on 18 January 2024 to stop work until certain conditions met – respondent ceased operation of coal mine and stood down employees – in February 2024 respondent determined mine would not reopen – some stood down staff made redundant, others resumed work to decommission equipment prior to redundancy – applicant disputed right of respondent to stand down employees without pay for approximately one month – Commission observed dispute primarily, though not exclusively, turned on whether respondent responsible for cause of work stoppage – respondent argued applicant impermissibly asked Commission to exercise judicial power by determining legal rights and obligations in reference to past events – Commission observed s.526 powers easy to identify regarding continuing stand down situations; scope of powers less clear after stand down has concluded as ongoing dispute would concern past events – Commission considered nature of judicial power, noting [*Carter*] and [*Helloworld*] – Commission found applicant sought claim for more than a legal entitlement to wages consequent upon a conclusion that a stand down was not authorised by the Act – further noted applicant lodged application promptly after stand down announced and was ongoing (cf *Helloworld*) – Commission held it could determine dispute – applicant argued respondent could reasonably be held responsible for stoppage and employees could have been usefully employed – applicant submitted respondent failed to implement appropriate controls to prevent frictional ignition event and that there was cleanup or maintenance work to do – respondent argued it could not be held responsible as direct cause of stoppage was the Final Prohibition Notice and it could not have done anything further to comply with Regulator's requirements – Commission found employees could not be usefully employed during stoppage from perspective of employer [*Townsend*] – immediate cause of shut down was Final Notice issued by Regulator; however necessary to look past immediate cause for real or substantive cause(s) of stoppage – found no single event or factor caused Regulator to issue notice or cause work stoppage – whether

respondent could be held responsible for stoppage – observed difficult to follow rationale for issuing full prohibition given frictional ignition events not novel or unique to respondent's mine – held respondent took reasonable steps to identify and implement controls to manage further risks of frictional ignition events – noted respondent cooperated with Regulator and engaged with prior recommendations – Commission found respondent could not have reasonably prevented the stoppage – application dismissed.

C2024/404 [2024] FWC 3306
Easton DP Sydney 28 November 2024

Owczarek v The University of Melbourne

TERMINATION OF EMPLOYMENT – misconduct – sexual harassment – s.394 Fair Work Act 2009 – application for unfair dismissal – applicant summarily dismissed on 14 December 2023 – reasons for dismissal were alleged serious misconduct, said to be constituted by a combination of sexual harassment (primarily in the nature of the extended pursuit of an unwelcomed romantic or non-platonic relationship) and inappropriate workplace behaviour by the applicant toward a work colleague (primarily unwelcome communications or attempts to communicate on repeated occasions for non-work matters) – the work colleague is referred to as the 'Complainant' – during the period of alleged misconduct, the applicant was Acting Dean of the School of Sciences at the University, and the Complainant reported directly to him – critical incident of conduct commenced at a dinner between the applicant and the Complainant on 26 September 2019, at a restaurant in Melbourne – at that dinner, the applicant was said to have placed his hands on his colleague's hands (the applicant says they jointly held hands) and said 'I love you' or similar words (the applicant takes issue with the exact form of words said, the context and alleged reciprocation by the Complainant) – University relied on a series of communications or unwelcome attempts at contact over the course of the following 15 months to January 2021 – many of those communications, being text messages or emails, were not in dispute and none of them were in any way sexual – what was in dispute was the characterisation of those actions, with the University contending they were said to be in furtherance of pursuing a romantic relationship – central element of the applicant's case concerns a meeting he had with human resources on 18 March 2021, where he was told to 'stop' all contact with the Complainant – applicant contended that he completely complied with that directive and he did not attempt to, or make, contact with the Complainant at all from that date – this period essentially coincided with a change in work roles by the applicant, such that he no longer had any professional dealings with the Complainant – in early 2023 the applicant applied for a position that would once again see him working with the Complainant – at that stage, the Complainant made a formal complaint to the University about the matters from 2019 to early 2021, which the University formally investigated, and led to his dismissal – Commission found that the applicant had engaged in instances of misconduct, and agreed with the University that allegations 2(a)-(c) were serious misconduct, being sexual harassment albeit not with that intention by the applicant – also found that the conduct underpinning allegation 7 was serious misconduct, following as it did directly in the shadow of allegation 2 – for the purposes of assessing whether a reason is a valid reason for dismissal, the Commission did not consider it sound or defensible for an employer to allow a significant period of time to pass – in this case 2 years at the lower end and nearly 3 and a half years for the core allegation – where the employer is on notice about, and to a significant extent has dealt with, fundamental aspects of the conduct – held that an employer should not sit on a serious allegation to be possibly acted upon 'formally' at some indeterminate point later on following further reflection or receipt of a formal complaint – such delay is not sound, because it can cause real difficulties in getting to the bottom of the allegations in question – Commission not satisfied that there was a valid reason to support the dismissal of the applicant – Commission satisfied that the dismissal was harsh, unjust and unreasonable in all of the circumstances – held that a very significant factor in this case concerns the conclusion that, in a real and practical sense, the misconduct (and other perceptions of misconduct) had been dealt with by

March 2021 and commitments given to prevent their recurrence – the catalyst that led to the formal complaint being made against the applicant was the validly held concern that, if the applicant successfully applied for a new Faculty position, he would be working again with the Complainant (and her concern for others in the Faculty with whom he would also work) – a proportionate response would have been refusing to appoint the applicant to that position for those reasons, and possibly other steps short of dismissal – Commission found that dismissal was disproportionate in circumstances where there was no credible evidence of any ongoing misconduct or similar conduct since March 2021 – satisfied the applicant was unfairly dismissed – Commission ordered that the applicant be reinstated and also made an order for continuity of employment, given the length of tenure prior to dismissal.

U2023/13159 [2024] FWC 1368
Bell DP Melbourne 20 December 2024

Ingall v Qube Ports P/L

TERMINATION OF EMPLOYMENT – valid reason – conduct – s.394 Fair Work Act 2009 – applicant was employed as casual stevedore – applicant's vehicle collided with another vehicle during a shift – respondent stood down applicant and investigated incident – respondent then provided applicant with an opportunity to respond and permitted applicant to return to work – after applicant returned to work but before respondent reached a disciplinary outcome decision applicant sent a number of emails to respondent's employees and management (subsequent conduct) – respondent alleged that emails were untrue, inappropriate and demonstrated applicant had not taken responsibility for the incident – suggested this breached Code of Conduct and Ethics and similar workplace policies – respondent issued second show cause letter referencing subsequent conduct – applicant responded – respondent dismissed applicant effective immediately – Commission considered whether there was a valid reason (s.387(a)) – found that collision incident was not a reason for dismissal; consequently not relevant to consideration of valid reason – found that dismissal was due solely to his subsequent conduct: he failed to treat his colleagues with respect and failed to take responsibility for incident – found this was valid reason for dismissal – Commission held that applicant was notified of the reason (s.387(b)) and had an opportunity to respond (s.387(c)) which weighed against finding that the dismissal was unfair – held s.387(d)-(g) factors not relevant – Commission considered other matters (s.38(h)) – whether dismissal was a proportionate response to conduct – held that conduct was discourteous, targeted and deliberate and was inconsistent with applicant's employee obligations – considered whether applicant's suspension was punitive, whether investigation was inappropriately reopened to dismiss the applicant, that the applicant cooperated with process – held in each case that those factors were not relevant considerations – held that dismissal was not harsh, unjust or unreasonable and not unfair – application dismissed.

U2024/6871 [2024] FWC 3605
Durham C Brisbane 31 December 2024

Keifa v Lifestyle Bakery P/L

TERMINATION OF EMPLOYMENT – termination at initiative of employer – mobile phone policy – ss.387, 394 Fair Work Act 2009 – applicant dismissed from production role at bakery – mobile phone use in factory area strictly prohibited under company policy – applicant summarily dismissed for policy breach – applicant lodged for unfair dismissal remedy under s.394 – applicant alleged dismissal harsh, unjust or unreasonable – contended respondent failed to accept mitigating family care needs as valid exception to policy – Commission observed respondent supplies products to major supermarket chains – supermarket contracts forbade use of mobile phones in factory area – large supermarkets entitled to attend and audit respondent unannounced – noted respondent offered alternative arrangements for applicant to be contacted by family in emergencies – applicant declined – Commission considered s.387 – criteria satisfied – found respondent had a valid reason to dismiss applicant –

found respondent had very compelling reason for policy – applicant aware of consequences and admitted conduct responsible for termination – explained applicant's repeated refusal to comply with respondent's lawful direction in favour of using phone highlighted reckless indifference towards respondent's viability and safety of consumers – observed applicant's personal circumstances did not exempt or override respondent's policy – Commission satisfied applicant was notified of the reason for termination – was given opportunities to respond and have support – having regard to relevant factors and circumstances, the Commission determined the dismissal was not harsh, unjust or unreasonable – application dismissed.

U2024/6445 [2024] FWC 3449
Thornton C Adelaide 10 December 2024

Graves v IAA Group Holding P/L

TERMINATION OF EMPLOYMENT – genuine redundancy – remedy – ss.385, 394 Fair Work Act 2009 – respondent small business with 8 full time employees – applicant employed under *Health Professionals and Support Services Award* (Award) – applicant dismissed 8 July 2024 – applicant suffered injury on 7 July 2024 and unable to attend workplace on 8 July 2024 – applicant attempted to send medical certificate – unable to access work email account – attempted to contact supervisor and manager – applicant spoke to supervisor who asked if she had spoken with manager – applicant informed supervisor she had been unable to reach manager – supervisor instructed applicant to speak to manager – supervisor asked applicant whether applicant had checked her work emails – applicant informed supervisor of inability to access work email – supervisor informed applicant manager had terminated her employment – termination made by email – supervisor read email to applicant over the phone – employment terminated effective immediately due to respondent's financial stress – applicant claimed dismissal made unfairly without warning and lacked proper process – respondent argued dismissal consistent with Small Business Fair Dismissal Code (Code) – submitted Small Business Fair Dismissal Code Checklist (Checklist) – Commission considered Code – found respondent made incorrect statements in the Checklist – painted false picture of the process leading to the dismissal – Commission found respondent ignored obligations under the Award to consult with the applicant before dismissal – Commission rejected argument dismissal consistent with Code – considered whether genuine redundancy – respondent submitted minutes of one-on-one meetings between applicant and supervisor – respondent argued minutes reflected applicants' knowledge of respondent's poor financial performance – applicant denied any knowledge of the minutes – Commission rejected claim the applicant had been consulted on possible redundancy – found respondent failed to comply with obligations in the Award to consult with the applicant about redundancy – accepted applicant's claim her dismissal came as a complete surprise – Commission found no genuine redundancy – considered whether dismissal was harsh, unjust or unreasonable under s.385 – considered valid reason for dismissal – respondent submitted applicant dismissed on basis of redundancy – respondent traded at a loss in previous financial year – Commission satisfied, on balance, there was a valid reason for dismissal – found applicant not notified of reason for dismissal (s.387(b)) – Commission considered other relevant matters – no redeployment or alternative employment discussed with applicant – held dismissal unfair – remedy considered – reinstatement inappropriate – compensation considered – found applicant would have earned eight weeks remuneration if proper redundancy consultation undertaken – deductions for payment in lieu of noticed received – compensation ordered of $8,025 less taxation and 11.5% superannuation contribution.

U2024/8643 [2024] FWC 3523
Sloan C Sydney 20 December 2024

Randall v SRG Global Asset Care P/L

TERMINATION OF EMPLOYMENT – termination at initiative of employer – s.394 Fair Work Act 2009 – on 6 August 2023 applicant and respondent confirmed applicant's

retirement date as July 2024 – on 16 May 2024 applicant stated he intended to finish working on 5 July 2024 – on 13 May 2024 applicant requested long service leave from 8 July 2024 to 13 January 2025 – respondent replied taking long service leave into retirement was "against company policy" and proposed retirement date be changed to 29 July 2024 – applicant rejected offer – respondent confirmed it couldn't facilitate the leave request but offered a goodwill payment of five weeks' salary – applicant disputed the offer, claimed it was less than his entitlements, and requested a termination letter, alleging termination of employment – SRG made the goodwill payment and paid out accrued leave balances – Commission questioned whether applicant's employment was terminated on respondent's initiative – respondent claimed applicant resigned on 6 August 2023 – Commission found the resignation was not "clear and unambiguous." – applicant's departure date was only confirmed on 16 April 2024 – applicant intended his last workday to be in July 2024, with employment ending after long service leave – respondent did not advise any issues with applicant's plan until May 2024 – respondent knew about the policy in early 2024 but did not communicate it to the applicant and could not explain the oversight – Commission concluded this amounted to a termination of the employment at respondent's initiative – Commission questioned whether there was otherwise a valid reason for dismissal – respondent effected the dismissal on 5 July 2024 as a result of its decision not to agree to applicant's request to take long service leave into retirement – Commission found dismissal was unreasonable due to failure by respondent to inform applicant at an early stage that he would not be permitted to take long service leave into retirement – Commission agreed that an order for reinstatement would give rise to complications – applicant sought reinstatement, but only for the purposes of him being able to take long service leave – position applicant held is no longer available – Commission was mindful that respondent made a goodwill payment that was of significant amount – observed whether to order remedy is at Commission's discretion [*Nguyen*] – determined not appropriate in all circumstances to order compensation – held applicant was dismissed, and that the dismissal was unfair – however determined that it was not appropriate to order a remedy.

U2024/9504 [2024] FWC 3233
Sloan C Sydney 25 November 2024

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Websites of Interest

Department of Employment and Workplace Relations - https://www.dewr.gov.au/workplace-relations-australia - provides general information about the Department and its Ministers, including their media releases.

AUSTLII - www.austlii.edu.au/ - a legal site including legislation, treaties and decisions of courts and tribunals.

Australian Government - enables search of all federal government websites - www.australia.gov.au/.

Federal Register of Legislation - www.legislation.gov.au/ - legislative repository containing Commonwealth primary legislation as well as other ancillary documents and information, and the Federal Register of Legislative Instruments (formerly ComLaw).

Fair Work Act 2009 - www.legislation.gov.au/Series/C2009A00028.

Fair Work (Registered Organisations) Act 2009 - www.legislation.gov.au/Series/C2004A03679.

Fair Work Commission - www.fwc.gov.au/ - includes hearing lists, rules, forms, major decisions, termination of employment information and student information.

Fair Work Ombudsman - www.fairwork.gov.au/ - provides information and advice to help you understand your workplace rights and responsibilities (including pay and conditions) in the national workplace relations system.

Federal Circuit and Family Court of Australia - https://www.fcfcoa.gov.au/.

Federal Court of Australia - www.fedcourt.gov.au/.

High Court of Australia - www.hcourt.gov.au/.

Industrial Relations Commission of New South Wales - www.irc.justice.nsw.gov.au/.

Industrial Relations Victoria - www.vic.gov.au/industrial-relations-victoria.

International Labour Organization - www.ilo.org/global/lang--en/index.htm - provides technical assistance primarily in the fields of vocational training and vocational rehabilitation, employment policy, labour administration, labour law and industrial relations, working conditions, management development, co-operatives, social security, labour statistics and occupational health and safety.

Queensland Industrial Relations Commission - www.qirc.qld.gov.au/index.htm.

South Australian Employment Tribunal - www.saet.sa.gov.au/.

Tasmanian Industrial Commission - www.tic.tas.gov.au/.

Western Australian Industrial Relations Commission - www.wairc.wa.gov.au/.

Workplace Relations Act 1996 - www.legislation.gov.au/Details/C2009C00075

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