FWC Bulletin

3 October 2024 Volume 10/24 with selected Decision Summaries for the month ending Monday, 30 September 2024.

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Our Workplace Advice Service partners

06 Sep 2024

The Workplace Advice Service (WAS) began in 2018 to support eligible employees and employers who access our services.

We coordinate the Service in partnership with private law firms, Community Legal Centres, and Legal Aid organisations across Australia. The Service offers up to 1 hour of free legal advice to eligible unrepresented employees and small business employers.

Eligible employees and small business owners can talk to a lawyer through the service about:

- dismissal
- general protections
- workplace bullying, and
- sexual harassment cases.

Our partners are essential to the success of the Service. We work together to make changes or improvements to the Service. They receive the quarterly WAS Newsletter and have access to professional development sessions, including sessions run by our Commission Members. This helps support and strengthen our relationship with partner organisations.

We welcome new partners who have recently joined the Service:

Burn Legal Australia Pty Ltd Dentons Australia Limited Hennings Lawyers Kingsford Legal Centre Longton Legal Mackay Regional Community Legal Centre Inc Mark Gustavsson and Associates Tailored Legal Uniting Communities Law Centre Westjustice Women's Legal Service NSW

The online WAS Partner Portal streamlines our internal process and partner interactions with the Service. It also helps us to quickly connect eligible employees and employers with partners.

Learn more about the Service, our partners, and how you can get involved on the Workplace Advice Service page on our website. If you have any questions, or are interested in partnering with us, please email us at was@fwc.gov.au.

Statement about applications for minimum standards orders issued

06 Sep 2024

The President of the Fair Work Commission, Justice Hatcher, has issued a statement about consultation and other matters relating to 3 applications for minimum standards orders lodged on 28 August 2024 by the Transport Workers' Union.

Read the President's statement (pdf).

Stay up to date

Updates about regulated worker matters, including applications relating to minimum standards orders and guidelines or road transport contractual chain orders and guidelines will be provided through our regulated worker subscriber service .

Read more about:

- Regulated worker minimum standards applications
- Regulated worker and contractual chain standards
- The New laws

Subscribe to Announcements and follow us on LinkedIn .

Paid Agents Working Group report and recommendations published

09 Sep 2024

On 9 September, our Paid Agents Working Group published its Report and Recommendations. Our President, Justice Hatcher, issued an accompanying Statement.

In January this year, Justice Hatcher directed that a Paid Agents Working Group be established to review the procedures applicable to the participation of paid agents in Commission proceedings.

The Working Group published an options paper in March 2024 and invited submissions from stakeholders. In addition to a written submissions process, the Working Group held public consultations in Brisbane, Sydney, Melbourne and online. All documents relevant to the Working Group have been published on our paid agents consultation webpage.

In his Statement, Justice Hatcher accepted the recommendations made by the Working Group. Implementation of the changes will be led by the President together with Commissioner Johns, our National Practice Lead for unfair dismissal and general protections cases.

Justice Hatcher thanks everyone who participated in the consultation process, and notes his appreciation for the contribution of Commission Members and staff who formed part of, or supported the Working Group.

Read:

- President's Statement: Paid agents and the Fair Work Commission – publication of Report and Recommendations (pdf)
- Report and recommendations: Paid agents and the Fair Work Commission (pdf).

President’s Statement providing an update on building and construction agreement applications

11 Sep 2024

The President of the Fair Work Commission, Justice Hatcher, has issued a statement providing a further update on applications for approval of enterprise agreements in the Building and Construction Industry.

In the statement, the President outlines that a consultative process has been established between the administration of the Construction and General Division of the Construction, Forestry and Maritime Employees Union (CFMEU) and the Commission to maintain the integrity and timeliness of the agreement approval process.

Read the President's Statement: Further update on applications for approval of enterprise agreements in the Building and Construction Industry (pdf).

Follow us on Facebook and Instagram

16 Sep 2024

We are pleased to announce that you can now follow us on Facebook and Instagram. These pages will be used to share resources and updates on a range of topics related to our work. We will use our new channels to improve access to and understanding of our services.

You can find us on social media via the following:

- Facebook: Fair Work Commission
- Instagram: @fairworkcommission
- LinkedIn: Fair Work Commission
- YouTube: Fair Work Commission

Engaging with our social media accounts

We encourage you to interact with our social media pages. You can share or comment on our posts and ask general questions about our role.

When you interact with our social media pages, you are taken to have agreed to our social media terms of use. This policy applies in addition to the terms of service on each social media platform.

Subscribe and follow to stay up to date

To keep up to date with the latest news and announcements, we encourage you to subscribe and follow us on Facebook, Instagram and LinkedIn.

Sexual Harassment Disputes Benchbook published

01 Oct 2024

We have published the Sexual Harassment Disputes Benchbook.

This Benchbook applies to alleged sexual harassment in connection with work that happened (or started) on or after 6 March 2023. It deals with provisions from the Secure Jobs Better Pay Act which expand the Commission's sexual harassment jurisdiction.

Video launch

Our Benchbooks are like handbooks to help you understand Fair Work legislation. They provide information to help parties prepare for a case in the Commission. This includes information about our processes and examples of how Commission Members have interpreted legislation in previous cases to make decisions ('case law').

You may find the examples useful as you prepare for a case. Please note that we do not show all possible examples for every situation. You can use our document search to find decisions about other cases.

We thank everyone who was involved in the production of the Benchbook and all those that provided feedback on the consultation draft.

This Benchbook will be updated as required.

Read:

- Sexual Harassment Disputes Benchbook

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 Monday, 30 September 2024.

1 TERMINATION OF EMPLOYMENT – jurisdiction – Foreign States Immunity Act – s.394 Fair Work Act 2009, s.12 Foreign States Immunities Act 1985 Act – appeal – Full Bench – first matter appellant (Embassy) had dismissed 18 individual employees between March and September 2022 – each employee had applied for an unfair dismissal (UD) remedy at Commission – Embassy (respondent at first instance) objected to UD claims on two grounds: Act did not apply to Embassy, or in alternative, Embassy a sovereign foreign state, to which jurisdictional immunity is afforded by *Foreign States Immunities Act 1985* (Cth) (FSI Act), and some employees not permanent residents for purposes of FSI Act at relevant times, applications premature as commenced prior to dismissals taking effect – at first instance, objections rejected by Commission with exception of those pertaining to Mr Wedissa and Mr Mubaidin (second matter Appellants, first instance Applicants) – insufficient evidence to satisfy Commission at first instance that Messrs Wedissa and Mubaidin were permanent residents at time their employment contracts were made, Commission dismissed their applications and, by further decision, that of another former employee – Embassy sought permission to appeal dismissal of its jurisdictional objections; Messrs Wedissa and Mubaidin sought permission to appeal decision to dismiss their UD applications – Full Bench noted contentions raised by Embassy in appeal that would have significant implications for application of Australian industrial laws to persons employed in Australia by foreign state; Embassy's broadest contentions would render foreign states exempt from Fair Work Act, narrowest contentions would prevent employees of embassies or consulates from bringing UD proceedings – Full Bench noted numerous historical dismissal-related claims brought by employees working in embassies or consulates, noted inability of Embassy to provide single relevant Australian authority supporting its position that it should be subject to FSI Act immunity – Full Bench satisfied that it was in public interest to grant permission for Embassy to appeal due to novel contentions with significant implications described earlier – Full Bench also granted permission for Messrs Wedissa and Mubaidin to appeal, as their appeal raised novel, albeit more confined, issues in relation to operation of FSI Act, overlapping with issues in Embassy's appeal – Full Bench considered first contention advanced by Embassy: that Saudi Arabia immune from Commission's jurisdiction by operation of s.9 of FSI Act, and that immunity not lifted by s.12(1) FSI Act – s.9 of FSI Act states (with exceptions in FSI Act) foreign states immune from jurisdiction of courts of Australia in proceedings, s.12(1) provides exemptions to s.9 in certain circumstances where proceeding concerns employment of person under contract of employment made or performed in Australia – Embassy claimed that bringing UD proceedings against foreign state would conflict with Australia's international obligations – Full Bench considered operation of s.12(1) FSI Act –

Embassy submitted that UD proceedings do not fall within s.12(1) exemption as they are not proceedings concerning 'the employment of a person under a contract of employment that was made in Australia or was to be performed wholly or partly in Australia,' and they do not concern 'a right or obligation conferred or imposed by a law of Australia on a person as employer or employee' as per s. 12(2)(a) FSI Act – Full bench considered wording of s.12(1), jurisprudential development of phrasing in provision – Full Bench observed term 'proceeding' as having been broadly understood and cited concept of 'proceeding concern[ing]' to have wider meaning, requiring regard had at source of rights in issue in proceeding [*Firebird Global Master Fund II Ltd*] – Full Bench noted emphasis on reference to need for a proceeding to concern "one or more identified subject-matters" before lifting immunity conferred by s.9 [*Greylag Goose Leasing 1410 Designated Activity Company*] – Full Bench held no issue that UD applications are proceedings for purposes of s.12(1), connecting term 'concerns' connotes relationship between proceedings and subject matter identified in FSI Act exceptions – subject matter of s.12(1): 'employment of a person… under contract of employment made in Australia or to be performed wholly or partly in Australia [paraphr.]' – Embassy submitted that s.12(1) only lifts FSI Act immunity with respect to a cause of action directly seeking to enforce terms of contract of employment – Full Bench disagreed; s.12(1) not limited to contractual claims, but can apply so long as proceeding arises out of employment with relevant, existing, geographical connection to Australia, and proceeding concerns employment under contract, even if cause of action derives from legislation – Full Bench rejected Embassy submission that s.12(2) FSI Act extends operation of s.12(1) to proceeding not caught by it, observed rather that s.12(2) illustrates type of claims that fall within s.12(1) [*Robinson*] – Full Bench observed UD proceedings clearly concern subject matter of employment of a person, in the alternative, are proceedings concerning right or obligation conferred by Australian law for purposes of s.12(2) FSI Act – rejected Embassy submission that FW Act only provides 'right to apply' for remedy, rather than right or obligation regarding dismissal: UD provisions provide for persons to be 'protected from unfair dismissal' – rejecting Embassy submission, Full Bench noted s.29(2) FSI Act, which proscribes court from ordering reinstatement of person's employment, as modifying, not denying ability to bring UD proceedings – Full Bench considered Embassy submissions regarding Australia's international obligations: s.6 FSI Act indicates act not intended to affect immunity or privilege afforded by other legislation – Full Bench noted that Vienna Convention on Diplomatic Relations (VCDR) extended privileges and immunities to foreign diplomatic and consular personal, but only certain articles of it are codified in Australian law – Embassy relied on Article 22(2) VCDR, in that UD proceedings would impair 'dignity of the mission' by necessitating close examination of terminations and internal Embassy processes – Full Bench rejected this submission, observed Article 22 solely concerned with inviolability of mission premises – Full Bench observed articles of VCDR concerned with protection of documents or correspondence of a mission similarly to provide no reason to read s.12(1) FSI Act narrowly – Embassy submitted that FSI Act and FW Act should be construed consistently with obligations under international law, by which s.12(1) should not operate with respect to UD proceedings – Full Bench observed clear language of legislation must be obeyed; presumption that legislation should be consistent with international law can apply only so far as language of provision permits – Article 7 of VCDR provides subject

to other articles, 'sending state may freely appoint members of staff of mission' – citing UK precedent, Full Bench held impact of Article 7 to be that receiving state may not make order determining who is to be employed by diplomatic mission of foreign state [*Benkharbouche* (UK)] – Full Bench considered Embassy contention that even if s.12(2) FSI Act lifts s.9 immunity, s.12(2) does not apply to UD applications due to inconsistent provision in employment contracts: Article 12 of employment contracts states that Arabic copy to be considered original copy, any dispute arising between parties regarding contract articles shall be presented to Ministry of Civil Service in Saudi Arabia, whose decision on matter shall be final – Full Bench disagreed with reasoning of Commission at first instance, who found that Article 21 did not confer exclusive jurisdiction over contract dispute to Saudi Arabian Ministry due to mandatory language of Article [*Mobis Parts Australia P/L*] and that Ministry not a Court, both of which were findings that rejected Article 21 as an inconsistent provision for purpose of s.12(4) – Full Bench nonetheless rejected Embassy's contention and agreed with other findings of Commission on matter: it is not apt to label UD claim a dispute about a contractual provision for purposes of Article 21 as jurisdiction enlivened by s.394 FW Act, and even if s.12(4)(a) is engaged, s.12(4)(b) applies, by which s.12(1) will apply if inconsistent provision in contract rendered unlawful by Australian law – Full Bench held that private contract cannot displace right conferred by s.394 FW Act – Full Bench considered Embassy contention that Saudi Arabia not a 'person' within definition of 'national system employer' in s.14(1)(f) FW Act, thereby being not subject to Part 3-2 of the Act as a foreign State – Full Bench cited language of s.14(1)(f) with legal authorities that found a foreign State to be a person and national system employer for purposes of FW Act [*Benvenuto*] – Full Bench considered that if foreign State a 'person' under s.30D(1) FW Act, it follows that it is so for purpose of s.14(1)(f) – referred to s.22(1)(a) *Acts Interpretation Act 1901* (Cth) (AIA) (as at 25 June 2009 per s.40A FW Act, currently s.2C(1) of AIA) which provides 'person' may denote a body politic, rejected Embassy submission that due to s.21(1)(b) (as at 25 June 2009) this should only be construed as limited to body politic in Australia as language of provision merely requires 'sufficient connection to Australia,' [*Impiombato*] which Full Bench was satisfied of – Full Bench noted precedent in which 'person' includes reference to a foreign State [*Plaintiff M68/2015*], observed it readily apparent that s.14(1) of FW Act was drafted to have as comprehensive coverage as possible – rejecting Embassy contention that 'person' in s.14(1)(f) FW Act being referent to foreign State renders Part 3-2 FW Act in conflict with international obligations, Full Bench held that Australia's international obligations no basis to read FSI Act or FW Act in manner contended by Embassy, as Embassy only relied on 4 VCDR Articles not inconsistent with application of UD provisions to foreign State – Full Bench considered whether each employee was permanent resident (PR) at time of employment contract being made, as s.12(6) of FSI Act would displace s.12(1) exemption if so – Commission at first instance found all employees PRs, except 3 employees including Mr Wedissa and Mubaidin – Embassy appeal contended five other employees not PRs, Messrs Wedissa, Mubaidin appealed finding that they were not PR – Embassy evolved its submission (rejected at first instance) that s.12(7)(b) FSI Act excludes person from PR status if there exists any limitation as to time on that person's continued presence in Australia – Embassy on appeal submitted that a PR is a person holding 'permanent' rather than 'temporary' visa, citing history of

Migration Act 1958 (Cth) and associated regulations – Embassy contended concept of PR had this established meaning when FSI Act enacted – Full Bench considered s.12(7) FSI Act in context, noted substantial amendment of Migration Act regarding types visas, and lack of evidence that s.12(7) intended to adopt definition from pre-amendment Migration Act – amendment to Migration Act in 1993 broke link between 'temporary vias' designation and limitation to time – Full Bench held it too narrow a view that 'limitation of time' in s.12(7) FSI Act be measured in precise length of time, instead may end upon occurrence of specified event – considered residency status of Messrs Namaoui, Belkamel and Abdul-Hwa, noting Commission at first instance found them to be New Zealand citizens on Special Category Visa subclass 444 at time employment contracts signed – observed s.32 Migration Act and Migration regulations (as at 2011, commencement of employment contract) permitted subclass 444 visa holders to remain in Australia whilst they were New Zealand citizens – Full Bench therefore rejected Embassy contention that they were not PRs for purpose of s.12(7) FSI Act, held that Commission correct to find Messrs Namaoui, Belkamel and Abdul-Hwa PRs as defined in s.12(7) FSI Act – Full Bench considered Ms Maksoud and Mr Mansour, who at commencement of employment held subclass 309 Spouse (Provisional) visa and subclass 820 Spouse visa respectively – these visas were subject to limitation as to time, permitting entry into Australia only until determination of other visa application – therefore, Full Bench found that Commission erred in finding Mr Maksoud and Mr Mansour PRs as defined in s.12(7) FSI Act at commencement of employment contract, UD applications pertaining to them dismissed – Full bench considered Mr Wedissa's appeal of Commission's conclusion of insufficient evidence to demonstrate PR status at time employment contract signed – Mr Wedissa advanced argument that the terms of contract of employment meant that new contract made each year – Mr Wedissa contended that whilst not a PR when employment contract signed in February 2004, became PR in 2009 and citizen in 2011 – employment contract article 2 provided contract to be for 1 year, renewed automatically unless either party notifies other of wish to terminate at least 2 months prior to expiration, cited other articles supporting contention – Embassy directed attention to other provisions suggesting ongoing contract, such as leave provisions – Mr Wedissa submitted where contract renewable only by mutual consent, fresh contract formed rather than continuation of existing contract – Full Bench observed contract provisions inconsistent, cited possible issues of translation – Full Bench noted article 19 provides contract only concludes if notice given, therefore took view that contract was not made each year – Mr Wedissa therefore not a PR at time employment contract signed, Embassy immune with respect to Mr Wedissa's UD application – Full Bench considered Mr Mubaidin's appeal of Commission's conclusion that he was not PR at time employment contract signed by operation of s.12(6) FSI Act – documents submitted by Mr Mubaidin for appeal indicate he was granted Temporary Work (class GD) International Relations (subclass 403), permitting presence in Australia subject to limitation 'for a period specified by the Minister' – therefore, Mr Mubaidin not a PR for purpose of s.12(6) FSI Act – Full Bench concluded decision, granting permission to appeal with respect to Embassy and Messrs Wedissa, Mubaidin, dismissed all three appeals, save for finding that Commission erred in concluding Ms Maksoud and Mr Mansour PRs at time their employment contracts signed – varied first instance decision to include conclusion that not PRs for purposes of s.12(6-7) FSI Act,

dismissed their UD applications.

Appeal by Saudi Arabian Cultural Mission/Saudi Embassy & Embassy of The Kingdom of Saudi Arabia, Cultural Mission against decision of Deputy President Easton of 2 May 2024 [[2024] FWC 1152] re Saleh and Ors;; ; Appeal by Wedissa and Anor against decision of Deputy President Easton of 2 May 2024 [[2024] FWC 1152] re Saudi Arabian Cultural Mission/Saudi Embassy & Embassy of the Kingdom of Saudi Arabia, Cultural Mission

C2024/3320 and Ors | [2024] FWCFB 372
Asbury VP | Brisbane | 16 September 2024
Gibian VP
Dobson DP

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2 ENTERPRISE BARGAINING – bargaining dispute – s.240 Fair Work Act 2009 – appeal – Full Bench – parties engaged in bargaining for 19 proposed enterprise agreements to cover Qube's (appellant, first instance respondent) stevedoring employees across Australia – at first instance MUA (respondent, first instance applicant) applied to Commission to deal with bargaining dispute – application indicated bargaining meetings held at certain ports, and first instance respondent (Qube) expressed view that each meeting was solely relevant to that particular port, despite each port's agreement containing a 'Part A', with common conditions across all ports, and 'Part B' containing port specific terms – MUA contended that 'port by port' method of bargaining inefficient, sought for 'Part A' of agreements to be discussed and resolved before engaging in port specific negotiations – Qube contended that dispute concerned bargaining process rather than content of agreements, and Commission therefore had no jurisdiction to intercede under s.240, also contended lack of evidence that bargaining representatives 'unable to resolve dispute' – in lower decision, Commission found it did have jurisdiction to deal with dispute, as a dispute over manner in which bargaining for agreements is to occur is a dispute about proposed agreements as contemplated by s.240 – Commission rejected contention that evidence demonstrated bargaining representatives unable to resolve dispute – Commission listed dispute for conference, made directions to facilitate conference – Qube sought permission to appeal Commission's decision on following grounds: Commission erred in concluding that dispute was 'about the agreement', in doing so misconstruing s.240, erred by mischaracterising nature of dispute as one about the content of the proposed agreements, and in the alternative, erred in concluding that dispute was such that parties were 'unable to resolve' it – Full Bench considered whether to grant permission to appeal, noting considerations suggesting permission should be refused – Full Bench did not accept decision caused substantial injustice, noting Commission can only arbitrate dispute by consent, and decision at most may involve investment of Qube's resources to attend conciliation or mediation – Full Bench observed appeal raised novel questions relating to jurisdiction of Commission under s.240, with relatively little authority on types of disputes capable of being dealt with under s.240, or phrases 'disputes about the agreement' and 'unable to resolve the dispute' – permission to appeal granted – Full Bench noted that language of s.240(1) open to accommodate either a broad construction where Commission could deal with dispute about manner of bargaining, or a narrow construction within which Commission can only deal with dispute about agreement's content – observed that in face of competing statutory constructions, preferable to adopt that which will best promote the provision's purpose [*SAS Trustee Corporation*] – noted object in s.171(b)(ii), to

'facilitate good faith bargaining and the making of enterprise agreements,' including by dealing with disputes under s.240, and good faith bargaining obligations in s.228, both implying Commission's capacity to deal with disputes about bargaining process – to assist in identifying statutory purpose, Full Bench referred to Fair Work Bill 2008's explanatory memorandum, stating s.240 applications may be made in event of a 'dispute about the making of an enterprise agreement' – rejecting Qube's submission, Full Bench held that words 'about the agreement' require connection to proposed agreement, but do not compel narrow construction – rejected Qube's submission that Act's structure draws distinction between provisions directed to bargaining process and those directed to substantive content of agreement, with s.240 part of the latter and therefore confined to disputes about agreement content – third submission, that Commission's capacity to make intractable bargaining declaration (IBD) under ss.234-235A a contextual feature supporting narrow construction of s.240 noted as problematic by Full Bench, as s.240 substantially the same since 2009, while IBD provisions introduced in 2023 – despite logical difficulty of using subsequent amendments to discern legislative intention of existing statute, Full Bench noted that it may be done cautiously to ensure that amendment is not nugatory or where the existing provision under consideration is ambiguous [*Interlego AG*] – Qube submitted that s.235(2) requires the Commission be satisfied both of no reasonable prospect of agreement being reached and that the Commission has dealt with the matter by way of s.240 before an IBD can be made; if a s.240 dispute has only related to bargaining process, that may not provide enough evidence that there is no reasonable prospect of agreement being reached – Full Bench rejected this submission, stating it conceivable that s.240 dispute about bargaining process might satisfy Commission of no reasonable prospect of agreement being reached; parties being unable to agree on 'basic framework' for bargaining could suggest agreement unlikely – Full Bench cited previous broad construction of s.240, in matter where a party submitted that, inverse to Qube's contention, Commission could not deal with dispute about content of agreement under s.240, as it was limited to disputes about process or good faith bargaining requirements – Full Bench held that Commission has jurisdiction to deal with dispute about bargaining process – in original decision, Commission also found that dispute went to content of proposed agreement, in case it was incorrect to construe s.240 as permitting the Commission to deal with dispute relating to bargaining process – Qube submitted this finding was a mischaracterisation of dispute, unsupported by evidence: Full Bench did not accept submission – when characterising a dispute upon application, Commission not limited to examining terms of application before it, but can take into account entire factual background [*AMWU v Holden Ltd*] – Full Bench observed rarity of distinct line between dispute about bargaining process and dispute about agreement content, noting that MUA/Qube disagreement as to conduct of bargaining arose in part from concerns about content of proposed agreement – Full Bench observed that dispute cannot be purely described as related to bargaining process, with Qube under belief that substantive 'Part A' claims pressed by MUA without proper consideration to their suitability at particular ports – Full Bench considered whether Commission erred in finding that dispute was one that Qube and MUA were 'unable to resolve' pursuant to s.240(1) – Full Bench rejected suggestion of a 'minimum threshold of effort' towards resolution of a dispute before Commission can assist – such a construction would result in a 'pall of jurisdictional uncertainty' over all s.240 proceedings – use of present tense in phrase 'are unable' envisages no more than the existence of dispute,

that parties are unable to resolve it, and they have not managed to do so at the time assistance is sought – even if Qube's suggested construction was correct, and s.240(1) did require assessment of whether adequate or meaningful attempts made to resolve dispute, Full Bench found that Commission was correct in finding that parties attempted, but were unable to resolve dispute – for reasons above, appeal dismissed.

Appeal by Qube Ports P/L t/a Qube Ports against decision of Deputy President Slevin of 24 June 2024 [[2024] FWC 1646] re Construction, Forestry and Maritime Employees Union

C2024/4330		[2024] FWCFB 370
Gibian VP	Sydney	13 September 2024
Easton DP		
Grayson DP		

3 ENTERPRISE BARGAINING – protected action ballot – timing – ss.437, 604 Fair Work Act 2009 – appeal – Full Bench – Kuiper's operations include the supply of onshore and offshore construction personnel to the petrochemical, power generation and oil and gas industries – employees of Kuiper who perform offshore construction work are currently covered by the *Kuiper Australia P/L – Western Australia and Northern Territory Offshore Construction Project Greenfields Agreement 2020-2024* – the Australian Workers' Union (the AWU) approached Kuiper from May 2024 seeking to commence bargaining for a replacement agreement – Kuiper did not agree and indicated it was not in a position to commence bargaining – the existing agreement passed its nominal expiry date on 16 August 2024 – on 17 August 2024, the AWU made a formal request to commence bargaining for a replacement agreement under s.173(2A) of the FW Act – AWU filed an application for a protected action ballot order on 24 August 2024 – Kuiper objected to the making of the order sought on the grounds that the AWU had not been and was not genuinely trying to reach agreement for the purposes of s.443(1)(b) and also sought an order that the notice period required under s. 414(2)(a) be extended to 7 working days pursuant to s.443(5) if an order was made – at first instance the Commission made a protected action ballot order – Commission was satisfied that a proper application had been made by the AWU and that the AWU had been and was genuinely trying to reach agreement – Commission further ordered that the period of notice required under s.414(2)(a) be extended from 3 to 5 working days where the proposed industrial action involves a complete stoppage of work for 4 or more hours – Kuiper appealed the decision at first instance on the grounds that the Commission erred by misconstruing the statutory task and approaching the assessment of whether the AWU was, or had been, genuinely trying to reach agreement, by reference only to the 'motive' of the AWU; erred by mischaracterising the steps taken by the AWU as a basis for finding that the AWU [was] genuinely trying to reach agreement; erred by mischaracterising the steps taken by the AWU as a basis for finding that the AWU [had] been genuinely trying to reach agreement; and the Commission's discretion to extend the notice period to only 5 working days (instead of 7) miscarried as the Commission failed to have regard to a relevant consideration, namely the relevantly unchallenged evidence that four and half days to safely detach from the undersea pipeline was the likely minimum period necessary, and that it could often take longer to safely detach – Full Bench considered it was in the public interest to grant permission to appeal given the nature of the submissions

advanced by Kuiper – the grounds of appeal, particularly ground 1, raised questions in relation to the proper interpretation and application of s.443(1)(b) in dealing with applications for a protected action ballot order – permission to appeal granted – grounds 1 to 3 in the notice of appeal contended that the Commission erred in finding it was satisfied that the AWU had been and was genuinely trying to reach agreement – Kuiper contended that s.443(1)(b) requires not just an inquiry into the subjective intention of an applicant, but also the steps it had taken, or not taken, and all the circumstances – Kuiper submitted that it was 'premature' to conclude that bargaining had reached the stage where the AWU was trying to reach agreement – the AWU submitted that the true purpose of s.443(1)(b) is to guard against ulterior motive, that is, persons seeking to take industrial action for reasons other than in the ultimate pursuit of an agreement with the employer – the Full Bench found the focus of the parties' submissions on whether the assessment to be made for the purposes of s.443(1)(b) is objective or purely subjective was a distraction from the true task – the matter about which the Commission must be satisfied is whether the applicant has been, and is, genuinely trying to reach agreement with the employer – the Commission is required to make an impressionistic assessment of whether an applicant is genuinely trying to reach agreement in light of the particular circumstances of each application – the steps that a bargaining representative might be expected to have taken to demonstrate it has been, and is, genuinely trying to reach agreement will depend on the circumstances – Full Bench did not accept that the Commission misconstrued the statutory task by approaching the question of whether the AWU had been, and was, genuinely trying to reach agreement by reference only to its motive or subjective intention – found the Commission considered what the AWU had actually been doing and the overall circumstances in order to reach the state of satisfaction that it had been, and was, genuinely trying to reach agreement – ground 1 must fail – grounds 2 and 3 can be dealt with briefly – the gist of grounds 2 and 3 is that it was not open for the Commission to be satisfied that the AWU had been, and was, genuinely trying to reach agreement – to say that only one substantive bargaining meeting had taken place was merely a function of the timing of the application and the refusal of Kuiper to engage with the AWU at an earlier time – the AWU was entitled to apply for a protected action ballot order when it did – the Commission's task was then to consider whether its conduct up to that point, and at the time of the hearing, met the threshold in s.443(1)(b) – the actions of the AWU provided an ample basis for the conclusion that it had been, and was, genuinely trying to reach agreement – the Full Bench reject the submission that it was not open for the Commission to be satisfied that the AWU had been, and was, genuinely trying to reach agreement – Full Bench found the distinction sought to be drawn by Kuiper between preparatory steps and substantive bargaining is not helpful and distracts attention from an examination of what the applicant has actually done, considered in light of the overall circumstances – the AWU had corresponded with Kuiper since May 2024 requesting that bargaining commence, it had communicated its log of claims and participated in a meeting to discuss the process and timing of the negotiations – found all those steps are consistent with a conclusion that the AWU had been, and was, genuinely trying to reach agreement – the last ground alleged that the Commission erred in exercising the discretion in s.443(5) of the Act to extend the notice period for protected action involving a stoppage of work for 4 hours or more only to 5 working days – the Commission was

satisfied that there were exceptional circumstances justifying a notice period of longer than 3 working days and exercised his discretion to stipulate a period of 5 days – Kuiper submitted that the Commission should have extended the notice period to 7 days given the evidence – Full Bench did not accept that Kuiper had established that there was any error in the exercise of the discretion under s.443(5) – appeal dismissed.

Appeal by Kuiper Australia P/L against decision of Deputy President O'Keeffe of 3 September 2024 [[2024] FWC 2376] Re: The Australian Workers' Union

C2024/6258		[2024] FWCFB 378
Gibian VP	Sydney	17 September 2024
Wright DP		
Matheson C		

4 TERMINATION OF EMPLOYMENT – unlawful termination – ss.723, 773 Fair Work Act 2009 – applicant was employed by the respondent as the Manager of Community Services – applicant dismissed for serious misconduct – applicant made an application under s.773 that he was unlawfully terminated – respondent made jurisdictional objection that applicant not entitled to bring an unlawful termination application because s.723 prevents a person entitled to make a general protections court application from making an unlawful termination application – respondent is a body established for a local government purpose under the *Local Government Act 1995* (WA) (LG Act), including promoting the environmental sustainability of the region – general protections provisions in Part 3-1 apply to actions taken by 'constitutionally covered entities' and national system employers – Commission found that respondent is not a national system employer due to recent changes to the *Industrial Relations Act 1979* (WA) – changes meant local governments in WA could be declared to no longer be a national system employer – declaration made regarding respondent – whether the respondent is a 'constitutionally covered entity' – whether the respondent is a trading corporation within the meaning of s.51(xx) of the *Commonwealth of Australia Constitution Act* – applicant submitted that respondent is not bound by the *Corporations Act 2001* (Cth) and is akin to a municipal corporation rather than a 'trading corporation' [*Bonora*] – the respondent is a body corporate under the LG Act – in *Bonora* the local government was a body politic under NSW legislation – *Bonora* was distinguished on this basis – confirmed from *Bonora* that the starting point is to determine whether the respondent is a 'trading corporation' rather than directing separate attention to whether it is a 'corporation' – Commission applied principles for assessing 'trading corporation' status in *ALS* – respondent submitted that about half its fees and income revenue for the year to 30 June 2024 were for activities properly characterised as trading or financial, operated to generate profit and not for a benevolent public purpose – applicant submitted fees and charges revenue represented only 23% of the respondent's total revenue and that seven identified trading activities either experienced a loss or broke even – Commission found that some trading activities, such as the transfer station and sales of bins, are better characterised as activities promoting the environmental sustainability of the district – Commission also found commercial activities to be peripheral activities, including commercial collection and leasing of houses/units, airstrip – respondent determined not to be a trading corporation – held applicant was not entitled to bring a general

protections court application – held s.723 did not preclude applicant making unlawful termination application – jurisdictional objection dismissed – matter to be programmed for conference.

Bracegirdle v Shire of Irwin

C2024/3163		[2024] FWC 2201
Beaumont DP	Perth	19 September 2024

Other Fair Work Commission decisions of note

Appeal by Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU) against decision and order of Cross DP [[2024] FWC 2182], [PR778397] Re: NSW Electricity Networks Operations P/L as Trustee for NSW Electricity Networks Operations Trust T/A Transgrid

INDUSTRIAL ACTION – suspension of protected industrial action – ss.424, 604 Fair Work Act 2009 – appeal – Full Bench – Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union (appellant) appealed against Deputy President's order to suspend protected industrial action (PIA) in relation to bargaining involving employees of TransGrid (respondent) for two months (per s.424(1)) – Deputy President's decision dealt with respondent's third application for bargaining orders suspending or terminating protected industrial action – appellant provided a safety commitment that employees would temporarily suspend industrial action to perform emergency work where employees directed to perform work during a "Declared Incident" – declared incident defined as incident declared by respondent's CEO to cover major emergency situations such as storms, bushfires, IT breakdown and major equipment failures – emergency work not performed imminently would create a serious and imminent threat to human life or a serious and imminent risk of personal illness or injury – PIA occurred throughout 2024 – respondent demanded appellant agree to a revised safety commitment which appellant refused to comply with – respondent filed second application to suspend or terminate PIA under s.424 – Deputy President in first decision found in favour of respondent finding number of incidents which alleged PIA threatened blackouts – appellant and respondent disagreed whether this constituted a declared incident for purposes of extended safety commitment – appellant sought to appeal first decision, however this was refused because of the short period of suspension – appellant issued two further notices of PIA on 9 August 2024 – first notice was for 24 consecutive one-hour stoppages – second notice notified 25 different types of bans related to work performance – appellant flagged PIA would be subject to a safety commitment – respondent claimed PIA would delay maintenance work, including urgent and emergency work – respondent claimed PIA would threaten, endanger health, personal safety and welfare of NSW and ACT (s.424(1)(c)) – Deputy President ordered PIA suspended for further two months on the basis PIA would have the effect outlined at s.424(1)(c) – rejected appellant's criticism of the revised safety commitment proposed by respondent – found "*no existing provision that allows for [appellant] involvement in determining what are emergency work and declared incidents*" – found large numbers of employees would despite having given a safety commitment not comply with commitment in practice – Full Bench considered Deputy President required to determine first whether PIA engaged in was *"being threatened in or was threatened, impending or probable"* (s.424(1) – Deputy President needed to be satisfied that threatened PIA would have effects set out in s.424(1)(c) or (d) – appellant claimed Deputy President committed jurisdictional error by taking an irrelevant matter into account, being employees would not comply with terms of a notice including the safety commitment – Full Bench granted permission to appeal as it was satisfied it was in the public interest to do so – Full Bench only considered the first ground of appeal – appellant submitted Deputy President was satisfied employees would not comply with notice of protected industrial action – appellant submitted s.424 limited effects of particular protected industrial action to that which is being engaged in or threatened, impending or probable – appellant accepted that non-compliance with notice meant action would not be protected – Full Bench noted

s.424(1) concerned only with consequences of protected industrial action – first step to isolate industrial action is being engaged in or is threatened, impending or probable [*AIPA v FWA*] – considered whether industrial action taken was in breach of safety commitment and was unprotected industrial action – industrial action taken by appellant only be protected if it is 'employee claim' action – common requirements include notice requirements met (s.414) such as specifying the nature of the action and day on which it will start – 9 August 2024 notices sent out provided for stoppages and bans subject to safety commitment – language of notice of notified industrial action did not include non-compliance with safety commitment – respondent claimed safety commitment contemplates non-compliance with directions to address emergencies – Full Bench dismissed respondent's claim regarding safety commitment – extended safety commitment was drafted to make it clear respondent's employees 'will' suspend industrial action if directed – noted that a 'declared incident' was an objectively ascertainable event which occurs if the CEO declares an incident in an emergency situation such as storms, bushfires, IT breakdown or major equipment failure – found the safety commitment requires the work to be done or it does not – distinguished [*Victorian Hospitals' Industrial Association*] that Transgrid relied on where that Full Bench upheld the VHIA's claims regarding threatened protected industrial action would have s.424(1)(c) consequences – noted that this decision did not set out terms of relevant notices of protected industrial action – Full Bench considered Deputy President's reasons whether they relied on the anticipated consequences of appellant's failure or its members to comply with the safety commitment – Full Bench found Deputy President was satisfied that s.424(1)(c) requirements were met – characterised conduct as *'impermissible attempts to block and/or delay Declared Incidents and Emergency Work'* – noted Deputy President's finding that, without an Order, appellant would likely continue to act in such way with the attendant risks – Full Bench found appellant established Deputy President had erred – had not turned his mind to whether proposed conduct would be protected industrial action – took account of an irrelevant matter by considering industrial action that would be subject to the extended safety commitment – Full Bench considered respondent's notice of contention – respondent set out that the decision would have been affirmed regardless of Deputy President's reasoning process – Full Bench declined to second-guess what conclusion Deputy President would have reached following a different reasoning process – Full Bench declined to express a view on appellant's other grounds of appeal as the application may be redetermined based on different evidence – Full Bench quashed Deputy President's second decision and order – remitted application to single Commission member to be redetermined.

(C2024/5724)		[2024] FWCFB 365
Hatcher J	Sydney	9 September 2024
Gibian VP		
Sloan C		

Appeal by Virgin Airlines Australia P/L against decision of Commissioner Lim of 13 August 2024 [2024] FWC 2154 Re: Macnish

CASE PROCEDURES – stay order – ss.604, 606(1) Fair Work Act 2009 – respondent, a Cabin Crew Member, sought unfair dismissal remedy following termination by appellant – at first instance Commission found dismissal was unfair and ordered appellant reinstate respondent within 21 days of order being made, on or before 3 September 2024 – decision appealed – appellant sought stay of reinstatement order in appeal notice – appeal concerned the following circumstances – respondent was dismissed for having one glass of prosecco at a staff Christmas party, then later signing up for a flight approximately 7.5 hours later, in breach of '8-hour rule' set out in appellant's policy and procedures manual – Commission accepted respondent was in breach of policy, but found it was not unreasonable for him to have understood the concept as a guideline, rather than a firm rule – Commission found appellant's 'Drug and Alcohol Management Program' (DAMP) manual did not contain '8-hour rule,' and it was not unreasonable for respondent to reply on DAMP manual as comprehensive account of appellant's drug and alcohol policies – held no valid reason for dismissal – Commission found reinstatement was appropriate as respondent was well regarded

by managers, conducted himself professionally and showed genuine contrition and reflection in investigation process – principles in relation to granting a stay application – power to grant stay pending the hearing and determination of a s.604 appeal is contained in s.606(1) – the Commission 'must be satisfied that there is an arguable case, with some reasonable prospects of success, in respect of both the question of leave to appeal and the substantive merits of the appeal' and that 'the balance of convenience must weigh in favour of the order subject to appeal being stayed' [*Kellow-Falkiner Motors*] – a stay applicant must positively demonstrate that the balance of convenience weighs in favour of a stay being granted, that there is no prima facie position in favour of granting a stay, and that it is not to be regarded as the usual course – there are no different principles applicable where a stay of a reinstatement order is sought [*Supreme Caravans*] – should a stay be granted? – first considered whether appellant demonstrated an arguable case on appeal – in summary, appeal grounds were that Commission 1) erred by improperly placing weight on respondent's subjective understanding of '8-hour rule' rather than objective content of appellant's policies, 2) erred in finding that it was reasonable for respondent to have regard only to the DAMP manual, 3) made significant errors of fact in finding respondent 'self-referred' his breach of the rule and that the rule was a guideline, and 4) failed to consider, or give adequate weight to, the appellant's said to be reasonable and genuinely held concerns about the respondent, rendering the Commission's decision to reinstate unreasonable and/or plainly unjust – appellant moreover submitted appeal grounds were reasonable given it concerned safety policy in a safety-critical industry – Commission accepted appellant may have an arguable case – consideration of balance of convenience – Commission did not regard appellant's concern about respondent requiring additional training prior to recommencing duty, which would be wasted if appeal successful, as having substantial weight – noted training is frequently conducted by appellant whether or not respondent participates, and moreover, if a stay were granted and the appeal is unsuccessful, the respondent could prejudiced by a further delay in return to active duty – second, the appellant submitted respondent would remain a serious work health and safety risk, having regard to first instance adverse findings against him – Commission unable to accept this, noting Commissioner Lim's findings that respondent held a genuine belief that the '8-hour rule' was a guideline, that this belief was not unreasonable, and that he demonstrated genuine contrition and reflection – third, appellant submitted its revised undertaking addressed any financial prejudice to the respondent if a stay were granted and its appeal were unsuccessful – Commission noted this overlooked that 'the capacity to work in one's chosen occupation has intrinsic value which is separate and distinct from the benefit of the remuneration' [*Blackadder*], and that work, more than a way to make a living, is a continuing participation in society *[Transport Workers Union of Australia*] – respondent gave evidence as to the value of his performance of work, and feelings of self-worth and social connection associated with participation in the workplace, which is relevant to assessment of the balance of convenience – Commission found that taking all circumstances into account, the balance of convenience did not favour granting a stay – despite some inconvenience which may result from refusing a stay due to necessary steps to reintegrate respondent into workplace, balance against granting a stay was tipped by the possible and likely prejudice to the respondent – application for a stay refused.

C2024/5936		[2024] FWC 2333
Gibian VP	Sydney	2 September 2024

Zibert v SA Steel Works P/L

GENERAL PROTECTIONS – jurisdiction – ss.386, 394 Fair Work Act 2009 – applicant brought general protections application alleging employer dismissed him for complaining of assault by more experienced coworker – employer raised jurisdictional objection contending the Applicant resigned and was not dismissed on employer's initiative – Commission found an altercation occurred between applicant and coworker (without making concrete findings as to entirety of events of altercation due to factual disparities between parties) – applicant spoke on telephone to employer's director

regarding incident – Commission found applicant stated words to effect of "I can't do this anymore" – employer's director subsequently sent text message asking Applicant for key to his work vehicle after other workers noted applicant's whereabouts unknown and company tools inside the vehicle were exposed – applicant drove to workshop office and had further conversation with employer director – Commission preferred employer's testimony that applicant had repeated words to effect of "I can't do this anymore" and "I don't want to be here anymore" – employer director indicated applicant at liberty to report incident to police – employer director interpreted applicant's statements to indicate resignation – applicant returned vehicle keys and was collected by his partner – Commission preferred evidence that applicant declined employer director's offer for applicant to work as a boilermaker in business' fabrication operations – Commission preferred employer director's evidence that director did not offer to call him to arrange a further conversation at the office the following day to discuss the day's events or offer to attend a different construction site for work – employer emailed applicant following day noting receipt of applicant's resignation and employer's possession of his returned work vehicle – applicant queried by return email how employer concluded he had resigned, contending he gave neither verbal nor written resignation – employer replied by return email noting his return of company equipment and vehicle and his comments to the employer director the previous day – applicant's application contended employer's actions either constituted "the principal contributing factor' resulting in his termination at the employer's initiative or alternatively, that he was forced to resign due to employer's conduct – Commission noted various facts both supporting and contrary to a finding that employer terminated applicant's employment on its initiative – employer's director genuinely held belief applicant resigned – dismissal not determined by a subjective or genuinely held belief – Commission rejected employer's reliance on resignations in industry commonly lacking formality, finding no different legal standard applies to different industries – Commission found applicant's words to employer's director in context of surrounding circumstances and industry were insufficient to be relied upon objectively as a resignation – Commission found applicant was not in a considered state when repeating comments he 'could not do this anymore' and had 'had enough' – employer had opportunity the following day but failed to contact and clarify with applicant whether employer's belief he had resigned was correct – employer had opportunity not to give effect to employment relationship ending instead of replying to applicant's email to outline reasons it believed the applicant had resigned – Commission found employer's conduct was unreasonable given its knowledge that applicant had not communicated express oral or written resignation – Commission found employer's director was inclined to retain more experienced coworker and therefore indifferent to whether resignation had occurred, or any need to clarify same – employment termination at employer's initiative properly characterises an employer failing to clarify employee's genuine intent to resign after a reasonable time and simply taking ostensible resignation as employment's termination [*Tavassoli; Koutalis*] – Applicant's passiveness following events did not prevail over employer's failure to take reasonable steps to confirm or clarify applicant's intent before declaring the employment relationship to be over – Commission found employer had not intended to dismiss the applicant but held genuine but mistaken belief of applicant's resignation – employer unilaterally declaring the following day that the applicant was not employed was the principal contributing factor terminating employment relationship – dismissal within meaning of s.386(1)(a) established – employer's jurisdictional objection dismissed.

C2024/4291		[2024] FWC 2326
Anderson DP	Adelaide	2 September 2024

Zahirovic v Bluethumb P/L

GENERAL PROTECTIONS – jurisdiction – Australian-based employee – s.365 Fair Work Act 2009 – applicant challenged dismissal from senior software engineer role – respondent raised jurisdictional objection that applicant was not an 'Australian-based employee' – Commission considered if applicant was an Australian-based employee – applicant overseas resident, Bosnian citizen – lived and worked in Indonesia during

period of employment and negotiation of engagement of employment – countersigned contract whilst applicant in Indonesia – respondent operates online and based in Adelaide, South Australia – respondent submitted applicant was 'engaged outside of Australia and the external Territories to perform duties outside Australia and the external Territories' – applicant contended contract was prepared, sent from and returned to Australia and expressly referred to the FW Act – to fall within jurisdiction of the FW Act Commission must be satisfied the employment was between an 'Australian employer' and an 'Australian-based employee' – not in dispute respondent is an Australian employer – whether applicant engaged outside of Australia to perform duties outside Australia per s.35(3) considered – two limbs required, duties must be performed outside of Australia and a person must be 'engaged outside of Australia' for s.35(3) to be satisfied [*Munjoma*] – second limb not in dispute, performed duties outside Australia – Commission considered 'engaged outside Australia' using narrow construction then contrasted broader construction – established broader construction consistent with statutory interpretation preferrable [*Parimoo*] – contract prepared and sent from Australia (offer), signed by applicant and sent back to Australia (acceptance) opened via email in Australia – an employee not engaged outside Australia simply because a contract was signed outside Australia [*Winter v GHD Services*] – s.35(2) not made out, exception of s.35(2)(b) does not apply – Commission found applicant was an 'Australian-based employee' – jurisdictional objection dismissed – whether applicant dismissed considered – found applicant plainly stated words "I quit" to respondent – exit interview conducted, applicant did not withdraw or recant resignation – applicant used thumbs-up emoji on a message from the respondent referencing the applicant quitting – found employment relationship not ended by forced resignation – held applicant not dismissed – application dismissed.

C2024/4156		[2024] FWC 2430
Anderson DP	Adelaide	6 September 2024

Dupre v Excell Protective Group P/L

TERMINATION OF EMPLOYMENT – termination at initiative of employer – contract dispute – s.394 Fair Work Act 2009 – application for unfair dismissal remedy – respondent raised jurisdictional objection applicant not dismissed – respondent stated while a contract was signed by applicant on 19 March 2015, due to an issue with licensing of respondent's business, it did not trade from June 2015 to July 2017 and applicant was paid by a different entity (Second Entity) which respondent said was not an associated entity – while payments to applicant by respondent resumed in July 2017, applicant did not have a signed contract of employment with respondent after July 2017 – applicant claimed that different employment entities were used to deny applicant his full long service leave entitlement on termination of employment – on 19 November 2023, applicant was provided with a copy of new employment contract dated 25 October 2023, job description and non-disclosure agreement – applicant stated he met with respondent on 4 January 2024 to discuss concerns with certain clauses and respondent agreed to make amendments – respondent's evidence was the meeting was on 3 January 2024 and was confined to remuneration, commissions and confidentiality agreement – applicant stated, in early March 2024, the CEO/Owner announced respondent's management team would be transferred to another company (Third Entity) and leave accruals were to be rolled over – the CEO/Owner of respondent noted he did not own the Third Entity but had a financial interest in company – applicant stated he received an email on 6 March 2024 containing a new employment agreement, job description, and non-disclosure agreement for the employment transfer to Third Entity – applicant stated contract of employment retained clauses applicant had previously raised concerns regarding – respondent's 6 March 2024 email noted '… If you do not agree, you must contact me asap so we can resolve this as a matter of urgency. If an agreement cannot be reached this week then a decision must be made upon your role in the business' – respondent conceded the email could be read as a threat to applicant's employment – respondent agreed they could not force applicant to sign contract, there was no valid reason to dismiss applicant because of his refusal to sign the contract and applicant's

position was required and not redundant – on 8 March 2024 applicant received text message which stated '…there was a deadline for contract resolution which was not met The best you can do is to sign it and get it witnessed and leave it on my desk and hope the boss will be lenient. Benny may now lawfully reject it as you have not resolved in accordance with reasonable directions…' – respondent accepted language used had particular meaning when used in context of employment matters, being to place a person on notice they may be subject to some form of disciplinary action – respondent rejected that was the intention of the text message – on 11 March 2024, applicant sent an email setting out clarifications sought in relation to contract of employment – on 12 March 2024, applicant received letter titled 'Performance Review' which invited him to a performance review meeting – respondent stated same approach was taken with other employees who had not signed new contracts of employment – respondent claimed performance review meeting was about trying to resolve outstanding contract issues – on 3 April 2024, applicant stated he attended a meeting along with colleagues where respondent advised if they did not sign the contracts of employment it would be considered a resignation – applicant attended further meeting on 11 April 2024 where he said respondent stated he would need to 'finish up' and was directed to hand back his access fob, collect all belongings and leave work premises and his entitlements would be paid out the following week – evidence of respondent witnesses differed substantially from this – CEO/Owner stated he told applicant during the meeting that Restraint Clauses in proposed contract of employment could be changed and asked to meet applicant again on the following Wednesday – CEO/Owner rejected applicant was dismissed during the meeting and stated applicant handed over his access fob which respondent did not ask for – respondent's Manager (Capability and Culture) evidence was that he advised applicant to take paid time off to reflect on his position and seek advice and suggested applicant return to office on 17 April 2024 to resume discussion – respondent's Manager (Capability and Culture) stated that later that day a client contacted respondent querying an auto-response received from applicant that he was not working with respondent any longer – applicant stated when he returned home from 11 April 2024 meeting an hour later, he set up an autoreply on his work email address to notify people that he was no longer working for respondent and sent a text message to a work colleague confirming that he had been terminated – applicant sent email to respondent on 16 April 2024 asking for confirmation letter including the reason for his termination of employment, separation certificate and payment of entitlements – applicant received letter on 17 April 2024 which stated respondent became aware of applicant's resignation on 11 April 2024 when it discovered applicant email which indicated he no longer worked for respondent – respondent's email advised the resignation was accepted and asked applicant to confirm the resignation in writing – on 19 April 2024, applicant replied noting he did not resign from his employment and wished to remain employed under the current written contract signed by the company and himself – having not received a response from respondent to 19 April 2024 email, applicant sent further email on 23 April 2024 noting he had considered himself to be dismissed – respondent stated following applicant's 'resignation' on 11 April 2024, he did not take his personal belongings on that date and nor had he collected them since and he did not return company property in his possession until 28 May 2024 – CEO/Owner agreed that he was not aware of any steps taken to contact applicant or clarify applicant's employment status after the 11 April 2024 meeting beyond an email to applicant on 17 April 2024 – Commission found applicant to be credible and reliable in account of events – by contrast, found respondent's CEO/Owner to be an unimpressive witness and respondent's Manager (Capability and Culture) evidence to be unconvincing at times – Commission satisfied applicant did not resign and found actions of respondent resulted in termination of employment – found the statement that applicant was to 'finish up' 'today', return his access fob, collect his personal possessions and leave the building had the effect of ending employment relationship at initiative of respondent – Commission held dismissal was at initiative of respondent within the meaning of s.386(1)(a) – jurisdictional objection dismissed – Commission to consider merits – applicant was dismissed for declining to sign a proposed new contract of employment due to terms contained within it which he found to be unreasonable – Commission considered it plainly apparent applicant sought to remain in the employ of respondent and found termination of employment on grounds of declining to sign proposed new

contract of employment, absent requested amendments being made to the contract, could not be considered to be misconduct – held applicant's dismissal was unsupported by a valid reason and there were significant procedural failures of respondent in effecting the dismissal – Commission satisfied dismissal was unreasonable, unjust and harsh because of absence of a valid reason, procedural failures and delayed payment of accrued leave entitlement payments – held dismissal unfair – Commission found reinstatement inappropriate and ordered compensation – no evidence an order for compensation would affect viability of employer's enterprise – applicant employed for over 9 years as permanent full time employee with no performance or conduct issues – Commission satisfied that but for applicant's dismissal he would have remained employed for at least a further two years – applicant annual wage at time of dismissal was $112,320.16 – Commission satisfied applicant made efforts to mitigate loss and secured job commencing 27 August 2024 with no remuneration since date of dismissal – satisfied applicant would get remuneration between making of order and payment of compensation – compensation calculated using *Sprigg* formula – loss of earning calculated for the 19.7 week period between 11 April 2024 and 27 August 2024 equalling $42,552.06 plus superannuation – Commission found no reduction in the amount of compensation was appropriate and amount did not exceed compensation cap – respondent ordered to pay $42,552.06 gross less taxation as required by law, plus superannuation on that amount, to applicant within 14 days of date of decision.

U2024/4896		[2024] FWC 2313
Masson DP	Melbourne	2 September 2024

Arachchi v Serco Australia P/L

TERMINATION OF EMPLOYMENT – misconduct – detention centre – ss.385, 387, 394 Fair Work Act 2009 – applicant lodged for unfair dismissal under s.394 – employed as Detention Service Officer at Melbourne Immigration Detention Centre operated by respondent – applicant solely responsible for monitoring one detainee in compound during overtime shift on 28 January 2024 – CCTV footage revealed detainee made 9 escape attempts between 11:16am-11:38am unbeknownst to applicant – detainee made further escape attempt at 17:53pm – applicant engaged with detainee at 17:54pm whilst detainee lying on ground near external gate – detainee noted they were in pain, applicant called for medical assistance – respondent required 'enhanced monitoring' of detainee which involved constant supervision without physical proximity – respondent confirmed this was only role expected of applicant during shift – applicant stated she was on lunch, positioned in kitchen area, during initial period of escape attempts between 11:16am and 11:38am – applicable enterprise agreement mandates paid meal breaks are taken 'at post' for continued monitoring – applicant could have continued supervision from kitchen – applicant conceded had she observed escape attempts it would have constituted emergency – applicant notified of standdown on 1 February 2024 – shown CCTV footage during investigation process, admitted she missed escape attempts due to breaks – respondent considered failure of duty as serious misconduct, posed significant risk to security and safety of facility – employment ceased 30 April 2024 – Commission established dismissal under s.386, applicant terminated at initiative of respondent – accepted potential escape of detainee as extremely serious matter for respondent given Commonwealth contract regarding care and custody of detainees – applicant raised mitigating factors; not informed detainee was escape risk, no handover at commencement of shift, lack of adequate staffing compromised safety – applicant argued 'enhanced monitoring' did not require detainee under constant surveillance – Commission not persuaded – staffing was matter within respondent policies, applicant informed of requirement for enhanced monitoring, detainee gave no prior indication of escape risk – held repeated escape attempts were made in clear view over sustained period of inattention, almost inconceivable applicant could not have witnessed had she been taking lunch break at post as required – Commission observed applicant's failure to properly carry out sole duty engaged in was serious misconduct due to potential for harm to detainee and risk to respondent's reputation, established valid reason for dismissal per s.387(a) – satisfied respondent conducted procedurally fair dismissal process – Commission not

convinced applicant's ten years of service sufficient weight to render dismissal unfair, given gravity of misconduct – Commission held dismissal was not harsh, unjust or unreasonable – application dismissed.

U2024/5738		[2024] FWC 2462
Masson DP	Melbourne	12 September 2024

Xu v Hisense Australia P/L

TERMINATION OF EMPLOYMENT – misconduct – whistleblower policy – ss.385, 387, 394 Fair Work Act 2009 – applicant engaged as product line manager in respondent's consumer electronics and home appliance business – on commencement of employment, applicant received an employee handbook which included policies dealing with the respondent's whistleblower policy and bullying and harassment – following performance review, applicant advised that his final performance rating had been downgraded – applicant successfully had rating restored following complaint to human resources – applicant claimed he was excluded annual planning meeting, constituting workplace bullying, deliberate isolation and discrimination – applicant sent disrespectful email to finance manager, copying in other finance and product team members – applicant received formal written warning letter – applicant stood down for a week – during stand down applicant sent group email to 45 individuals and 13 department email accounts – email alleged that respondent had manipulated market statistics, had engaged in bullying, coercing resignations, unlawfully terminating pregnant employees and misappropriating funds – respondent' headquarters investigated allegations raised by applicant – following investigation, respondent advised that allegations were not substantiated – show cause letter issued – applicant dismissed for serious misconduct – application for unfair dismissal remedy lodged – Commission satisfied there was a valid reason for dismissal – found applicant's allegations were serious and held potential to damage standing and reputation of named person – the way allegations were raised was contrary to whistleblower policy – found that applicant's sense of grievance around exclusion from meetings and performance rating was likely to have provoked his misconduct – Commission satisfised allegations were intended to harm individuals and amounted to serious misconduct – Commission satisfied applicant was notified of valid reason for dismissal – show cause letter detailed allegations, breaches of policy and employment contract – Commission found applicant was denied genuine opportunity to respond to reason related to capacity or conduct – noted applicant was given 24 hours to respond to show cause letter – no direct meetings for purpose of investigating allegations – s.387(d)-(g) factors neutral – Commission considered other relevant matters – did not accept applicant's allegations were in good faith or in accordance with whistleblower policy – no justification for distributing allegations to hundreds of staff – applicant's emotional distress flowed from dismissal for serious misconduct and consideration did not weigh in applicant's favour – respondent's procedural failures not afforded significant weight due to wilful nature of applicant's misconduct – Commission not satisfied dismissal was harsh, unjust or unreasonable – dismissal not unfair – application dismissed.

U2024/6583		[2024] FWC 2513
Masson DP	Melbourne	16 September 2024

Rawson and Anor v Darton Warners Bay P/L

TERMINATION OF EMPLOYMENT – termination at initiative of employer – breaks – s.394 Fair Work Act 2009 – applicants employed as regular casual supervisors in respondent's store – applicants highly regarded before breaks dispute arose – employment relationship ended after dispute – applicants maintained they were unfairly dismissed – respondent argued applicants not dismissed and, in the alternative, dismissals not unfair – breaks issue arose over unpaid breaks in *General Retail Industry Award 2020* (GRIA) – longstanding practice in store of supervisors working through 30-minute meal break – respondent wanted 30-minute unpaid meal break enforced – store manager informed respondent that some supervisors unhappy

as they believed they would be working fewer hours so would earn less – store manager arranged supervisor meeting with respondent on 22 May 2024 – in meeting, applicants raised concerns regarding loss of work hours if they had to take unpaid meal break and that as meal break is unpaid entitlement they intended to return home during break period resulting in unsupervised junior staff – respondent said supervisors could leave store if they took their mobile phones so they could be contacted by junior staff – respondent's preferred outcome was for supervisors to remain in store for unpaid break to approve certain transactions – applicants alleged respondent said repeatedly "then this isn't the job for you" in meeting – specifically alleged respondent said this when one applicant said she would go home to see her daughter when on unpaid meal break – Commission observed respondent had incorrect understanding of GRIA break entitlements in that they could be agreed to be waived in exchange for payment or arrangement for crib break agreed – respondent denied saying "then this isn't the job for you" – on balance of probabilities, Commission found respondent responded to applicant's statement as alleged and made clear he was not prepared to comply with legal obligation under GRIA to provide supervisors with an unpaid 30-minute meal break during which time they could leave store – respondent denied acting aggressively in meeting – on balance of probabilities, Commission found respondent did say on numerous occasions in aggressive manner "this isn't the job for you" in response to concerns raised by applicants – Commission based this on supporting contemporaneous messages sent by applicants following meeting and making such statements was consistent with respondent's preferred outcome – Commission accepted applicants felt intimidated and upset during meeting – applicants said they were not prepared to work again until issue resolved – on 23 May, applicants posted in supervisor group chat separately, both stating intention to not return to work until matter resolved – after meeting, applicants removed themselves from supervisor group chat after providing messages that reaffirmed this – applicants removed from rosters by employer – first applicant rejected messages by store manager to ask for in-person meeting, asking for matter to resolved over messages – first applicant was asked to return supervisor keys on 28 May 2024 via message – first applicant reaffirmed her employment and that she has not resigned – similarly, on 28 May 2024, second applicant asked if employment had been terminated via text to store manager – on 30 May 2024, applicants received similar emails from respondent asking for property such as keys to be returned in 48 hours – both applicants agreed they had refused to attend in-person meeting to discuss matter further due to respondent's prior conduct, but both prepared to resolve matter via messages and made this clear to employer – on 31 May 2024, applicants attended store to return property – there was disagreement over discussion between applicants and store manager – applicants stated they told store manager they had not resigned employment – store manager said second applicant told her words to the effect of "I'm not doing any more shifts, I have anxiety" – applicants denied this by saying second applicant had told store manager she was going on a mental health plan – Commission preferred evidence given by applicants and considered store manager's evidence as having been coloured in an endeavour to support employer's defence of unfair dismissal claims – on 7 June 2024 both applicants provided with separation certificates each stating reason for separation was "employee ceasing work voluntarily" with explanation that "employee ceased attending shifts" – Commission found neither applicant resigned employment – applicants did not state they were not willing to work at all – no need to consider whether applicants forced to resign by conduct or a course of conduct engaged in by respondent – Commission did not accept that applicants repudiated employment contracts particularly due to casual nature of employment and there being no obligation to work particular shifts – Commission did not accept respondent's contention that applicants abandoned their employment as applicants provided reasonable excuses for shift non-attendance – Commission satisfied employment terminated on respondent's initiative and applicants were dismissed within meaning of Act – Commission satisfied that respondent did not have valid reason to terminate applicants' employment – Commission found dismissal for both applicants was harsh, unjust and unreasonable – Commission ordered remedy of $13,766.28 less taxation for first applicant and $9,525.12 less taxation for second applicant.

U2024/6508 and Anor [2024] FWC 2318

Saunders DP	Newcastle	30 August 2024

Hart v Intellisoftware P/L

GENERAL PROTECTIONS – jurisdiction – forced resignation – s.365 Fair Work Act 2009 – applicant resigned as marketing manager at software company – applicant submitted they were forced to resign – respondent raised jurisdictional objection of no dismissal – Commission considered test for dismissal under s.386 – two different version of events – applicant submitted CEO of the respondent said, 'I want to give you the opportunity to resign', 'I'm sorry' and 'this is your last day' – respondent submitted the conversation did not include any of those statements, purpose of the conversation was to inform applicant there was an upcoming performance meeting – respondent submitted the applicant brought up the resignation, 'if I resign will you pay me one week?' – CEO replied, 'put it in an email and I will think about it' – content of the conversation considered by the Commission – applicant submitted during prior conversation with an agent of the respondent he tried convincing applicant to resign – applicants version included agent asking 'if you had another job in mind?' – respondent accepted the question was asked, suggested agent was preparing the applicant in case the performance review resulted in termination – length of conversation contested – Commission preferred time estimated by applicant, finding conversation lasted approximately 20 minutes – another employee called as a witness, was not a part of either conversation but gave evidence regarding observations at the office and text exchange with the applicant – witness' evidence applicant looked 'visibly upset' after conversation with agent of the respondent – text exchange immediately preceding conversation included 'he got me fired' – Commission sceptical about purpose of conversation based on respondent's submissions – applicant's version of events preferred, not satisfied by respondent's version of events – found respondent's intention was to bring employment to an end [*Tavassoli*] – Commission accepted 'this is your last day' was said – applicant had no effective or real choice but to resign – held applicant dismissed – matter to proceed.

C2024/4250		[2024] FWC 2490
Easton DP	Sydney	13 September 2024

Community and Public Sector Union (SPSF Group) v The Victorian Fisheries Authority

ENTERPRISE AGREEMENTS – dispute about matter arising under agreement – relocation – s.739 Fair Work Act 2009 – application to deal with a dispute in accordance with the dispute settlement procedure of the *Victorian Public Sector Enterprise Agreement 2020* – application made in relation to two employees (Mr Amsey and Mr Steel) who transferred internally to a work location some distance from their homes and claimed associated relocation expenses – associated expenses included processing costs of selling existing homes and purchasing new homes closer to work location – agreed arbitration questions included whether the relocations arose from 'promotion or transfer as a result of an advertised vacancy', and if so, were the expenses reasonable – respondent contended it was not required to reimburse all expenses as internal transfers at level were not 'advertised vacancies' – Commission held that internal transfers were advertised vacancies and this was supported by cl 19 of the Agreement (which allows the employer to permanently change an employee's usual place of work' – respondent contended expenses not reasonable as they were over the cap determined by its policy – Commission held expenses were reasonable as they were expenses usually incurred in the selling or buying of property and the largest expense (stamp duty) is not a discretionary amount – Commission held not open to the respondent to determine what is 'reasonable' through the cap alone – however Commission held in the case of Mr Amey the expenses were only reasonable up to the cap as he had been explicitly told that amounts over the cap would not be approved – Commission held Mr Steel entitled to full reimbursement.

C2024/4005		[2024] FWC 2417
O'Neill DP	Melbourne	6 September 2024

Smout v BHP P/L

TERMINATION OF EMPLOYMENT – misconduct – process – ss.387, 394 Fair Work Act 2009 – applicant alleged to have engaged in sexual harassment of two cleaners – applicant contended sexual harassment did not occur or that the comments were not sexual harassment – intention of person who engaged in the conduct not relevant to question of whether conduct unwelcome or offensive [*Swift*] – Commission held the conduct was of sexual nature and was unwelcome – Commission found that the conduct was valid reason for dismissal – Commission held the applicant notified of reasons for dismissal – the applicant contended he was not afforded an opportunity to respond meaningfully to reasons as he was put on the spot – the Commission held applicant was not given a real or full opportunity to respond because he was put on the spot [*Gibson*] – in relation to other matters the Commission considered the role of the investigator – investigator a lawyer from a firm engaged by the respondent – lawyer claimed to be external and independent investigator – Commission held the investigation and the report was neither external or the report independent – Commission took into account issues with investigation process including that it was rushed, not thorough and conducted by telephone – Commission took into account applicant's service of 38 years and the difficult he will have finding alternative employment at his age – Commission's considered the notion of 'the standards of men, and not those of angels' [*Jupiter General Insurance*] no longer applicable in Australian workplaces – Commission determined that despite valid reason the applicant not afforded a 'fair go' due to failure to give full opportunity to respond and therefore the dismissal was unfair – Commission held reinstatement not appropriate due to conduct – Commission found a full opportunity to respond would have taken a further week – Commission ordered respondent pay the applicant 1 weeks' pay.

U2024/4252		[2024] FWC 2062
Riordan C	Sydney	19 September 2024

Chapagain v St. Basil's

CONDITIONS OF EMPLOYMENT – flexible working arrangement – caring responsibilities – ss.65, 65B Fair Work Act 2009 – dispute about request for flexible working arrangement – applicant part-time aged care worker for respondent – applicant employed by respondent since December 2012 for approximately 30 hours per fortnight – applicant exclusively worked weekends for previous 10 years – applicant worked for a different employer on weekdays – facility where applicant employed closed around March 2024 – on 7 March 2024, respondent wrote to applicant to outline new employment conditions – applicant submitted he did not agree to conditions at time and did not sign letter on that basis – applicant wrote to responded on 23 May 2024 to reiterate availability limited to weekends due to caring responsibilities for wife and newborn baby – requested a transfer to another facility to accommodate availability – applicant told no site able to provide only weekend shifts – applicant again requested adjustment to weekend work based on care commitments, outlining that his wife did not work, that he had only worked weekend shifts for the last 10 years and would otherwise have to look for alternative employment – respondent repeated weekend shifts not available – meeting held 11 June and written correspondence sent 14 June 2024 advising applicant that respondent was unable to accommodate request – applicant advised to inform respondent whether he intended to continue employment by 19 June 2024 – applicant sought permission to lodge dispute about flexible work arrangements on 18 June 2024 – applicant made request for interim arrangements on 26 June 2024 which were not successful – Commission noted that [*Quirke*] establishes clear requirements for request to be validly made under s.65(1) – noted respondent did not dispute that applicant made valid request – as applicant was parent with responsibility for care of young child, one of the circumstances set out at s.65(1A) applied – Commission noted "apparent" parties first attempted to resolve dispute at workplace level – noted applicant met minimum service period – noted both requests made in writing – respondent submitted no request for a flexible working arrangement made – applicant contended while he did not directly request a flexible

working arrangement, other circumstances made it clear he was requesting change in work – Commission found initial request identified relevant circumstances connected to a valid request but not the reasons for the change as required by [*Quirke*] – initial request not valid under s.65(1) – applicant's second request found to meet criteria required by s.65(3) – determined, despite offering alternative work options, respondent had refused request in accordance with s.65B(1)(b)(i) – respondent submitted applicant's request refused on reasonable business grounds – grounds included that there was no capacity to change working arrangements of other employees and arrangements would incur additional costs for respondent – respondent further submitted that applicant refused viable alternative options – applicant disputed grounds and argued respondent did not genuinely try to reach agreement – Commission sought clarity on orders sought – applicant identified was seeking arrangements until end of September 2024 when wife would return to work – Commission satisfied no reasonable prospect of dispute being resolved without order – order made that applicant be offered vacant weekend shifts at two facilities before other employees – applicant advised would need to lodge separate applications if other issued raised during proceedings in dispute.

C2024/4068		[2024] FWC 2332
Matheson C	Sydney	2 September 2024

Gauci v DP World Brisbane P/L

TERMINATION OF EMPLOYMENT – misconduct – drug test – ss.387, 394 Fair Work Act 2009 – application for relief from unfair dismissal – applicant failed random drug test – at test time applicant's urine contained cannabis – respondent found applicant breached alcohol and drug policy – applicant dismissed without notice – applicant asserted he was prescribed medicinal cannabis – applicant contended no valid reason as he was not impaired during work – not disputed that applicant did not disclose use of prescribed medicinal cannabis to respondent – applicant contended on day before shift he consumed small amount of cannabis early in morning to help get to sleep – applicant stated he consumed maximum prescribed daily dose – drug test results found THC presence in applicant to be forty-two times higher than respondent's alcohol and drug policy – applicant stood down without pay pending investigation and later terminated – Commission observed evidence given by two expert medical witnesses – Commission found much of evidence given by both expert witnesses aligned and credible – noted expert evidence that concentration of THC in applicant's urine was equivalent to applicant having smoked approximately 10 to 15 joints – further noted experts agreed concentration of THC only related to exposure, not impairment – found no lack of impartiality – Commission considered evidence given by applicant – found applicant's evidence regarding amount of cannabis consumed unreliable and imprecise – Commission considered whether valid reason existed – applicant submitted mere existence of cannabis not valid reason – applicant accepted he breached alcohol and drug policy but submitted failure to disclose medicinal cannabis use not valid reason related to his capacity or conduct – Commission noted applicant later retracted acceptance he breached policy under cross-examination and denied any policy breach – respondent submitted breach of alcohol and drug policy resulted in breach of employment contract – Commission found respondent's alcohol and drug policy lawful and reasonable – respondent submitted impairment not relied on as reason for dismissal – Commission considered whether dismissal harsh, unjust or unreasonable per s.387 – found reason for dismissal was breach of alcohol and drug policy by not disclosing use of prescription medication and attending work with elevated level of proscribed substance in system – impairment evidence found to be peripheral – Commission considered whether applicant aware of obligations under alcohol and drug policy – found applicant clearly aware and conduct wilful – found applicant aware breaches likely to result in disciplinary action, including termination – found valid reason existed – found applicant afforded opportunity to respond to reason for dismissal – found it does not follow applicant deprived of opportunity to respond because outcome did not result in outcome other than dismissal – found respondent's decision to summarily dismiss application consistent with policy and not disproportionate – found dismissal not harsh, unjust or unreasonable – application

dismissed.

U2024/3765 [2024] FWC 2351

Durham C Brisbane 2 September 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

Fair Work Commission Addresses

Australian Capital Territory
Level 3, 14 Moore Street
Canberra 2600
GPO Box 539
Canberra City 2601
Tel: 1300 799 675
Fax: (02) 6247 9774
Email:
canberra@fwc.gov.au

New South Wales

Sydney
Level 11, Terrace Tower
80 William Street
East Sydney 2011
Tel: 1300 799 675
Fax: (02) 9380 6990
Email:
sydney@fwc.gov.au

Newcastle
Level 3, 237 Wharf Road,
Newcastle, 2300
PO Box 805,
Newcastle, 2300

Northern Territory
10th Floor, Northern Territory House
22 Mitchell Street
Darwin 0800
GPO Box 969
Darwin 0801
Tel: 1300 799 675
Fax: (03) 9655 0420
Email:
darwin@fwc.gov.au

Queensland
Level 14, Central Plaza Two
66 Eagle Street
Brisbane 4000
GPO Box 5713
Brisbane 4001
Tel: 1300 799 675
Fax: (07) 3000 0388
Email:
brisbane@fwc.gov.au

South Australia
Level 6, Riverside Centre
North Terrace
Adelaide 5000
PO Box 8072
Station Arcade 5000
Tel: 1300 799 675
Fax: (08) 8410 6205
Email:
adelaide@fwc.gov.au

Tasmania
1st Floor, Commonwealth Law Courts
39-41 Davey Street
Hobart 7000
GPO Box 1232
Hobart 7001
Tel: 1300 799 675
Fax: (03) 6214 0202
Email:
hobart@fwc.gov.au

Victoria
Level 4, 11 Exhibition Street
Melbourne 3000
PO Box 1994
Melbourne 3001
Tel: 1300 799 675
Fax: (03) 9655 0401
Email:
melbourne@fwc.gov.au

Western Australia
Level 12,
111 St Georges Terrace
Perth 6000
GPO Box X2206
Perth 6001
Tel: 1300 799 675
Fax: (08) 9481 0904
Email:
perth@fwc.gov.au

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