



# DECISION

*Fair Work Act 2009*

s.789FC - Application for an order to stop bullying

## **Application by Miss Kristy-Lee Brinkworth** (AB2023/464)

COMMISSIONER LIM

PERTH, 26 MARCH 2024

*Application for an FWC order to stop bullying*

### **1. Introduction**

[1] This decision concerns Ms Kristy-Lee Brinkworth’s application under s 789FC of the *Fair Work Act 2009* (**Act**) for anti-bullying orders against her employer, Neighbourhood Retail Pty Ltd (**Company**) and two of its employees, Ms Teresa Jackway, the Produce Manager, and Ms Rae Whitford, the Office Manager.

[2] The Company operates the South Bunbury Marketplace, where Ms Brinkworth, Ms Jackway and Ms Whitford all work. Ms Brinkworth was first employed as a Produce Assistant. Ms Brinkworth contends that all the respondents have bullied her. The Respondents deny that any bullying behaviour has occurred.

[3] Pursuant to s 789FD of the Act, a worker is “bullied at work” if, while the worker is at work in a constitutionally covered business:

- (a) an individual or group of employees repeatedly behaves unreasonably towards the worker; and
- (b) that behaviour creates a risk to health and safety.

[4] The Commission may make an anti-bullying order only if it is satisfied that the worker has been bullied at work<sup>1</sup> and that there is a risk that the worker will continue to be bullied at work.<sup>2</sup>

[5] I conducted conferences on 13 November 2023 and 1 December 2023 to facilitate discussions and explore options for resolution between the parties. Directions for the filing of material were subsequently issued. A determinative conference was conducted on 9 February 2024. All parties represented themselves. Ms Brinkworth gave evidence in support of her case, as did Ms Whitford and Ms Jackway. Mr Michael Prosser, Director for the Company, and Mr David Howlett, Store Manager, also gave evidence for the Company.

[6] Prior to the hearing of the matter my chambers constructed a paginated court book consisting of submissions and evidence of the parties. References to evidence are by way of the relevant page number in the court book.

[7] Having considered the relevant evidence and submissions of the parties, I find that Ms Brinkworth was not bullied at work. The reasons for my decision follow.

## **2. What were the events that led to Ms Brinkworth’s application?**

### **2.1 Ms Brinkworth**

[8] Ms Brinkworth gave extensive evidence about the circumstances which in her view demonstrate that she has been bullied at work. I understand that all the evidence provided by Ms Brinkworth has great significance to her, however it is not possible to reproduce all of it in this decision. In summary, her evidence was as follows:

- (a) In February 2023, she interviewed for a position at South Bunbury Marketplace with the former store manager, Mr Simon Ibbitson, and Ms Whitford. Ms Brinkworth had approached the Company and indicated that she had just moved to the area and was looking for a job.<sup>3</sup> During this interview, she was told that there was a position available for in the produce section, and that it would initially be around 20 hours per week. After a three-month trial period, they could offer her 30 hours per week on a part-time or full-time basis.<sup>4</sup> A few days later, Ms Brinkworth was sent a contract for a role as a Produce Assistant on a casual basis. Ms Brinkworth assumed it was only for the three-month trial period, so she signed the contract and sent it back.<sup>5</sup>
- (b) From her first shift, there were issues with Ms Jackway, her direct superior. Ms Brinkworth felt that her “skills and experience were being disregarded” and that she was “being treated like it was her first time working in a role”.<sup>6</sup> Ms Brinkworth points to the following in support of how Ms Jackway treated her poorly:
  - (i) Ms Jackway would repeatedly train her in tasks that Ms Brinkworth already knew how to do. This included training in how to cut produce, how to receive orders and complete invoices.<sup>7</sup> Ms Brinkworth felt that this was unnecessary as she had previous experience working in produce retail.
  - (ii) During a training session with Ms Jackway, Ms Jackway told her that, “some people think that young women like yourself should not be in produce roles like this with all the heavy lifting because it's hard on your body, and if you want to have babies, it will make that not possible for you”. Ms Jackway said it was something her father always said and that that was how she was raised.<sup>8</sup> Ms Brinkworth says that this was a pointed personal comment from Ms Jackway.
  - (iii) In August 2023, Ms Brinkworth was scheduled to cover shifts while Ms Jackway was on leave. Ms Brinkworth was told in the lead up to Ms Jackway’s leave that she would be undertaking the store orders. However, the day before Ms Jackway went on leave, Ms Brinkworth was told that Ms Jackway would still do the store orders whilst on leave. A supplier was also arranged to come in to assist Ms

Brinkworth. Ms Brinkworth said that Ms Jackway did this to prevent her from performing this task,<sup>9</sup> which made her feel overshadowed and took away from her success.<sup>10</sup>

- (iv) Ms Brinkworth is not comfortable with confrontation and so did not feel confident bringing up issues with Ms Jackway. Further, that Ms Jackway would not return her greetings at the start of shifts.<sup>11</sup>
- (c) On 14 August 2023, Ms Brinkworth spoke with Ms Whitford to raise her grievances with Ms Jackway. Ms Brinkworth expressed her view that Ms Jackway was treating her poorly because Ms Jackway felt threatened that Ms Brinkworth was trying to take her job.<sup>12</sup>
- (d) A few weeks after the meeting on 14 August 2023, Ms Brinkworth met with Ms Whitford again about Ms Jackway.<sup>13</sup> Ms Brinkworth told Ms Whitford that she had not had the chance to address Ms Jackway's behaviour with her directly, as Ms Jackway had been ignoring her or shutting attempts at conversation down.<sup>14</sup>
- (e) After this second meeting with Ms Whitford, Ms Brinkworth's Thursday shifts with Ms Jackway were cut. A week later, her Friday and/or Saturday shifts were cut. Ms Brinkworth raised this with Ms Whitford, and Ms Whitford told her that because of her concerns with Ms Jackway, Ms Jackway was unhappy and had taken her shifts away.<sup>15</sup>
- (f) In late August or early September 2023, Ms Brinkworth was moved out of the produce department, into the grocery section, and finally into the front-end checkouts. Her shifts in the plants section were also cut down. Ms Brinkworth spoke to Ms Whitford to express her dissatisfaction with this move and said that Ms Whitford agreed that it was retaliatory conduct from Ms Jackway.
- (g) In September 2023, there was a further conversation where Ms Whitford told Ms Brinkworth that there were no shifts in the grocery section available, and that there were shifts available in the front-end if she wished to take them.<sup>16</sup>
- (h) Following this, Ms Brinkworth's shifts were further reduced to the point where she was working either one or no shifts each week.
- (i) On 28 September 2023, Ms Brinkworth filed her application for an anti-bullying order.
- (j) On 13 December 2023, Ms Brinkworth was certified as unfit for work due to workplace-related stress, anxiety and depression. At the time of the determinative conference, Ms Brinkworth was still certified as unfit for work.

## **2.2 Ms Whitford**

**[9]** Ms Whitford gave the following evidence:

- (a) During Ms Brinkworth's interview, she was not offered a part-time or full-time position. This is because there are no part-time staff at South Bunbury Marketplace. There are

also no permanent staff other than one permanent employee in each department. All other positions are engaged on a casual basis. This includes the position that was offered to Ms Brinkworth.<sup>17</sup>

- (b) At the meeting on 14 August 2023, Ms Brinkworth did tell Ms Whitford that she was having issues with Ms Jackway, citing issues such as Ms Jackway speaking over her and changing her mind regarding tasks and instructions. Ms Brinkworth did not want Ms Whitford to intervene and wanted to speak with Ms Jackway herself.<sup>18</sup>
- (c) After Ms Brinkworth came to speak with her again, Ms Whitford spoke to Mr Howlett to relay Ms Brinkworth's concerns.<sup>19</sup> Ms Whitford and Mr Howlett then spoke with Ms Jackway regarding Ms Brinkworth's issues and asked Ms Jackway to be more careful with Ms Brinkworth.<sup>20</sup>
- (d) Ms Whitford strongly refuted Ms Brinkworth's account of their discussion at [8](e). Ms Whitford's evidence is that she would never say words to that effect. Ms Whitford also explained that the Thursday shifts were training shifts with Ms Jackway and as Ms Brinkworth had said she didn't need training, she was no longer rostered on for them.<sup>21</sup>
- (e) Ms Whitford explained that Ms Brinkworth was moved out of produce at Ms Jackway's request due to the deterioration of the working relationship.<sup>22</sup> Ms Whitford did not say to Ms Brinkworth or agree that it was retaliation from Ms Jackway.
- (f) Regarding the reduction of Ms Brinkworth's shifts in the plants section, Ms Whitford's evidence is that the plants section does not run a profit, and so the decision was made to cut the staffing hours in the plants section. Ms Brinkworth had more shifts in other departments, so the decision was made to roster an existing casual employee to work three to six hours a week in the plants section on an as needed basis.<sup>23</sup>
- (g) Ms Whitford's evidence regarding the reduction of Ms Brinkworth's shifts on the front-end is that Ms Brinkworth had a high number of unavailable days that impacted on the Company's ability to roster her on during weekdays, given Ms Brinkworth's preference to not work weekends.<sup>24</sup>
- (h) There has been a reduction in shifts for all casuals at the South Bunbury Marketplace. There has also been turnover in staff due to staff leaving for other opportunities.<sup>25</sup>

### **2.3 Ms Jackway**

**[10]** Ms Jackway gave the following evidence:

- (a) The types of training that Ms Brinkworth is aggrieved about is given to all employees. Ms Jackway did not continually train Ms Brinkworth in tasks unless Ms Brinkworth had completed a task incorrectly. Ms Jackway gave the example of occasions where Ms Brinkworth would not check off invoices properly, so Ms Jackway would need to show her how to perform that task correctly.<sup>26</sup>

- (b) Ms Jackway needed to have regular conversations with Ms Brinkworth each week about tasks not being completed correctly.<sup>27</sup>
- (c) Ms Jackway agreed that the relationship between Ms Brinkworth and herself was poor. Ms Jackway attributed this to Ms Brinkworth being hard to communicate with. Ms Jackway said that when she would see Ms Brinkworth she would greet her, but Ms Brinkworth would not respond or look at her until Ms Jackway gave her instructions for tasks.<sup>28</sup>
- (d) With regards to the conversation about women in produce roles, Ms Jackway's evidence is that Ms Brinkworth has twisted an innocent conversation. Ms Jackway and Ms Brinkworth were having a conversation about their upbringings and family, and Ms Jackway shared comments that her father used to make. Ms Jackway has been in produce herself since her early 20s and has trained many young women in produce.<sup>29</sup>
- (e) With regards to her leave in August 2023, Ms Jackway explained that she was on leave for two days and that she had facilitated the order and supplier to assist Ms Brinkworth as Ms Brinkworth had not met the suppliers before.<sup>30</sup>
- (f) Ms Jackway confirmed that Ms Whitford and Mr Howlett raised Ms Brinkworth's concerns with her. Ms Jackway said at the time that it was probably due to her being blunt towards Ms Brinkworth when having to continually instruct her on how to accept deliveries properly, and being accountable for stock that comes into the department.<sup>31</sup>
- (g) After this conversation, Ms Jackway changed Ms Brinkworth's roster. Ms Jackway said that Ms Brinkworth was originally working shifts on Friday or Saturday so that Ms Brinkworth could have the responsibility of handling orders on Saturdays. However, as Ms Brinkworth was struggling with the task, she re-arranged her own roster so that Ms Brinkworth would get Sunday and Monday off to take pressure off Ms Brinkworth.<sup>32</sup>
- (h) Ms Jackway confirmed that she requested that Ms Brinkworth be moved out of the produce department due to the working relationship breaking down. Ms Jackway gave evidence that she was not coping well with working with Ms Brinkworth and had concerns about her own mental health.<sup>33</sup>

## **2.4 Action taken by the Company**

[11] Mr Prosser, Mr Howlett and Ms Whitford also gave evidence regarding measures the company has taken following Ms Brinkworth's bullying allegations. These include:

- (a) In November 2023, all staff managers participated in training with a third-party registered training organisation in mental health awareness and workplace bullying and harassment awareness.<sup>34</sup>
- (b) Rolling out new Company policies for bullying and handling grievances.<sup>35</sup> These new policies were drafted by the Company's head office then discussed with the department managers. Once finalised, the new policies were emailed to all existing employees.<sup>36</sup>

[12] On 19 March 2024 date, Ms Brinkworth confirmed with my chambers that she had been certified as fit to return to work.

[13] For completeness, I note that the Company tendered brief statements from Mr Simon Ibbitson and Ms Lisa Nettle. However, they did not attend the determinative conference and there was no opportunity to test their evidence. I have therefore not relied on their statements in my findings.

### 3. Submissions

[14] The parties provided limited submissions regarding their respective cases. In summary, Ms Brinkworth asserts that she has been subject to bullying behaviour in her workplace. The Company contends that bullying has not occurred, and the Company has taken steps to ensure that there is no risk that Ms Brinkworth be bullied, such as requiring management staff to undergo training and rolling out new policies. The Company also submits that given Ms Brinkworth's complaint against Ms Whitford, they have designated Mr Howlett as her direct report.<sup>37</sup>

### 4. Consideration

[15] The Commission's power to make a stop bullying order is enlivened if the three criteria in s 789FF of the Act exist. *Firstly*, a "worker" must have made an application under s 789FC of the Act; *secondly*, the Commission must be satisfied that the worker has been bullied at work by an individual or group of individuals; and *thirdly*, the Commission must be satisfied there is a risk that the worker will continue to be bullied at work by the individual or group.

[16] Section 789FC allows a worker to make a stop bullying application if they reasonably believe they have been bullied at work.

#### **"789FC Application for an FWC order to stop bullying**

- (1) A worker who reasonably believes that he or she has been bullied at work may apply to the FWC for an order under section 789FF.
- (2) For the purposes of this Part, *worker* has the same meaning as in the *Work Health and Safety Act 2011*, but does not include a member of the Defence Force.

Note: Broadly, for the purposes of the *Work Health and Safety Act 2011*, a worker is an individual who performs work in any capacity, including as an employee, a contractor, a subcontractor, an outworker, an apprentice, a trainee, a student gaining work experience or a volunteer.

[17] Section 789FD defines when a worker is bullied at work:

#### **"789FD When is a worker *bullied at work*?**

- (1) A worker is *bullied at work* if:
  - (a) while the worker is at work in a constitutionally-covered business:

(i) an individual; or  
(ii) a group of individuals;  
repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and

(b) that behaviour creates a risk to health and safety.

(2) To avoid doubt, subsection (1) does not apply to reasonable management action carried out in a reasonable manner.

(3) If a person conducts a business or undertaking (within the meaning of the *Work Health and Safety Act 2011*) and either:

(a) the person is:

- (i) a constitutional corporation; or
- (ii) the Commonwealth; or
- (iii) a Commonwealth authority; or
- (iv) a body corporate incorporated in a Territory; or

(b) the business or undertaking is conducted principally in a Territory or Commonwealth place;

then the business or undertaking is a *constitutionally-covered business*.

**[18]** Section 789FF allows the Commission to make stop-bullying orders in certain circumstances:

**“789FF FWC may make orders to stop bullying**

(1) If:

(a) a worker has made an application under section 789FC; and

(b) the FWC is satisfied that:

- (i) the worker has been bullied at work by an individual or a group of individuals; and
- (ii) there is a risk that the worker will continue to be bullied at work by the individual or group;

then the FWC may make any order it considers appropriate (other than an order requiring payment of a pecuniary amount) to prevent the worker from being bullied at work by the individual or group.

(2) In considering the terms of an order, the FWC must take into account:

(a) if the FWC is aware of any final or interim outcomes arising out of an investigation into the matter that is being, or has been, undertaken by another person or body—those outcomes; and

(b) if the FWC is aware of any procedure available to the worker to resolve grievances or disputes—that procedure; and

(c) if the FWC is aware of any final or interim outcomes arising out of any procedure available to the worker to resolve grievances or disputes—those outcomes; and

(d) any matters that the FWC considers relevant.

[19] It is not contested, and I find, that Ms Brinkworth is a “worker” as defined by s 789FC(2) of the Act. It was also not contested, and I find, that Ms Brinkworth reasonably believes that she has been bullied at work. It was clear that there are workplace tensions between Ms Brinkworth and management at the workplace, and it was agreed by all parties that the relationship between Ms Brinkworth and Ms Jackway had deteriorated. This supports a finding that Ms Brinkworth’s belief that she has been bullied at work is reasonable.

[20] I now turn to the criteria in s 789FF of the Act.

#### **4.1 Did the Company, Ms Jackway or Ms Whitford engage in bullying behaviour towards Ms Brinkworth?**

[21] I found that all the witnesses spoke genuinely about their perspectives and frustrations. The witnesses generally agreed as to events that occurred, though they differed in their recollections of conversations.

[22] I refer to Deputy President Easton’s decision in *Application by Mr Matthew Egan*,<sup>38</sup> where he stated:

“[87] Tone and context is everything in many interactions at work. In stop-bullying applications, the Commission is often called upon to adjudicate on whether words and messages sent and received at work were innocent, innocuous, offensive, destructive, and so on.

[88] Innocent or innocuous words, said in a certain context or delivered in a certain tone, can send offensive or destructive messages. Offensive or destructive messages can also be coated in innocuous or innocent words or can be delivered in the most pleasant or professional of tones.

[89] The Commission applies an objective test: behaviour is unreasonable if a reasonable person, *having regard to all the circumstances*, may consider it to be unreasonable. But applying this objective test is a difficult task – particularly if tone is important. Witnesses might provide evidence or context and of the words used, but unless there is a video or audio recording of the conversation or the exchange occurs in written form, the Commission has to make an objective assessment of the tone and intention based on the subjective descriptions given by the sender and the recipient.”

[23] These words are pertinent to this matter, where much of the differences between the witnesses are in their perception of interactions.

[24] With regards to the events that have occurred between the parties, I make the following findings.

[25] When Ms Brinkworth was interviewed in February 2023, Mr Ibbitson and Ms Brinkworth did discuss a role in produce with hours of around 20 hours per week. I find that Ms Brinkworth did want a full-time or part-time role, but I find that neither Mr Ibbitson nor Ms Whitford promised her such a role. I note the below extracts from Ms Brinkworth’s employment contract and find that she would have known at the time that her role was a casual one.

#### **“1. Employment**



b) You are employed on a casual basis according to the needs of the Employer from time to time in the position as per Item 2 of the attached Employment Schedule. You will report to Simon Ibbitson, Directors or any other person directed by the Employer from time to time. The Employer may unilaterally change your title, duties, responsibilities, function, role accountability or reporting relationship at any time.”

...

#### **4. Hours**

a) As a casual employee you will not have reasonably predictable or regular hours of work, and you may be required to work at any time of the week including late nights, weekends and public holidays to suit the Employer’s operational requirements. The Employer will notify you when you are required to work from time to time.”

[26] There were clear issues between Ms Brinkworth and Ms Jackway. I find that this is due to them having very different personalities and communication styles, and neither having the knowledge or processes in place to properly manage escalating tensions. Ms Jackway is direct, and by her own admission, blunt in how she communicates. This does not automatically translate into bullying behaviour, but it is worth noting that such a communication style is not always the most appropriate or pleasant way to communicate with co-workers, particularly when they report to you.

[27] Both Ms Brinkworth and Ms Jackway seemed to take each interaction with each other the wrong way, even when there was no intention to be hurtful. This can be seen where Ms Jackway shared the story about the outdated views her father held with regards to women performing roles that required lifting heavy objects. Ms Brinkworth’s assertion that Ms Jackway was making a pointed comment about her presence in the Company ignores the context of the situation. I accept Ms Jackway’s evidence that the context of this story was that she and Ms Brinkworth were sharing stories about their upbringing and that Ms Jackway was not making a personal comment on Ms Brinkworth.

[28] From examining the evidence and listening to both Ms Brinkworth and Ms Jackway, I can see that these misconstrued or poor interactions between Ms Brinkworth and Ms Jackway built up to the point that it was unproductive for the workplace and for each other’s mental health for them to work together.

[29] It is clear from the evidence that Ms Brinkworth thinks highly of her ability and her prior work experience, and it may be that she is right to do so. Certainly, there is nothing wrong with taking pride in your work. However, what was also clear is that Ms Brinkworth was very sensitive to any actions or perceived actions that suggested she did not know how to perform her role. Throughout Ms Brinkworth’s conversations with the other witnesses, there was a view that Ms Jackway felt threatened by her or felt that Ms Brinkworth was out to take her job. I am unsure how Ms Brinkworth reached this conclusion as it did not appear to be rooted in objective evidence.

[30] I accept Ms Jackway’s evidence that the training she gave to Ms Brinkworth is standard training that all new employees undertake. I further accept Ms Jackway’s evidence that any extra training she undertook with Ms Brinkworth was to assist with tasks that needed extra attention. I do not find it unusual for new employees to go through standard training, even in

tasks that the employee already knows how to perform. I also do not find that Ms Jackway was seeking to undermine Ms Brinkworth in her role.

[31] It is not controversial that Ms Brinkworth raised her grievances with Ms Jackway with Ms Whitford, and by extension, Mr Howlett. Ms Whitford and Mr Howlett relaying the concerns directly to Ms Jackway when Ms Brinkworth expressed the preference to navigate the problem herself was not helpful in de-escalating the tensions, but I find it was done out of a concern to manage the problem rather than spite.

[32] I also find that Ms Jackway's request to no longer have Ms Brinkworth in the same section, and to no longer have Ms Brinkworth report to her, was genuinely driven by the sentiment that they could not work together productively and that it was impacting on both of their mental health.

[33] I accept Ms Whitford's evidence that the rostering of Ms Brinkworth has been affected by a combination of Ms Brinkworth's unavailability and the reduction in casual labour at the premises overall.

[34] I do not doubt that Ms Brinkworth is genuinely upset by her experience working at the Company. I find overall that the Company managed Ms Brinkworth's concerns clumsily. There were several points in the process where if the Company had been more transparent and consultative it could be that this application may not have eventuated. It is clear from the evidence that the Company struggled to deal with Ms Brinkworth's concerns, and did not know how to best manage the conflict between Ms Brinkworth and Ms Jackway. However, based on my consideration of all the circumstances and my findings above, I do not find that the Company, Ms Jackway or Ms Whitford engaged in bullying behaviour towards Ms Brinkworth.

#### **4.2 Risk of future bullying behaviour**

[35] The Commission can only intervene and make anti-bullying orders when it is satisfied that there is a risk of future bullying. If there is no risk of bullying in the future, the Commission cannot, and should not, make orders to improve or repair relationships in the workplace.

[36] Even if I had found that Ms Brinkworth had been subjected to bullying, I would not have been satisfied that there is currently a risk that she will continue to be bullied at work. Ms Brinkworth has been absent from work for several months and has only recently been certified as fit to return to work. The Company has also taken the action of rolling out training to all managers and updating their bullying and grievances policies.

#### **4.3 The orders sought**

[37] As I have not found that Ms Brinkworth has been bullied at work, the power to make stop-bullying orders cannot be enlivened. However, I wish to make some brief observations about the orders that Ms Brinkworth seeks. They are:<sup>39</sup>

- (a) An overhaul of the Company's policies to include a clearly stated procedure for how complaints of bullying and harassment in the workplace will be acted on.

- (b) All management staff to receive training on how to act on complaints of bullying and harassment in the workplace.
- (c) To be compensated for the loss of income that has resulted from her being removed from the produce and plants sections.
- (d) To be re-instated to her former hours and position in the produce and plants sections.
- (e) A written apology from Ms Jackway, Ms Whitford and Mr Howlett.
- (f) All communication between the Company and herself to be conducted by email going forward.
- (g) That for all meetings the Company allow Ms Brinkworth to have a support person present.

[38] The Company contends that they have already complied with (a) and (b) and also agree to (f) and (g) moving forward. Ms Brinkworth acknowledged during the determinative conference that she no longer presses for those orders.<sup>40</sup>

[39] With regards to (c) and Ms Brinkworth's desire to be compensated for loss of income, I put to Ms Brinkworth several times during the process that pursuant to s 789FF of the Act, the Commission does not have the power to make an order requiring payment of a pecuniary amount. During the determinative conference Ms Brinkworth accepted this, but said she wanted it stated.<sup>41</sup>

[40] With regards to the order that Ms Brinkworth be re-instated to her position in the produce and plants sections, given the breakdown in the relationship between Ms Brinkworth and Ms Jackway, I am not convinced that such an order would have been appropriate or helpful for Ms Brinkworth. Even if I had found that the jurisdictional requirements for the making of an order had been made out in this matter, I would nevertheless have declined to issue this order.

## **5. Conclusion**

[41] It can be a very difficult and isolating experience when you do not get along or communicate well with your manager or co-workers. I do not doubt the genuineness of Ms Brinkworth's distress. However, that does not necessarily translate to a finding of bullying.

[42] As I am not satisfied that the jurisdictional prerequisites in s 789FF of the Act have been met, Ms Brinkworth's application must be dismissed. An order to this effect will be issued separately.<sup>42</sup>



COMMISSIONER

*Appearances:*

*K Brinkworth, Applicant*

*M Prosser for the Respondent*

*Hearing details:*

2024.

Perth:

February 9.

Printed by authority of the Commonwealth Government Printer

<PR771149>

---

<sup>1</sup> Act, Section 789FF(1)(b)(i).

<sup>2</sup> Act, Section 789FF(1)(b)(ii).

<sup>3</sup> Transcript, 9 February 2024, PN77.

<sup>4</sup> Ibid, PN75.

<sup>5</sup> Ibid, PN99, PN109.

<sup>6</sup> Ibid, PN125.

<sup>7</sup> Ibid, PN136-PN143.

<sup>8</sup> Ibid, PN312.

<sup>9</sup> Ibid, PN182-PN190.

<sup>10</sup> Ibid, PN194.

<sup>11</sup> Ibid, PN278-PN282.

<sup>12</sup> Ibid, PN196.

<sup>13</sup> Ibid, PN24-PN227.

<sup>14</sup> Ibid, PN227.

<sup>15</sup> Ibid, PN290-PN294.

<sup>16</sup> Ibid, PN410-PN407.

<sup>17</sup> Ibid, PN85.

<sup>18</sup> Ibid, PN210.

<sup>19</sup> Ibid, PN228-PN229.

<sup>20</sup> Ibid, PN231.

<sup>21</sup> Ibid, PN296.

<sup>22</sup> Ibid, PN360.

<sup>23</sup> Ibid, PN415.

<sup>24</sup> Ibid, PN449.

<sup>25</sup> Ibid, PN649; PN662-PN663.

<sup>26</sup> Ibid, PN243-PN247.

<sup>27</sup> Ibid, PN248-PN249; PN251.

<sup>28</sup> Ibid, PN261-PN265.

<sup>29</sup> Ibid, PN321-PN324.

<sup>30</sup> Ibid, PN274-PN276.

<sup>31</sup> Ibid, PN284.

<sup>32</sup> Ibid, PN301-PN304.

<sup>33</sup> Ibid, PN362.

<sup>34</sup> Ibid, PN552-PN554; Digital Court Book (DCB), pages 190-193.

<sup>35</sup> DCB, pages 185-189.

<sup>36</sup> Transcript, 9 February 2024, PN567-PN582.

<sup>37</sup> DCB, page 291.

<sup>38</sup> [\[2023\] FWC 3299](#).

<sup>39</sup> DCB, page 65.

<sup>40</sup> Transcript, 9 February 2024, PN774; PN818.

<sup>41</sup> Ibid, PN775-PN776.

<sup>42</sup> [PR772718](#)