The Advisor

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web: www.siag.com.au phone enquiries Australia wide 1300 SIAGHR (1300 742447)

Superannuation for Paid Parental Leave (PPL) from July 2025

On Thursday 7 March 2024, the Commonwealth Government announced that it will pay superannuation on government-funded paid parental leave (**PPL**) from **1 July 2025**.

The Women's Economic Equality Taskforce has long campaigned for payment of superannuation on PPL in conjunction with women's movements and unions. It is also a crucial part of the government's new *Working for Women* national strategy to achieve gender equality.

Minister for Women Senator Katy Gallagher stated that the relevant data clearly identifies a strong need for reform, and that paying superannuation on government-funded PPL should help address the 25% disparity between the average superannuation retirement balances of men and women. Senator Gallagher further hopes that the initiative will help 'normalise taking time off work' and compel people to view PPL as a 'workplace entitlement similar to annual and sick leave'. Treasurer Jim Chalmers described the scheme as 'part of [the government's] efforts to ensure women earn more and keep more of what they earn.'

But how will this impact on the budget?

Under Labor's current plan, superannuation will be paid at 12% of the PPL rate (which is based on the national minimum wage, currently $882.75 per week). If 180,000 families were to access PPL with superannuation from July 2025, it is likely to cost approximately half a billion dollars in 2025-26.

How will this affect employers?

This latest governmental initiative is still in its primitive stages; however, it is highly likely that it will have significant repercussions for the future of superannuation, employment law and industrial relations. Current superannuation legislation will need to be updated, and these provisions are likely to affect enterprise agreements and various modern awards which are currently in operation.

2024 Annual Wage Review

Introduction

On 28 March 2024, the federal government handed down its submissions to the Annual Wage Review Expert Panel (**panel**) – the body tasked with conducting the Annual Wage Review. The government has requested that the panel increase wages such that real wages do not 'go backwards'. However, the government did not request that wages should automatically increase with inflation, nor that inflation should be the only factor taken into consideration by the panel.

This submission has relaunched annual discussions regarding the extent to which wages should be adjusted. Interest groups across several industries have made submissions to the panel.

What is the Annual Wage Review?

Each year, between March and June, the Annual Wage Review Expert Panel is tasked with reviewing the minimum wages in each award and the national minimum wage order. The national minimum wage order is a national minimum requirement that applies to all employees, regardless of whether they are covered by an award or enterprise agreement, or neither. Typically, these changes come into operation on 1 July of the following financial year.

What is likely to be taken into account?

In determining the extent to which Awards and the National Minimum wage should be adjusted, the panel must consider both s 284 and s 134 of the *Fair Work Act 2009* (Cth) (**the Act**).

To determine the necessary adjustments that should be made to the minimum wages of awards, s 284 of the Act sets out that the panel must consider:

(a) the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth;
(b) promoting social inclusion through increased workforce participation;

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(c) relative living standards and the needs of the low paid;
(d) the principle of equal remuneration for work of equal or comparable value; and
(e) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.

S 134 of the Act further requires the panel to contemplate

(a) relative living standards and the needs of the low paid;
(b) the need to encourage collective bargaining;
(c) the need to promote social inclusion through increased workforce participation;
(d) the need to promote flexible modern work practices and the efficient and productive performance of work;
(e) the principle of equal remuneration for work of equal or comparable value;
(f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden;
(g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
(h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

Evidently, these provisions grant broad discretion on the panel to holistically evaluate the state of the economy and make an adjustment to wages accordingly.

Often, the panel give weight to the submissions of relevant interest groups submissions. The panel will consider the submission of the Commonwealth, who have advocated against real wages going 'backwards' and for the panel to not view the Stage 3 tax cuts as a substitute for wage growth.

Given the latest quarterly CPI figure was 3.6% (March 2024), The Commonwealth appears to be requesting an increase in line with this figure.

Some peak bodies have responded in contest of the government. The Australian Chamber of Commerce and Industry maintains that at maximum, only a 2% wage increase should be awarded, due to weak productivity growth. The Australian Industry Group has indicated that it is prepared to accept as much as a 2.8% raise, which they claim, "would lower the likelihood of negative impacts on employment and raise the likelihood of an earlier reduction in interest rates".

Employee representatives such as the Australian Council of Trade Unions have pushed for a 5% increase, exceeding the most recent CPI figure by almost 1.5%.

Recent Wage

In 2023, minimum wages were increased across awards by 5.75% on the back of the most recent CPI figure being 7%. While the panel accepted the regression of real wages last year, this was likely due to the figure (and those of the previous year) being exceptionally high.

In 2022, the national minimum wage was increased by 5.2%. Award rates were increased by $40 if the minimum wage was less than $869.60 and by 4.6% if greater than that. The most recent CPI figure prior to that review was 5.1%. Hence, the panel maintained the national minimum wage in line with inflation and adjusted awards to ensure that real wage reduction was only minimal. The panel may take a similar approach in this review.

Summary

The specific factors considered by the Annual Wage Review Expert Panel are broad. Due to this, it can be difficult to predict how awards and the national minimum wage will be adjusted on a year-to-year basis. However, CPI, the submissions of interest groups and the trends of past years can all be utilised to predict the extent to which minimum wages will be adjusted for the 2025-2025 Financial Year.

HR Coordinator fined over $100k for 'Deceitful and Unscrupulous' Underpayment Scheme

Fair Work Ombudsman v DTF World Square Pty Ltd (in liq) (No 4) (2023) FCA 341

The HR Coordinator of a popular Taiwanese dumpling chain has been fined $105,084 for her role in a 'deceitful and unscrupulous' scheme to rob workers. This same judgment saw two companies trading as Din Tai Fung Restaurants be hit with over $4 million in court ordered penalties for contraventions that occurred between November 2017 and June 2018 – the second highest pecuniary punishment ever secured by the Fair Work Ombudsman.

On 10 April 2024, Justice Anna Katzmann of the Federal Court found that the proprietors knowingly contravened the *Fair Work Act 2009* (Cth) (**the Act**) in a manner that detrimentally impacted seventeen workers who were mostly Indonesian and Chinese visa holders. Submissions to the court speculated that the employers hired visa holders deliberately in an effort to minimise the risk of the underpayment being detected.

But how did the underpayment scheme actually operate? Justice Katzmann listed five 'serious contraventions' of the Act which primarily related to the falsification of records and the deliberate miscalculation of casual loading, weekend, and public holiday rates. These actions were classified as 'serious contraventions' because of their deliberate and systematic nature, and under the Protecting Vulnerable Workers laws, the maximum penalties are ten times higher than those that would generally apply.

Despite her willing and active participation in many facets of the company's misconduct, the HR Coordinator was not charged with serious contraventions. A former payroll officer at the company described how he was instructed by the HR Coordinator to make inaccurate records of hours worked. He was also told to make it look like workers had worked 'less than the hours that they actually worked set out in the master payroll.'

Ultimately, this decision has underlined the importance of statutory bodies such as the Fair Work Ombudsman, and it has demonstrated the robustness of Australia's employment regulatory framework. It has also made an example of employers who have knowingly acted in a manner that was completely contrary to their obligations, which the Fair Work Ombudsman hopes will serve as a deterrent for such behaviour in the future.

New 35% Work Value Claim

On 9 February 2024, the Australian Nursing and Midwifery Federation (**ANMF**) launched a new work value case, seeking pay rises of up to 35% for approximately 250,000 nurses, midwives, and nursing assistants across Australia.

What is a work value case?

A work value case is a case in which the Full Bench of the Fair Work Commission (**FWC**) considers whether adjustments to the current minimum wages in a modern award should be varied due to 'work value reasons'.

Factors considered when determining whether adjustments to wages can be made for 'work value reasons' include:

- The conditions under which the work is done;
- The skill or responsibility required to complete the work; and
- The nature of the work.

The application aims to build upon the success of two recent work value cases, which provided wage increases for workers, including nurses in the aged care sector.

- On 30 June 2023, a 15% wage increase was conferred upon 'direct' care and some senior food services employees in the aged care sector.
- On 15 March 2024, the FWC awarded a 3% pay increase for 'non-direct' care workers and added to the 15% increase of direct care workers in the aged care sector. Some direct care workers are to receive up to a 28.5% pay increase. Further decisions on when these variations will come into effect are pending.

The ANMF's application argues that the nature of the work carried out by nurses, midwives and nursing assistants has 'demonstrably changed'. They claim that wage rates have not kept up with these changes as they have eventuated in the last several decades. This claim is formed on the basis that workers covered by this award are faced with complex issues in a more varied and ever-evolving set of circumstances. Further, the ANMF claims that the demand for nursing has increased, with greater levels of chronic disease in the ageing population.

The ANMF's claim is also founded on the assertion that roles covered by the Nurses Award were never properly valued 'because of assumptions based on gender'. Given that approximately 89% of nurses and almost 100% of midwives are female according to the ANMF, this is a powerful claim. The national secretary of the ANMF has argued that it is 'only fair that nurses, midwives and AINs covered by the national award get recognition for their demanding work, regardless of the healthcare setting.'

Justice Hatcher, President of the FWC, conducted a case conference with the relevant parties on 4 April 2024, where it was determined that parties with sufficient interest will meet again on 17 May 2024 to discuss responses to the ANMF's claim.

Increase to Civil Penalties

The day after the *Fair Work Legislation Amendment (Closing Loopholes No.2) Act 2024* (Cth) (No. 2 Act) gained royal assent on 26 February 2024, a number of changes to civil penalties were introduced.

The maximum civil pecuniary penalties available have been increased as such:

- 300 penalty units ($93,900) for individuals;
- 3000 penalty units ($939,000) for individuals for serious contraventions;
- 1,500 penalty units ($469,500) for body corporates;
- 15,000 penalty units ($4,695,000) for body corporates for serious contraventions;

These rates apply for the following contraventions of the FW Act:

- s 44 – breach of the NES;
- s 45 – breach of a modern award;
- 50 – breach of an enterprise agreement;
- s 280 – breach of a workplace determination;
- s 293 – breach of a national minimum wage order;
- s 305 – breach of an equal remuneration order;
- s 323 – breach of the method and frequency of payment;
- s 325 – unreasonable requirement to spend or pay an amount;
- s 328 – breach of an employer's obligations in relation to guarantees of annual earnings;
- ss 535 and 536 – breach of the employer's obligations in relation to employee records and pay slips;
- s 757BA – breach of the obligation in relation to pay slips for paid family and domestic violence leave (yet to commence under the Secure Jobs, Better Pay Act (2022))

Furthermore, increased maximum penalties for underpayment also came into effect on 27 February 2024.

These will increase such that the employee who has been underpaid will be entitled to the higher of:

- the ordinary penalty for the contravention, as set out above; or
- 3 times the 'underpayment amount'.

‘Little Room for Entrepreneurship’

Ms Jessica Tidmarsh v Aspire 2 Life Pty Ltd [2024] FWC 289 (5 February 2024)

Background

A home care worker engaged by the Queensland based provider of Aged Care, Aspire 2 Life has lodged a successful general protections claim under s 365 of the *Fair Work Act 2009* (Cth) (**the Act**) after it was decided that she was in fact an employee, rather than an independent contractor.

Last October, the worker, Ms Tidmarsh, had informed Aspire 2 Life that she had contacted the Fair Work Ombudsman regarding concerns about multiple working arrangements. Shortly afterwards, she was dismissed due to ‘irreconcilable differences.’ Ultimately, this dismissal was deemed to be ‘adverse action,’ and therefore it constituted a breach of the general protections provisions within the Act.

However, the main point of contention was whether Ms Tidmarsh classified as an employee or an independent contractor. This particular determination was critical as it determined whether she was entitled to pursue a general protections claim against Aspire 2 Life.

In determining the classification of the employee, the leading case authority of *CFMEU v Personnel Contracting Pty Ltd* [2022] was consulted. This case established the primacy of contract terms in deciphering the nature of a working relationship. It is important to note that on 1 July 2024, this case authority will be superseded by a legislative provision passed under the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023*. The new provision instructs courts to assess the ‘real substance, practical reality and true nature of the relationship’ alongside contractual provisions. Notwithstanding this change, discussion of contractual terms remains relevant as they will still be utilised by courts in efforts to gain insight into the true nature of a relationship.

Ms Tidmarsh had signed two documents: a ‘contracted service provider agreement’ and a ‘contractor work opportunity document’. The ‘contracted service provider agreement’ was accepted as the document that primarily governed their contractual relationship. However, Ms Tidmarsh argued that the second document signed, the ‘contractor work opportunity document’ also partly constituted the contract, underpinning the working relationship. This argument was accepted by the court, as the document contained key rights and obligations such as the worker’s available working hours, an obligation for the worker to follow processes as instructed to meet standards and an obligation to not discuss rates of pay with clients.

What was decided?

Deputy President Roberts of the Fair Work Commission (**FWC**) found that both contractual documents contained a number of terms that would indicate that the applicant was an independent contractor. Such terms included:

- A term that required the worker to use an ABN.
- Terms making the worker responsible for their own tax, super and insurance.
- A term that required them to provide their own safety equipment.

However, Deputy President Roberts made it clear that in line with *Deliveroo Australia Pty Ltd v. Franco* [2022], limited weight was given to terms that were merely consequential to labelling adopted in the agreement.

Ultimately, it was held that an employment arrangement was in place because the ‘contractual arrangements taken as a whole’ had ‘little if any scope for entrepreneurship on the part of the applicant.’

The elements of the arrangement that were found to restrict the entrepreneurial capacity of Ms Tidmarsh include;

- Aspire 2 Life delivered its services which were at the core of its business through the worker;
- The work was provided in accordance with case plans which the respondent was contracted to manage; and
- The applicant had rigid set hours of work, which could not be changed other than by 2 weeks’ notice.

In summary, the Deputy President affirmed that Aspire 2 Life created ‘contractual arrangements that reserved themselves the right to determine the services that the [worker] would provide to [Aspire 2 Life’s] clients and how they would be provided.’ To that end, the company was found to be the employer of the applicant.

Alleged Harassment Victim Fails to Cap Costs

O'Brien v Goodman Fielder Consumer Foods Pty Ltd [2024] FedCFamC2G 117

IIn an application to the Federal Circuit and Family Court, Mr O'Brien alleged that his employer, Goodman Fielder Consumer Foods Pty Ltd (**Goodman Fielder**), unlawfully discriminated against him by terminating his employment after he raised complaints of harassment. Mr O'Brien applied to the court to limit the costs that may be recovered by Goodman Fielder against Mr O'Brien to $30,000. However, this application was ultimately dismissed.

Background

Mr O'Brien submitted that during his employment, three employees of Goodman Fielder engaged in a pattern of sexual harassment towards him. This included being shown pornography by these three employees, having his genitalia grabbed, being asked questions about his genitalia, being referred to as 'fag, faggott, princess, gorgeous [and] sweetie', having his sex life and baldness commented on, and having one of the employee's backsides 'flashed' towards him.

He further alleges that he was subject to racial discrimination and vilification, due to being called a 'skippy poofter'.

However, the respondent denied all of the material facts behind these allegations and submitted that they intend to demonstrate that it was instead Mr O'Brien 'who engaged in inappropriate workplace behaviour [that] led to his dismissal.'

As such, prior to the Court being required to make a decision on these issues, Mr O'Brien applied to have the Court limit the costs that may be payable were he to be unsuccessful in this claim.

Decision

When making a decision to limit costs, the court will first assess the complexity of the factual and legal issues that are to be determined.

While Mr O'Brien contended that the case was not complex, and simply involved 'rudimentary application of settled principles', the court determined that this was difficult to support, and the court would be required to make 'novel findings'. These findings would be firstly, in regard to what conduct can be proven, and secondly, whether the proven conduct amounts to either unlawful discrimination, sexual harassment or racial vilification, as was alleged. Beyond this, a determination as to vicarious liability of Goodman Fielder would also be necessary.

Ultimately, Judge Humphreys held that these matters were for the court to determine, and that the court was confident in being able to hear the matter in five days, which both parties agreed with.

The applicant alleged that it was in the 'public interest' for the court to make a determination regarding the alleged conduct, given there had been no case that dealt with 'sexual harassment … [and] sex discrimination between male employees and [the] subject matter of baldness'. This was supported by the court's finding, as it was held that there is significant public interest in terms of whether the alleged conduct falls within the discrimination legislation. It was also held that it was in the public interest to confirm whether or not employers have a duty, both to 'ensure that employees are relevantly educated' about conduct which is prohibited, and to prohibit and prevent like conduct in future.

While the respondent then argued that Mr O'Brien seeking general damages of at least $150,000 reduces the public interest, Judge Humphreys stated that the fact that 'the applicant seeks an award of damages [of] a significant amount' is not a matter that detracts from the public interest in calling out the alleged conduct, if it occurred.

Finally, the court considered costs that were likely to be incurred. While Mr O'Brien expected that his costs would be up to $90,000, and the respondent likewise expected that their legal fees would be approximately $150,000, Judge Humphreys applied Schedule 2 of the *General Federal Law Rules 2021*. In this application, he held that the scale costs for a five-day hearing would amount to $52,000.

Based on this, Judge Humphreys ultimately found that to limit the costs to $30,000 would be inappropriate. This was because, the difference between the applicant's proposed limit of $30,000 and the scale costs of $52,000 'would expose [Goodman Fielder] to a significant shortfall,' even if they were to be successful.

What does this mean for Employers?

This case demonstrates the process of the court when determining whether to make an order to limit the costs available. While the court considered matters such as the complexity of the issues of the case and the extent of the public interest in a judicial determination of the issues, ultimately, the deciding factor behind the dismissal of the application was the cost limitation requested by the applicant was significantly lower than what the scale costs would be.

FWC grants a rare extension of time for an unfair dismissal application

Under section 394 of the *Fair Work Act 2009* (Cth) (**the Act**), a person who has been dismissed from their job may apply to the Fair Work Commission (**FWC**) for an unfair dismissal remedy. Section 394 (2)(a) of the Act stipulates that these applications must be made within **21 days** unless the applicant has been confronted with **'exceptional circumstances'** under section 394(3). The FWC usually interprets the phrase 'exceptional circumstances' extremely narrowly – with a significant number of unfair dismissal remedy applicants who have requested an extension of time (**EOT**) having had their applications dismissed.

However, on 16 February 2024, the FWC granted an EOT in the case of *Karen Robson v Woolworths Group Limited (U2023/12599)* (**Robson**). In a similar decision on the same day, the case of *Sonya Conrad v Golding Mining Pty Ltd (U2024/88)* (**Conrad**) saw an application for an EOT dismissed. In addition to discussing the value of EOT applications, these recent decisions may also have significant implications for the future of FWC decisions in the context of increasingly frequent natural disasters.

The FWC must consider the following factors when determining if there are exceptional circumstances that warrant an extension of time:

- the reason for the delay;
- whether the person first became aware of the dismissal after it had taken effect;
- any action taken by the person to dispute the dismissal;
- prejudice to the employer (including prejudice caused by the delay);
- the merits of the application; and
- fairness as between the person and other persons in a similar position

In order to understand the decision-making process of the FWC, the similarities and differences of the Robson and Conrad cases should be examined:

Similarities:

- Both applicants' failure to become aware of their dismissal was not an exceptional circumstance.
- Both applicants' delay in receiving legal advice were not an exceptional circumstance.
- Both applicants' failure to check their emails was not an exceptional circumstance.

Differences:

- Robson lost internet and phone service as a result of Cyclone Jasper, whilst Conrad was affected in a more indirect manner and could not travel back to Townsville as a result of Cyclone Jasper.
- Robson submitted her application 1 day late, whilst Conrad submitted her application 2 days late.

In the Robson case, an EOT was granted. Commissioner Durham determined that the impact of Cyclone Jasper and the subsequent internet and telephone service outages amounted to exceptional circumstances.

Conversely in the Conrad case, the EOT was not granted, and the application dismissed. Failure to become aware of dismissal, delays in receiving legal advice, and failure to check emails were not considered to be exceptional circumstances.

Some crucial inferences may be gleaned from the comparative analysis of these two remarkably similar cases. We can infer that the FWC's threshold for exceptional circumstances remains high, and that they will continue to interpret the phrase narrowly. The analysis of these matters further suggests that the FWC will place a considerable amount of personal responsibility on those wishing to file an application for an unfair dismissal remedy. Both cases highlight the following statement of Commissioner McKinnon in *Kaul v Childcare Management Service Pty Ltd*:

> *"It is not always, or even generally, necessary to obtain expert legal advice before making an application for an unfair dismissal remedy. There is extensive, plain language information about the unfair dismissal jurisdiction on the Commission's website, with additional tools designed to make the jurisdiction more accessible."*

Perhaps most importantly, we can infer that those who have been directly affected by a natural disaster are likely to have suffered from exceptional circumstances. In a nation which is experiencing an ever-increasing number of natural disasters, this decision could have some intriguing repercussions in the very near future.

New Duty of Care Decision for Employers Pending

Vision Australia Ltd v Elisha [No 2] [2023] VSCA 288

Background

In 2015. an 'adaptive technology consultant' employed by Vision Australia was found to be wrongfully dismissed under part 3.2 of the *Fair Work Act* (**the Act**). As a result, the employee was awarded $27,248.68 in damages.

In August 2020, further proceedings commenced, and the trial judge ordered a further $1.4 million in damages pursuant to the former employee's breach of contract claim. However, the negligence claim brought by that same plaintiff was rejected on the basis that the defendant (the employer) owed no duty of care in the context of dismissal.

Decision of the Courts

On appeal, the Victorian Supreme Court of Appeal found that the trial judge 'erred' by awarding the damages due to breach of contract and ordered the plaintiff to return the $1.4 million.

Despite this setback, the plaintiff successfully applied for special leave, arguing that the court was wrong in concluding that the employer "did not owe a duty to take reasonable care to avoid injury", whilst engaged in the disciplinary and dismissal process of the plaintiff. They also argued that the Supreme Court was mistaken in its finding that the breach of contract did not give rise to damages for psychiatric injury.

The current key case authority on this matter comes from *Addis v Gramophone Co Ltd* - a 1909 case which found that claims for damages for wrongful dismissal should be limited to the financial loss directly resulting from the breach of contract. Therefore, other elements, such as injury to reputation or emotional distress may only entitle a plaintiff to damages, if brought under a separate cause of action, such as defamation.

The plaintiff makes this argument by contending that "there is nothing inherent to employment, and dismissal therefrom, which ought to make loss for psychiatric injury irrecoverable".

What does this mean for Employers?

The Victorian Supreme Court of Appeal will now be tasked with confronting the principle upheld in the Addis case. They will be required to make a judgment on whether employers' duty of care extends to the provision of safe dismissal and disciplinary processes and further, whether employers may be liable to damages for psychiatric injury stemming from unfair dismissal. This may open the door to far more substantial damages being awarded against employers who unfairly dismiss employees or do not comply with proper disciplinary procedures.

Alleged Unfair Dismissal Actually A Voluntary Resignation

Hamish Meadows v Alrawi Pty Ltd: U2023/11378

The Applicant Mr Hamish Meadows applied to the Fair Work Commission (**FWC**) under *the Fair Work Act 2009* (Cth) (**the Act**) alleging he was unfairly dismissed from his employment by the respondent Alrawi Pty Ltd. The respondent raised a jurisdictional objection that Mr Meadows was not dismissed, but voluntarily resigned from his employment on 11 November 2023. Commissioner Simpson found that Mr. Meadows' resignation was voluntary and not initiated by the employer and therefore dismissed the application for unfair dismissal.

Background

The applicant, Mr Meadows was hired by the respondent as a part-time Dental Assistant in early April 2022. This followed a period of the clinic being understaffed and was at the request of his now wife, Mrs Meadows who was a long-standing employee.

Disagreement arose in the course of the employment regarding his role, with Mr Meadows believing he would only be a Dental Assistant temporarily before transitioning to a Laboratory Technician. As Mr Meadows suffered from a blood phobia, he believed that working as a Dental assistant would not be sustainable long-term as he could only assist during non-surgical procedures. This was disputed by Dr Luma who hired Mr Meadows and alleged that the applicant was hired only as a Dental Assistant but was permitted, if there was a need, to do laboratory work. The respondent claimed that Alrawi Pty Ltd was a small clinic and did not generate sufficient work to hire a Laboratory Dental Technician.

Further problems arose when Mr Meadows returned from his honeymoon in late September. On 25 October 2023, Layla and Hamish Meadows submitted a joint complaint regarding workplace toxicity, role ambiguity, and mistreatment, regarding Mr. Meadows's position. Subsequently, two other employees submitted complaints seeking clarification on roles and expressing frustration with the work environment. Subsequently, a meeting took place on the 30 October 2023, where Mr Meadows alleged that he felt pressure from management to resign and raised concerns about a workplace injury because of his work. In the meeting, Mr Meadows was offered continuous employment of 2 days per week until he found suitable alternative employment. Mr Meadows maintained that the conduct of the respondent amounted to his employment being terminated. Mr Meadows later submitted a written resignation on the 11 November 2023.

Decision

The Commissioner was not satisfied that complaints from other staff members about not wanting to work with Mr. Meadows put to him, nor his complaint about his sore wrist and neck had the probable effect of bringing his employment to an end. The evidence supported the employer's position that Mr. Meadows was employed as a Dental Assistant, with laboratory work being merely incidental to the role.

Despite Mr. Meadows's dissatisfaction with his role, the employer offered him continued employment on a reduced basis until he found alternative employment. While Mr. Meadows claimed he had no opportunity to negotiate his hours, the reduction to two days a week was not significantly different enough from his previous part-time arrangements to constitute a termination of employment. Mr. Meadows had multiple courses open to him other than resigning following the meeting on 30 October. His subsequent resignation, voluntarily given on 11 November, meant that there was no unfair dismissal, and ultimately, the FWC found that Mr. Meadows' resignation was voluntary and not initiated by the employer.

What does this mean for Employers?

This case demonstrates what circumstances may or may not amount to a constructive dismissal. Importantly, although Mr Meadows not given an opportunity to negotiate the reduction of his hours to two days a week, this did not bring his employment to an end. As Mr Meadows was hired on a part-time basis, his position was not so different going forward that this change constituted a repudiation of his employment contract.