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Update Summary

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UPDATE 144

AUGUST 2024

NATIONAL WORKPLACE RELATIONS

Material Code 42609134

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UPDATED COMMENTARY

Aaron Neal has updated the following commentary.

Fair Work Act 2009

Chapter 1 – Introduction

The meaning of “child” is considered in regard to s 4 of the *Family Law Act 1975*. See [FWA.17.20].

Work stoppages which are not “authorised or agreed to” are discussed in regard to *Fair Work Ombudsman v Construction, Forestry, Maritime, Mining and Energy Union (No 2)* [2023] FCA 1302. See [FWA.19.60].

A reasonable concern about imminent risk to health or safety is looked at with reference to *Australian Building & Construction Commissioner v Construction, Forestry, Mining & Energy Union* [2009] FCA 1092; (2009) 189 IR 165. See [FWA.19.80].

The Act extending to the exclusive economic zone and the continental shelf is considered with reference to *Fair Work Ombudsman v Valuair Ltd (No 2)* (2014) 224 FCR 415; 244 IR 227; [2014] FCA 759. See [FWA.33.20].

Chapter 2 – Terms and conditions of employment

When the FWC must make an industrial action related workplace determination is looked at in regard to *Minister for Industrial Relations (Vic) v Esso Australia Pty Ltd* [2019] FCAFC 26. See [FWA.266.80].

When the FWC must make an intractable bargaining workplace determination is considered with reference to *Transport Workers' Union of Australia v Cleanaway Operations Pty Ltd (t/as Cleanaway Operations Pty Ltd)* [2024] FWCFB 287. See [FWA.269.40].

Part 2-7A was inserted into the *Fair Work Act 2009* by the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*. See [FWA.306A.20]-[FWA.306V.20].

Chapter 3 – Rights and responsibilities of employees, employers, organisations etc.

The Australian Paper case: *Australian Building and Construction Commissioner v Australian Manufacturing Workers' Union* [2017] FCA 167 and *Australian Building and Construction Commissioner v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (No 2)* [2017] FCA 367, and *Adams v Director of the Fair Work Building Industry Inspectorate* [2017] FCAFC 228 are referred to at [FWA.421.80].

Cooling off periods are considered with reference to *Virgin Australia Regional Airlines Pty Ltd T/A Virgin Australia Regional Airlines v The Australian Licenced Aircraft Engineers Association* [2023] FWC 1510. See [FWA.425.80].

The meaning of significant harm is considered with reference to *Shoalhaven Starches Pty Ltd T/A Manildra Group v Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2024] FWC 1282 and *Linfox Australia Pty Ltd v Australian Federated Union of Locomotive Employees* [2019] FWC 3653. See [FWA.426.100].

Construction, Forestry and Maritime Employees Union v Sydney International Container Terminals Pty Ltd [2024] FCA 490 is referred to at [FWA.470.20].

Stand down or refusal to work is discussed with reference to *Coal & Allied Mining Services Pty Ltd v MacPherson* [2010] FCAFC 83. See [FWA.524.20].

Employee not stood down during a period of authorised leave or absence is considered in regard to *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Qantas Airways Ltd* [2020] FCAFC 205. See [FWA.525.20].

Chapter 5 – Administration

When the FWC may grant permission is discussed in regard to *Howell v Elite Elevators Corporation Pty Ltd* [2023] FWCFB 265. See [FWA.596.40].

Tucker v Victoria [2020] FWCFB 6354 is referred to in regard to a person not being represented by a lawyer or paid agent. See [FWA.596.80].

