

MAY 2025

Industrial Reports from the High Court, Federal Court, the State and Territory Supreme Courts, and Federal and State Industrial Courts and Tribunals

Incorporating the Authorised Reports of the Fair Work Commission, the Industrial Relations Commission of NSW, the Industrial Court of Queensland and the Queensland Industrial Relations Commission

INDUSTRIAL REPORTS

2025

CONSULTANTS

The Honourable JUSTICE ADAM HATCHER
President of the Fair Work Commission

The Honourable JUSTICE INGMAR TAYLOR
*President of the
Industrial Relations Commission of New South Wales*

The Honourable LANCE WRIGHT KC
*former President of the
Industrial Relations Commission of New South Wales*

ALICIA ASH BA LLB (Hons)

MANAGING EDITOR

MAHREEN HASAN BCom (Hons) LLB, MPP

The mode of citation of this part will be:
337 IR

TABLE OF CASES REPORTED

Part 3 — Pages 227-352

Construction, Forestry and Maritime Employees Union v Sydney International Container Terminals Pty Ltd (Fed Ct of Aust)	319
Dixon v United Workers Union (Fair Work Commission)	1
Drage v Gold Coast Hospital and Health Service (Qld Sup Ct)	284
Hancock v Sydney International Container Terminals Pty Ltd (Fair Work Commission)	227
Hawken v Patrick Stevedores Holdings Pty Ltd (Fair Work Commission)	11
Lederer Group Pty Ltd v Hodson (NSW Ct of App)	55
State Wage Case 2024 (No 3), Re (NSW Indus Relations Commn)	111
State Wage Case 2024 (No 4), Re (NSW Indus Relations Commn)	182
Virgin Airlines Australia Pty Ltd v Macnish (Fair Work Commission)	32
Visscher v Fripp (NSW Indus Relations Commn)	202

(Cases in **bold** reported in this part)



© 2025 Thomson Reuters (Professional) Australia Limited
Lawbook Co. ABN 64 058 914 668 Published in Sydney

ISSN 0728-8417

INDEX

Part 3 — Pages 227-352

ENTERPRISE AGREEMENT

Construction — Enterprise agreement provided annual threshold of hours required to be worked by employees, beyond which employees would be entitled to be paid 30 hours at ordinary rate plus applicable overtime rate for each shift worked in particular week according to roster — Whether on proper construction of agreement employees who had exceeded annual threshold were entitled to be paid for 30 hours at ordinary rate even if they did not attend rostered shifts, such payment not being caught by s 470(1) of Fair Work Act 2009 (Cth) — Purpose of scheme to create certainty for employees as to guaranteed minimum income each week (regardless of hours worked) and to ensure certainty for employers as to availability of work and supply of labour — Payment was part and parcel with obligation to work according to roster in relevant week, therefore prohibited by s 470(1) of Fair Work Act 2009 (Cth).

*Construction, Forestry and Maritime Employees Union v Sydney
International Container Terminals Pty Ltd (Fed Ct of Aust)* 319

INDUSTRIAL ACTION

Protected industrial action — Employers did not pay employees for rostered shifts on which they refused to work as part of protected industrial action — Union contended employees entitled to certain payments under enterprise agreement for period of industrial action — Whether s 470(1) of Fair Work Act 2009 (Cth) prohibited employers from making payments to employees on relevant days — Whether payments under enterprise agreement were “in relation to the total duration of the industrial action” on relevant days — Fair Work Act 2009 (Cth), s 470(1).

*Construction, Forestry and Maritime Employees Union v Sydney
International Container Terminals Pty Ltd (Fed Ct of Aust)* 319

INTERPRETATION

Enterprise agreements — Whether primary judge misapplied “common law principle” that requirement for employer to pay wages is conditional upon employee’s performance of work — Role of “common law principle” in process of construction.

*Construction, Forestry and Maritime Employees Union v Sydney
International Container Terminals Pty Ltd (Fed Ct of Aust)* 319

INDEX

JUDICIAL REVIEW

Application for judicial review of decision of second respondent — Grounds of review — Breach of statutory condition — Where applicant relevantly sought exemption from vaccination mandated by health employment directive on basis of genuinely held religious beliefs — Where applicant identified components of vaccine and potential for genomic disturbance as repugnant to Catholicism — Where applicant otherwise objected to mandatory vaccination on grounds of safety and reliability of vaccines — Whether applicant's attitude toward vaccination constituted genuinely held religious belief — Whether concerns regarding components of vaccine or potential genomic disturbances constituted genuinely held religious beliefs — Whether health employment directive accordingly breached s 58 of Human Rights Act 2019 (Qld) — No breach of statutory condition established — Applicant's beliefs not relevantly religious beliefs — Human Rights Act 2019 (Qld), ss 20, 58.

Drage v Gold Coast Hospital and Health Service (Qld Sup Ct) 284

Application for judicial review of decision of second respondent — Grounds of review — Breach of statutory condition — Where Director-General of second respondent issued health employment directive mandating vaccination against COVID-19 for certain employees — Where health employment directive countenanced exemption of employees with genuinely held religious beliefs against vaccination — Where applicant unsuccessfully applied thrice for exemption from mandatory vaccination on variety of bases — Where applicant contends that health employment directive unlawful as contrary to human rights to freedom of religion and freedom of demonstration of religion — Where applicant contends that such rights absolute and non-derogable — Where s 13(1) of Human Rights Act 2019 (Qld) countenances placement of reasonable limits on freedom of religion and freedom of demonstration of religion — Whether health employment directive unlawful for breaching s 20 of Human Rights Act 2019 (Qld) — Whether either freedom absolute and non-derogable — Health employment directive not unlawful — Religious freedoms reasonably and justifiably limited in health employment directive — Judicial Review Act 1991 (Qld), ss 20(2), 43 — Hospital and Health Boards Act 2011 (Qld), ss 51A, 51E — Human Rights Act 2019 (Qld), ss 13, 20.

Drage v Gold Coast Hospital and Health Service (Qld Sup Ct) 284

Application for judicial review of decision of second respondent — Grounds of review — Failure to observe procedures required by law to be observed in relation to making of decision — Statutory obligation to give proper consideration to human rights in making decision — Where relevant health employment directive and attendant policy countenanced potential impacts on religious freedoms — Whether Director-General of second respondent gave proper consideration to human rights in deciding to implement health employment directive and attendant policy — Proper consideration to human rights given — Decision-maker seriously turned mind to possible impact of decision on human rights and implications thereof — Human Rights Act 2019 (Qld), ss 20, 58.

Drage v Gold Coast Hospital and Health Service (Qld Sup Ct) 284

INDEX

TERMINATION OF EMPLOYMENT

- Application for unfair dismissal remedy — Where employee drank alcohol before shift — Where accident occurring during shift — Where employee tested positive for alcohol after incident — Where employee believed he was under alcohol limit — Where employer had recently amended blood/alcohol limit to zero in drug and alcohol policy — Where drug and alcohol policy provided for termination after three breaches — Where employees notified of changes through text and email — Where employee terminated for positive result and prior breaches of policy — Where employee disputed prior breaches where employer alleged employee had refused drug test — Whether dismissal harsh, unjust or unreasonable — Whether valid reason for dismissal — Breach of drug and alcohol policy valid reason — Whether other matters relevant — Steps to communicate with employees about changes to policy were inadequate — Employee unaware that cut off level for alcohol had changed — Employer's evidence failed to show employee was directed to be drug tested in respect of prior breaches — Concerns with how warnings for prior breaches were issued meant they did not establish employee engaged in course of conduct of breaching drug and alcohol policy — Dismissal harsh and unreasonable as seriousness of breach outweighed by other matters — Application granted — Fair Work Act 2009 (Cth), ss 385(b), 387(a), 387(h), 394.
- Hancock v Sydney International Container Terminals Pty Ltd (Fair Work Commission)* 227

WORDS AND PHRASES

- “In relation to the total duration of the industrial action on that day” — Fair Work Act 2009 (Cth), s 470.
- Construction, Forestry and Maritime Employees Union v Sydney International Container Terminals Pty Ltd (Fed Ct of Aust)* 319
- “Religious belief”.
- Drage v Gold Coast Hospital and Health Service (Qld Sup Ct)* 284
- “Under law” — Human Rights Act 2019 (Qld), s 13(1).
- Drage v Gold Coast Hospital and Health Service (Qld Sup Ct)* 284