

CASENOTE: *Lye v Fair Work Commission* [2026] FCA 95

Mr Jacob Lye ('Employee' or 'Applicant') commenced an appeal proceeding in the Fair Work Commission ('Commission') against his former employer and respondent the Bureau of Meteorology ('Bureau').

The Employee sought orders restraining Commission from 'continuing, listing progressing or determining' two appeal proceedings, and preventing the Commission from requiring the Employee to participate without 'reasonable adjustment requests being lawfully considered and determined'.¹ The gravamen of these orders was the request by the Employee to the Commission to provide him with a workspace in order to prepare his materials for the appeals hearing (listed for 18 February). The Employee requested that be either (a) a working space at the Commission; (b) a space at the Bureau; or (c) a commercial space, such as "We Work".

Such request was refused by both Gibian VP on 12 January 2025 and by Asbury VP in late January 2025. The Employee alleged that the refusals involved jurisdictional error and sought urgent interlocutory relief.

The injunction application

The docket judge, Justice Dowling of the Federal Court of Australia ('Court'), heard the Applicant's application for relief. In support of his application, the Applicant alleged that the Commission:

- applied the incorrect legal test in considering his request for reasonable adjustments;
- failed to consider the application of the *Disability Discrimination Act* 1992 (Cth) (**DDA**), given the Applicant's disabilities. These included: 0 Type 1 diabetes, generalised Anxiety Disorder; and attention-deficit/hyperactivity disorder, amongst others;
- failed to perform its functions consistent with its obligations to "respect and value the diversity of the work force by helping to prevent and eliminate discrimination" as provided for by section 578(c) of the *Fair Work Act* 2009 (Cth) (**FW Act**); and
- took account of an irrelevant consideration, namely that working spaces were not available for the public.

The Bureau sought and was granted leave to intervene. The Bureau opposed the relief.²

In response, the Commission opposed the interlocutory relief, alleging there was no error in the consideration of the Employee's request. The Commission says that (to the extent that the DDA applied), any test was met. The Commission says the decisions correctly took account of the FW Act, and that the availability of the facilities was a relevant consideration in the refusal.

His Honour's reasoning

There was some debate about the proper test to be applied. The Employee alleged that the test for interlocutory relief is that the applicant must demonstrate that there is a serious question to be tried: see *ABC v O'Neill*; ³ and then the related matter of whether there was a balance of convenience in favour of such relief: *Samsung Electronics*.⁴

¹ I refer to these injunctions as Orders 1 and 2, in this casenote, below.

² See r9.12 of the *Federal Court Rules* 2011.

³ *Australian Broadcasting Corporation v O'Neill* [2006] HCA 46; 227 CLR 57 at [65]-[72] (Gummow and Hayne JJ).

⁴ *Samsung Electronics Co Ltd v Apple Inc* [2011] FCAFC 156; 217 FCR 238 at [67] (Dowsett, Foster and Yates JJ).

The Bureau argued, *contra*, that where the effect of the injunction is to delay the appeal hearings, then the Court may only grant a stay of the appeal hearings where there are shown to be exceptional circumstances: *Woodside v AWU*.⁵

Stay and 'exceptional' circumstances: the docket judge found that the second test (of exceptional circumstances) applied; but in either case, the Applicant would fail.

In order to access the injunction (in the nature of a stay) the Employee must demonstrate a strong case for a stay, with a regard to the question of final relief, though this is not a necessary condition.⁶ Dowling J found that the requirements of both other persons, and of the Applicant had been taken into account, finding also that there were no exceptional circumstances which warrant the making of the order sought by the Employee. The refusal of a stay would not have consequences so adverse and severe that the attainment of justice requires interlocutory intervention. His Honour dismissed the application.

Alteration of the application: After the hearing, the Employee sought to alter the orders sought in the application. Rather than press Orders 1 and 2 (set out above), he sought an order preventing the hearing of the appeal proceeding '*unless and until the Commission has properly considered and determined*' the Employee's request for adjustments, which presumably included provision of a working space.

On the basis that such orders were not provided to the Bureau, and amounted to an amendment to the application, Dowling J declined to make the amendment to the application on the basis that the orders would not succeed.

Rationale of the decision

Despite the odd nature of the Applicant's request, Dowling J applied a fairly standard consideration of 'exceptional circumstances' and the decision is no kind of surprise. Spurious allegations concerning or related to such matters are becoming more common in the Federal Court, which has a long-standing relationship with decisions made under the FW Act.

In addition to exercising powers such as the primary jurisdiction under sections 545 (regarding compensation and interlocutory relief) and 546 (concerning penalty for contraventions) the Federal Court has a supervisory jurisdiction over the Commission, in at least two senses: the *first* sense is by referral, see section 608, which allows the President of the Commission to seek what is essentially an advisory opinion from a Full Court.

The *second* sense is in a regulatory sense, in the exercise of orders in the nature of prohibition and mandamus, where the Federal Court has found an error in the exercise of jurisdiction exercised by the Commission: see sections 562 and 563(b) of the FW Act. Whilst the first sense is exercised relatively seldom, litigants seem to be availing themselves of the latter more frequently.⁷ In this case, though misconceived on the question of 'exceptional circumstances', it appears to be this test that the Applicant was aiming for.

The area of 'jurisdictional error' is quite narrow. It requires a Full Bench to have misconceived its role, misunderstood the nature of its jurisdiction, misconceived its duty, failed to apply itself to the questions it was required to answer or misunderstood the nature of the decision or opinion it was

⁵ *Woodside Energy Ltd v Australian Workers' Union* [2022] FCA 1391 at [30]-[43] (Katzmann J).

⁶ *BHP Coal Pty Ltd v Mining and Energy Union* [2025] FCA 1116 at [39], [41], [47], [50] and [52] (Wheelahan J).

⁷ See recent cases including *TESA Group Pty Ltd v Mining and Energy Union* [2025] FCA 922; *Jats Joint Pty Ltd v FWO* [2025] 743; and *Roebuck v Shopping Centres Australia Property Group Re Ltd (No 2)* [2024] FCA 1144.

obliged to form: see *Coal and Allied*.⁸ This case is an example of the flawed view of that supervisory jurisdiction, without need for reference to *Coal and Allied*. The application prohibition and mandamus is therefore not an 'appeal against all comers', or some avenue for complaint about the outcome of Commission proceedings.

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24 February 2026

⁸ (2000) 203 CLR 209, 208-209 at [31] (Gleeson CJ, Gaudron and Hayne JJ).