IN THE FAIR WORK COMMISSION

Matter No.: C2026/12076

Appellant: Holly Teagan Dahm

Respondent: State of Queensland (Queensland Treasury)

RESPONDENT'S OUTLINE OF SUBMISSIONS

Background

1. The Appellant (Mrs **Dahm**) was dismissed from her employment with the Respondent on 5 December 2025. On 24 July 2026, Mrs Dahm applied to the Fair Work **Commission** to deal with an unlawful termination dispute pursuant to s 773 of the *Fair Work Act* 2009 (**FW Act**). That **Application** was filed 210 days after the 21-day time limitation for making the Application expired.

2. Mrs Dahm alleges the Respondent unlawfully terminated her employment *for the reason of* 'physical and mental disability'. The termination letter[1] states that Mrs Dahm's employment was terminated due to misconduct pursuant to s 91(1)(b) of the *Public Sector Act 2022* (Qld) (**PS Act**) in the form of 'inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the public sector entity in which you are employed (Queensland Treasury) within the meaning of s 91(5)(b) of the PS Act.' The conduct involved posts by Mrs Dahm on 'LinkedIn'. The content of the posts speak for themselves. They are produced in the show cause material. [2]

3. Prior to the Application, Mrs Dahm had made the following other applications relating to her dismissal:

    a. On 24 December 2025, she filed a public sector appeal in the Queensland Industrial Relations Commission (**QIRC**). On 2 June 2026, the Industrial Registry of the QIRC informed Mrs Dahm that the termination decision was not appealable under the PS Act, and she may consider filing an application for reinstatement (**Appeal Refusal**).

    b. On 19 June 2026, Mrs Dahm filed an application to appeal the Appeal Refusal to the Full Bench of the QIRC. Mrs Dahm was given leave to withdraw that proceeding on 2 October 2026.

[1] Unlawful Termination Application, Attachment 4.
[2] Unlawful Termination Application, Attachment 2.

c. On 29 June 2026, Mrs Dahm filed an application for a statutory order of review of the Appeal Refusal in the Supreme Court of Queensland. She discontinued that proceeding on 31 August 2026.

The proceeding below

4. On 8 May 2026, the Respondent filed an Employer Response raising three jurisdictional objections to the Application, namely:

   a. The Application was not lodged within 21 days after the termination, and there are no other exceptional circumstances that warrant the FWC allowing a further period of time for lodgement under s 774(2) of the FW Act (**Out of Time Objection**);

   b. Further or in the alternative, Chapter 6, Part 6-4 of the FW Act does not apply to the Respondent because of the implied limitation on Commonwealth legislative power with respect to State system employees (**Constitutional Objection**); and

   c. Further or in the alternative, s 725 of the FW Act barred the Application by virtue of s 732 of the FW Act due to Mrs Dahm having previously made an application to the QIRC in relation to her dismissal (**Multiple Proceedings Objection**).[3]

5. At [4]-[10] of the Decision, the Commission identified four questions that it considered required determination, being:

   a. whether the Respondent 'is not a national system employer and therefore, whether Mrs Dahm is protected by the unlawful termination provisions in the [FW] Act';[4]
   b. whether the Respondent 'is a state system employer, as Chapter 6, Part 6-4 of the Act does not apply to the State of Queensland because of the implied limitation on Commonwealth legislative power with respect to State system employees, a limitation also reflected in the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009* (Qld) (**Referral Act**)';[5]

   c. whether Mrs Dahm 'is barred from bringing this application pursuant to ss 725 and 732 of the FW Act, because of having made other applications in relation to her dismissal';[6] and

[3] Employer Response filed 8 May 2026
[4] Decision at [4].
[5] Decision at [8].
[6] Decision at [9].

d. if the other jurisdictional arguments fail, whether the Commission should extend the time for Mrs Dahm to make the Application.[7]

6. The Commission then dismissed the Application, reasoning as follows:

> [41] Section 6 of the Qld Referral Act specifically excludes from matters referred to the Commonwealth Parliament those relating to public sector employees and employers.
>
> [42] Ms Damn [sic] by virtue of being a dismissed Queensland public sector employee, would have had standing to lodge an unfair dismissal application or general protections application in the QIRC pursuant to the *Industrial Relations Act 2016* (Qld).
>
> [43] The decision in *AWU v SoQ*[8] is also relevant to the facts here. An order in the Applicant's favour in connection with this application in the Commonwealth jurisdiction would impair, curtail or weaken the capacity of the State of Queensland to exercise its constitutional powers and functions.

7. The Commission dismissed the Application on the Respondent's Constitutional Objection only, and did not deal with the Out Of Time Objection or Multiple Proceedings Objection.

Position on appeal to the Full Bench

8. The Respondent respectfully accepts that it led the Commission into error to the extent the Respondent put forward the Constitutional Objection. That error was jurisdictional and material such that the decision of the Commission should be quashed[9] and the matter remitted for determination of the remaining objections.[10]

9. The Commission is entitled to determine the limits of its authority to deal with a dispute under s 776 of the FW Act, though it has no authority to conclusively determine those limits.[11] In this regard:[12]

> [43] … Error in the construction of the FW Act leading the FWC to assume authority that it does not have (or to decline to exercise jurisdiction that it does have) may

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[7] Decision at [10].
[8] *AWU v State of Qld (Dept of Communities*) [2014] FWCFB 5546.
[9] Section 607(3)(a) of the FW Act.
[10] Section 607(3)(c) of the FW Act.
[11] *Coles Supply Chain Pty Ltd v* ***Milford*** [2020] FCAFC 152; (2019) 279 FCR 591, [42]-[43].
[12] Ibid.

> readily be characterised as jurisdictional in the sense explained in *Craig*,[13] with the consequence that the affected decision would be liable to be quashed….

10. The Respondent accepts that the definition of 'employee' and 'employer' for the purposes of the 'unlawful termination' provisions of the FW Act take their ordinary meaning beyond the definitions of 'national system employee' and 'national system employer'.[14] Further, the Respondent accepts that Part 6-4 of the FW Act relies on the external affairs power.[15]

11. For these two reasons the unlawful termination provisions of the FW Act could apply to the parties, subject to any other limitations on the Commonwealth's legislative power.

12. In this respect, the Respondent accepts that the procedure prescribed by s 776 only permits the Commission to 'deal with the dispute' by way of mediation or conciliation, or making a recommendation or expressing an opinion.[16] The merits of the claim cannot be finally heard and determined, nor can substantive remedies be ordered or enforced; acknowledging that the Commission cannot exercise judicial power.

13. If, under s 776, resolution of the dispute has been, or is likely to be unsuccessful after all reasonable attempts, the Commission must issue a certificate to that effect (**the Certificate**). The Certificate is a precondition to dealing with the dispute by arbitration,[17] or making an application to Court.[18]

14. The Respondent therefore accepts that, in so far as the proceeding below was limited by s 776 of the FW Act, that provision does not 'impair, curtail or weaken the capacity of the States to exercise their constitutional powers and functions'.[19]

15. For this reason, any question of whether subsequent steps that allow for the merits of the dispute to be finally heard and determined, including any order for reinstatement or civil penalties, would only arise should the matter proceed beyond the conciliation process required by s 776.

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[13] *Craig v South Australia* (1995) 184 CLR 163 at 179.
[14] Pat 1-2, s 15, FW Act.
[15] Fair Work Bill 2008, Explanatory Memorandum, [1342], [2702]; *Fair Work Ombudsman v Foot & Thai Massage Pty Ltd (in liquidation) (No 4)* [2021] FCA 1242, [680] (Katzmann J); *Victoria v The Commonwealth* (1996) 187 CLR 416, [137]-[148] (Brennan CJ, Toohey, Gaudron, McHugh and Gummow JJ).
[16] Section 776(1) and s 595(2), FW Act.
[17] Section 778(a)(i), FW Act.
[18] Section 777(1)(a), FW Act.
[19] *AWU v State of Qld (Dept of Communities*) [2014] FWCFB 5546, [20] applying *Clarke v Federal Commissioner of Taxation* (2009) 240 CLR 272, 298-9 and *Austin v The Commonwealth* (2003) 215 CLR 185, 265.

16. In this regard, whilst the Commission is entitled to consider constitutional matters to satisfy itself of its jurisdiction, the Commission has no authority to make binding determinations as to those matters.[20] In circumstances where the constitutional issue identified by the Commission at [43] of the Decision does not arise under s 776, it was not necessary or appropriate for the Commission to engage with that issue.

Leave to appeal

17. Mrs Dahm seeks permission to appeal under s 604 of FW Act. Section 604(2) of the FW Act requires the Commission to grant permission to appeal if it is satisfied that it is in the public interest to do so.[21] The Commission may otherwise grant permission to appeal on discretionary grounds.[22]

18. For the reasons stated above, the Respondent respectfully submits that the Commission erred in dismissing the Application on the basis it did, amounting to jurisdictional error that ought to be corrected on appeal.

Disposition

19. Respectfully, permission to appeal should be granted[23]; the Decision quashed; and the matter remitted to the Commission to hear and determine according to law.

20. The Respondent is content for the Commission to determine the appeal on the papers and does not require an oral hearing.

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27 October 2026

Lodged by
Respondent

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[20] *Milford*, [43].
[21] FW Act, s 604(2).
[22] FW Act, s 604(2).
[23] Pursuant to s 607(3)(a) of the FW Act.