

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Originating Application - Form 15 - Rule 8.01(1)
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	21/04/2023 3:02:08 PM AEST
Date Accepted for Filing:	21/04/2023 3:07:35 PM AEST
File Number:	VID44/2023
File Title:	SALLY RUGG v THE COMMONWEALTH OF AUSTRALIA AS REPRESENTED BY THE DEPARTMENT OF FINANCE & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Amended Originating Application

Amended pursuant to the Orders of the Hon. Justice Mortimer dated 21 March 2023

VID 44 of 2023

Federal Court of Australia
District Registry: Victoria
Division: Fair Work

Sally Rugg

Applicant

The Commonwealth of Australia as represented by the Department of Finance

First Respondent

Dr Monique Ryan

Second Respondent

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Federal Court of Australia, Commonwealth Law Courts
305 William Street, Melbourne, Victoria, 3000

Date:

Date:

Signed by an officer acting with the authority of
the District Registrar

Filed on behalf of:	The Applicant, Sally Rugg
Prepared by:	Angus Mackenzie
Law Firm	Maurice Blackburn Lawyers
Tel	(030 5018 4019
Email	amackenzie@mauriceblackburn.com.au
Address for service	Level 21, 380 La Trobe Street

Details of claim

On the grounds stated in the accompanying ~~affidavit~~ Statement of Claim, the Applicant claims:

As against the Commonwealth

Contravention of s 44(1) of the *Fair Work Act 2009* (Cth) – unreasonable additional hours

1. A declaration pursuant to s 21 of the *Federal Court of Australia 1976 Act* (Cth), and s 545(1) of the *Fair Work Act 2009* (Cth) (**FW Act**), that the first respondent (**the Commonwealth**) contravened s 44(1) of the FW Act by requesting or requiring that the Applicant work additional hours that are not reasonable, in contravention of s 62(1) of the FW Act.
2. A declaration pursuant to s 21 of the *Federal Court of Australia 1976 Act* (Cth), and s 545(1) of the FW Act that the Commonwealth's contravention of s 44(1) of the FW Act was a serious contravention within the meaning of s 557A of the FW Act.
3. An order pursuant to s 545 of the FW Act that the Commonwealth pay compensation to the Applicant for the loss suffered by her because of the contraventions described in paragraphs 1 and 2 above.
4. An order pursuant to s 547 of the FW Act for interest on any amount ordered to be paid to the Applicant under paragraph 3 above.
5. An order pursuant to s 546(1) of the FW 2009 that the Commonwealth pay pecuniary penalties for the contravention of the FW Act described in paragraph 1 above.
6. An order pursuant to s 546(3) of the FW Act that any penalty ordered by the Court pursuant to s 546(1) be paid to the Applicant.
7. Any other orders as the Court considers appropriate.

Contravention of s 340 of the FW Act – adverse action

8. A declaration pursuant to s 21 of the *Federal Court of Australia 1976 Act* (Cth), and s 545(1) of the FW Act that the Commonwealth contravened s 340 of the FW Act by terminating her employment because the Applicant exercised a workplace right, being to make complaints and inquiries in relation to her employment.
9. A declaration pursuant to s 21 of the *Federal Court of Australia 1976 Act* (Cth), and s 545(1) of the FW Act that the Commonwealth contravened s 340 of the FW Act by injuring the Applicant in her employment because the Applicant exercised a workplace right, being to make complaints and inquiries in relation to her employment.
10. A declaration pursuant to s 21 of the *Federal Court of Australia 1976 Act* (Cth), and s 545(1) of the FW Act that the Commonwealth contravened s 340 of the FW Act by altering the

position of the Applicant to her prejudice because the Applicant exercised a workplace right, being to make complaints and inquiries in relation to her employment.

11. A declaration pursuant to s 21 of the *Federal Court of Australia 1976 Act* (Cth), and s 545(1) of the FW Act that the Commonwealth contravened s 340 of the FW Act by terminating her employment because the Applicant had the benefit of a workplace instrument, being s 62(2) of the FW Act, and cl 31.1 and 32.2 of the *Commonwealth Members of Parliament Staff Enterprise Agreement 2020–23*, and therefore a workplace right.
12. A declaration pursuant to s 21 of the *Federal Court of Australia 1976 Act* (Cth), and s 545(1) of the FW Act that the Commonwealth contravened s 340 of the FW Act by injuring the Applicant in her employment because the Applicant had the benefit of a workplace instrument, being s 62(2) of the FW Act, and cl 31.1 and 32.2 of the *Commonwealth Members of Parliament Staff Enterprise Agreement 2020–23*, and therefore a workplace right.
13. A declaration pursuant to s 21 of the *Federal Court of Australia 1976 Act* (Cth), and s 545(1) of the FW Act that the Commonwealth contravened s 340 of the FW Act by altering the position of the Applicant to her prejudice because the Applicant had the benefit of a workplace instrument, being s 62(2) of the FW Act, and cl 31.1 and 32.2 of the *Commonwealth Members of Parliament Staff Enterprise Agreement 2020–23*, and therefore a workplace right.
14. An order pursuant to s 545 of the FW Act that the Commonwealth pay compensation to the Applicant for the loss suffered by her because of the contraventions described in paragraphs 8–13 above.
15. An order pursuant to s 547 of the FW Act for interest on any amount ordered to be paid to the Applicant under paragraph 14 above.
16. An order pursuant to s 546(1) of the FW 2009 that the Commonwealth pay pecuniary penalties for the contraventions of the FW Act described in paragraphs 8–13 above.
17. An order pursuant to s 546(3) of the FW Act that any penalty ordered by the Court pursuant to s 546(1) be paid to the Applicant.
18. Any other orders as the Court considers appropriate.

As against Dr Ryan

Accessorial Liability – contravention of s 44(1) of the FW Act – unreasonable additional hours

19. A declaration pursuant to s 21 of the *Federal Court of Australia 1976 Act* (Cth), and s 545(1) of the FW Act, that the second respondent (**Dr Ryan**) was involved, within the meaning of s 550(2)(a) and s 550(2)(c), in the Commonwealth’s contravention of s 44(1) of the FW Act in paragraph 1 above.

20. An order pursuant to s 545 of the FW Act that Dr Ryan pay compensation to the Applicant for the loss suffered by her because of the contravention described in paragraph 19 above.
21. An order pursuant to s 547 of the FW Act for interest on any amount ordered to be paid to the Applicant under paragraph 20 above.
22. An order pursuant to s 546(1) of the FW 2009 that Dr Ryan pay pecuniary penalties for the contravention of the FW Act described in paragraph 19 above.
23. An order pursuant to s 546(3) of the FW Act that any penalty ordered by the Court pursuant to s 546(1) be paid to the Applicant.
24. Any other orders as the Court considers appropriate.

Accessorial Liability – contravention of s 340 of the FW Act – adverse action

25. A declaration pursuant to s 21 of the *Federal Court of Australia 1976 Act* (Cth), and s 545(1) of the FW Act, that Dr Ryan was involved, within the meaning of s 550(2)(a) and s 550(2)(c), in the Commonwealth’s contraventions of s 340 of the FW Act in paragraphs 8–13 above.
26. An order pursuant to s 545 of the FW Act that Dr Ryan pay compensation to the Applicant for the loss suffered by her because of the contravention described in paragraph 25 above.
27. An order pursuant to s 547 of the FW Act for interest on any amount ordered to be paid to the Applicant under paragraph 26 above.
28. An order pursuant to s 546(1) of the FW 2009 that Dr Ryan pay pecuniary penalties for the contravention of the FW Act described in paragraph 25 above.
29. An order pursuant to s 546(3) of the FW Act that any penalty ordered by the Court pursuant to s 546(1) be paid to the Applicant.
30. Any other orders as the Court considers appropriate.

Against the first respondent

Prohibited adverse action

31. ~~An injunction, on a final basis, restraining the first respondent from terminating the applicant’s employment, or allowing the termination of the applicant’s employment to take effect, because any such termination would contravene s 340 of the *Fair Work Act 2009* (Cth) (the FW Act).~~
32. ~~A declaration that the first respondent contravened s 340 of the FW Act in that the first respondent took adverse action against the applicant within the meaning of s 342 of the FW Act, being to decide to dismiss the applicant (to be given effect from 31 January 2023):~~

- a. ~~because the applicant has exercised a workplace right because she exercised the right under s 62(2) of the FW Act to refuse to work additional hours that were unreasonable;~~
 - b. ~~because the applicant has proposed to exercise a workplace right because she proposed to continue to exercise the right under s 62(2) of the FW Act to refuse to work additional hours that were unreasonable;~~
 - e. ~~because the applicant has exercised a workplace right by refusing to work additional hours that were not reasonable, being a workplace right arising from her entitlement to the benefit of a workplace instrument, namely cl 31 and 32 of the *Commonwealth Members of Parliament Staff Enterprise Agreement 2020-23*;~~
 - d. ~~because the applicant has proposed to exercise a workplace right because she proposed to continue to exercise the right under cl 31 and 32 of the *Commonwealth Members of Parliament Staff Enterprise Agreement 2020-23* to refuse to work additional hours that were not reasonable;~~
 - e. ~~because the applicant has exercised a workplace right by refusing to work additional hours that were not reasonable, being cl 4 of her contract of employment (which contract is made under the *Members of Parliament (Staff) Act 1982 (Cth)* (**the MOPS Act**) and which is a law governing the relationship between employer and employee);~~
 - f. ~~because the applicant has proposed to exercise a workplace right by proposing to continue to refuse to work additional hours that were not reasonable, being clause 4 of her contract of employment.~~
33. ~~A declaration that the first respondent contravened s 340 of the FW Act in that the first respondent took adverse action against the applicant within the meaning of s 342 of the FW Act, being to injure the applicant in her employment by engaging in hostile conduct in the workplace, because of the reasons described in paragraphs 2(a)–(f) above.~~
34. ~~A declaration that the first respondent contravened s 340 of the FW Act in that the first respondent took adverse action against the applicant, being to decide to dismiss the applicant (to be given effect from 31 January 2023) because the applicant has exercised a workplace right, being to make complaints and inquiries in relation to her employment.~~
35. ~~Compensation be paid by the first respondent under s 545 of the FW Act for contraventions of s 340 of the FW Act.~~
36. ~~Pecuniary penalties be imposed against the first respondent under s 546(1) of the FW Act for contraventions of s 340 of the FW Act.~~
37. ~~An order under s 546(3)(c) that pecuniary penalties be paid to the applicant.~~

Breach of the National Employment Standards—unreasonable additional hours

38. — A declaration that the first respondent has contravened s 44(1) of the FW Act because the first respondent has contravened s 62 of the FW Act.
39. — Compensation be paid by the first respondent under s 545 of the FW Act for contraventions of s 44(1) of the FW Act, for contraventions of s 62 of the FW Act.
40. — Pecuniary penalties be imposed against the first respondent under s 546(1) of the FW Act for contraventions of s 44(1) of the FW Act for contraventions of s 62 of the FW Act.
41. — An order under s 546(3)(c) that pecuniary penalties be paid to the applicant.

As against the second respondent

Involvement in the prohibited adverse action

42. — An injunction, on a final basis, restraining the second respondent from terminating the applicant's employment, or allowing the termination of the applicant's employment to take effect, because any such termination would contravene s 340 of the FW Act.
43. — A declaration that the second respondent was involved in the contraventions of s 340 of the FW Act by the first respondent, having directly procured, induced, or having been knowingly concerned in or party to the contravention, in that the second respondent was the principal actor on behalf of the first respondent in the relevant transactions.
44. — Compensation be paid by the second respondent under s 545 of the FW Act arising from her involvement in the contraventions of s 340 of the FW Act by the first respondent.
45. — Pecuniary penalties be imposed on the second respondent for her involvement in the contraventions of s 340 of the FW Act by the first respondent.
46. — An order under s 546(3)(c) that pecuniary penalties be paid to the applicant.

Involvement in the breach of the NES

47. — A declaration that the second respondent was involved in the contraventions of s 44(1) of the FW Act by the first respondent, for contraventions of s 62 of the FW Act, having directly procured, induced, or having been knowingly concerned in or party to the contravention, in that the second respondent was the principal actor on behalf of the second respondent in the relevant transactions.
48. — Compensation be paid by the second respondent under s 545 of the FW Act arising from her involvement in the contraventions of s 44(1) of the FW Act by the first respondent for contraventions of s 62 of the FW Act.

49. ~~Pecuniary penalties be imposed on the second respondent for her involvement in the contraventions of s 44(1) of the FW Act by the first respondent for contraventions of s 62 of the FW Act.~~

50. ~~An order under s 546(3)(e) that pecuniary penalties be paid to the applicant.~~

General

51. ~~Any other order needed to do justice.~~

Claim for interlocutory relief

The Applicant also claims interlocutory relief.

1. ~~An interim injunction restraining the first and second respondents from terminating, or allowing the termination of the applicant's employment to take effect, until further order.~~
2. ~~An interlocutory injunction restraining the first and second respondents from terminating, or allowing the termination of the applicant's employment to take effect, until the resolution of this proceeding.~~

Applicant's address

The Applicant's address for service is:

Place: Level 21, 380 La Trobe Street, Melbourne VIC 3000

Email: AMackenzie@mauriceblackburn.com.au; EmilyCreak@mauriceblackburn.com.au; JBornstein@mauriceblackburn.com.au

~~_____~~

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: ~~25 January 2023~~ 21 April 2023

D. Victory

.....
Signed by Daniel Victory
Lawyer for the Applicant