

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)
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File Number:	VID44/2023
File Title:	SALLY RUGG v THE COMMONWEALTH OF AUSTRALIA & 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



A handwritten signature in blue ink that reads "Sia Lagos".

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.



Originating application

No. _____ of 2023

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

Sally Rugg

Applicant

The Commonwealth of Australia and another named in the schedule
Respondents

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:

The Court ordered that the time for serving this application be abridged to

Date:

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

Filed on behalf of (name & role of party) Sally Rugg, Applicant
Prepared by (name of person/lawyer) Angus Mackenzie
Law firm (if applicable) Maurice Blackburn Lawyers
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Address for service Level 21, 380 La Trobe Street, Melbourne VIC 3000
(include state and postcode)



Details of claim

On the grounds stated in the accompanying affidavit, the Applicant claims:

Against the first respondent

Prohibited adverse action

1. 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**).
2. 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;
 - c. 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.

3. 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.
4. 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.
5. Compensation be paid by the first respondent under s 545 of the FW Act for contraventions of s 340 of the FW Act.
6. 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.
7. An order under s 546(3)(c) that pecuniary penalties be paid to the applicant.

Breach of the National Employment Standards – unreasonable additional hours

8. 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.
9. 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.
10. 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.
11. 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

12. 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.
13. 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.



14. 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.
15. 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.
16. An order under s 546(3)(c) that pecuniary penalties be paid to the applicant.

Involvement in the breach of the NES

17. 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.
18. 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.
19. 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.
20. An order under s 546(3)(c) that pecuniary penalties be paid to the applicant.

General

21. 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

The Applicant's address is 140 Collins Street, Thornbury VIC 3071

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: 25 January 2023

**Schedule**

No.

of 2023

Federal Court of Australia

District Registry: Victoria

Division: Fair

Sally Rugg

Applicant

The Commonwealth of Australia

First Respondent

Dr Monique Ryan MP

Second Respondent

Date: 25 January 2023

*Angus Mackenzie*Signed by Angus Mackenzie
Lawyer for the Applicant