



DECISION

Fair Work Act 2009
s.604 - Appeal of decisions

Jessica Stunden

v

The Commonwealth of Australia, as represented by Services Australia
(C2026/12705)

DEPUTY PRESIDENT FAROUQUE
COMMISSIONER LEE
COMMISSIONER CONNOLLY

MELBOURNE, 22 OCTOBER 2026

Appeal against decision [2026] FWC 3240 of Deputy President Lake at Brisbane on 25 August 2026 in matter number U2025/13924 – permission to appeal refused

[1] Ms Jessica Stunden has lodged an appeal under s 604 of the *Fair Work 2009* (Cth) (the **Act**) against a decision of Deputy President Lake on 25 August 2026 ([2026] FWC 3240) in which the Deputy President dismissed an application for an unfair dismissal remedy made by Ms Stunden under s 394 of the Act. The respondent to that application and this appeal is the Commonwealth of Australia as represented by Services Australia (**Services Australia**). The matter was listed before the Full Bench for permission to appeal only. Prior to the hearing of Ms Stunden's application for permission to appeal, Services Australia sought permission to be represented under s 596 of the Act. We granted Services Australia permission pursuant to s 596(2)(a) of the Act.

[2] Ms Stunden requires the Commission's permission in order to appeal from the decision of the Deputy President. Because the appeal is from a decision made under Part 3-2 of the Act, s 400 of the Act applies to the appeal. Section 400(1) provides that the Commission must not grant permission to appeal unless it is in the public interest to do so. Section 400(2) provides that an appeal on a question of fact can only be made on the ground that the decision involved a significant error of fact. Consideration of the public interest involves a broad value judgment (*Coal & Allied Mining Services Pty Ltd v Lawler* (2011) 192 FCR 78 at [44]). Matters that may engage the public interest include issues of importance and general application, or that the decision manifests an injustice (*GlaxoSmithKline Australia Pty Ltd v Makin* [2010] FWAFC 5343; (2010) 197 IR 266 (*Makin*) at [27]). In deciding whether to grant permission to appeal it is unnecessary and inappropriate to conduct a detailed examination of the appeal grounds (*Trustee for the MTGI Trust v Johnston* [2016] FCAFC 140 at [82]). However, it is necessary to engage with the appeal grounds to consider whether they raise an arguable case of appealable error. An appellant must ordinarily demonstrate that there is such a case in order to be granted permission to appeal, as an appeal cannot ultimately succeed in the absence of error (*Coal & Allied Operations Pty Ltd v AIRC* (2000) 203 CLR 194 at 204). The fact that a primary decision maker may have made an error is not necessarily a sufficient basis to grant permission to appeal.

The Decision of the Deputy President

[3] The Deputy President's decision dismissed Ms Stunden's application having concluded that Ms Stunden's dismissal was not harsh, unjust or unreasonable within the meaning of s 387 of the Act.

[4] The following matters were set out in the Deputy President's decision. In July 2022, Ms Stunden commenced employment with Services Australia as a Services Officer. In early 2024, Ms Stunden was made a permanent employee. Ms Stunden's position at Services Australia involved provision of information and support to members of the public relating to welfare services. In mid-July 2024, Ms Stunden transferred to the Toowong Services Centre where her team leader was a Mr Blackwood. On 31 October 2024, Ms Stunden was involved an interaction with a client when she allegedly spoke inappropriately to the client and raised her voice to the client. On 5 November 2024, Ms Stunden was informally counselled by a manager of Services Australia in relation the incident on 31 October 2024. Thereafter, Ms Stunden is alleged to have engaged in certain misconduct in her interactions with clients or colleagues. On 6 November 2024, Ms Stunden was alleged to have raised her voice at a customer and then yelled at Mr Blackwood. On 19 November 2024, Ms Stunden was subject to a formal counselling session relating to the incidents on 31 October 2024 and 6 November 2024. On 12 December 2024, Ms Stunden allegedly yelled at a colleague in profane terms. On 13 December 2024, Ms Stunden called into the work absence phone line, spoke to an acting manager to request three weeks annual leave and in the course of the conversation allegedly used abusive and profane terms. Ms Stunden was approved to take one week's annual leave. On 13 December 2024, Services Australia sent Ms Stunden a letter notifying her that she would be investigated to determine if she had breached Australian Public Service (APS) Code of Conduct. On 20 December 2024, Services Australia sent Ms Stunden a notice informing her she would be suspended with pay, that the suspension would be reviewed each 30 days and directing her to remain out of her workplace, not to discuss or reference the allegations except with a person representing or supporting her in the investigation and not to make contact with other staff at the Toowong Service Centre. On 8 January 2025, the investigator appointed by Services Australia sent Ms Stunden a letter setting out a number of allegations alleged to be breach of the APS Code. On 22 January 2025, Ms Stunden provided a written response to the allegations in which she noted that there had been regrettable incidents, that she had observed similar behaviour by co-workers and that the severity of her actions may have been mitigated if accommodations had been in place to assist her disability. On 20 & 21 March 2025, Ms Stunden allegedly sent texts to another employee (Ms B) at Toowong Service Centre in which she inquired whether that employee had been interviewed for the investigation and making disparaging references regarding Mr Blackwood and another Services Australia staff member. On 3 April 2024, Services Australia sent Ms Stunden a letter advising her of an additional disciplinary allegation alleging various breaches of the APS Code due to her text message to Ms B on 20 March 2025 including by reason of a breach of two of the directions made by Services Australia on 20 December 2024. On 4 April 2024, Services Australia suspended Ms Stunden without pay, after having given her an opportunity to respond to a proposed suspension without pay. On 22 April 2025, the investigator sent Ms Stunden a letter setting out his preliminary findings which indicated that six of the eight allegations were substantiated. The letter sent out a draft investigation report and gave Ms Stunden seven days to respond. On 23 April 2024, Ms Stunden sent a response to the investigator in which she attacked the competence of the investigator and alleged that the investigator had made the same mistakes as her managers including an assumption that a

person with a cognitive disability must be erratic and incapable. On 30 April 2025, the investigator wrote to Ms Stunden confirming that six of the eight allegations were substantiated and that the matter would be referred to the Sanction delegate to determine the sanction. In that regard, the investigator's correspondence indicated that no finding was made in respect of two of the eight allegations as they were addressed at the counselling on 19 November 2026. On 1 May 2025, Ms Stunden sent an email to employees of Services Australia with the subject line "You can't terminate a dead girl " and made reference to preparations to take her own life. This email caused services Australia to have the Queensland Police Service conduct a welfare check. On 15 May 2026, Ms Stunden applied to the Merit Protection Commissioner (MPC) for a review of the investigator's findings of a breach. In the period from 30 April 2025 there were various communications between Ms Stunden and Services Australia which related to the suspension, investigation process, provision of medical information and an attempt by Services Australia to have Ms Stunden provide medical information about her fitness to participate in the sanction process. On 1 July 2026, Services Australia changed Ms Stunden's suspension from a suspension without pay to a suspension with pay. On 4 July 2025, Ms Stunden authorised Services Australia to send a preliminary sanction letter to her treating psychiatrist. On 8 July 2024, the Services Australia sanction delegate sent Ms Stunden (via her psychiatrist) a letter setting out a preliminary view that a sanction of termination of employment was appropriate, detailing the justification for that preliminary view and giving Ms Stunden 7 days to respond. On 11 July 2024, Ms Stunden provided a response to the proposed sanction and attached a letter from her treating psychiatrist. On 28 July 2025, an independent sanction delegate, made a decision that Ms Stunden's employment be terminated effective 4 August 2026 and a notice to that effect was sent to Ms Stunden's psychiatrist.

[5] The Deputy President found in substance that the conduct alleged in the allegations made in the disciplinary process were substantiated on the evidence before him. The Deputy President was satisfied that Ms Stunden's failure to comply with a lawful and reasonable direction of Services Australia was a valid reason for the dismissal. The Deputy President was also satisfied that Ms Stunden's inappropriate behaviour in breach of the APS Code of Conduct buttressed a conclusion of a valid reason. In that regard, the Deputy President was satisfied that Ms Stunden had engaged in the following such inappropriate behaviour:

- (i) on 31 October 2024, Ms Stunden spoke loudly over the customer and told them she would reassign them;
- (ii) on 6 November 2024, Ms Stunden raised her voice at a customer and then yelled at Mr Blackwood, "Brian, wait";
- (iii) on 28 November 2024, Ms Stunden used words to the effect of, "someone clearly took it, I hate it when people move my stuff, why would someone Fucking move my stuff", and "Fuck! people need to not move my shit!";
- (iv) on 4 December 2024, Ms Stunden raised her voice at Mr Blackwood;
- (v) on 12 December 2024, Ms Stunden used words to the effect of "I fucking assigned them"... "Don't fucking talk to me" when speaking to a colleague. She then yelled at Mr Shephard, describing her colleague with words to the effect of, "fucking useless", "can't do their job" and "I am the only person who knows what they're doing". She also used words to the effect, "you're setting me up to fail, you are the ones doing this to me" and "You've pushed me to the point where I can't even fucking do my job";

- (vi) on 12 December 2024, Ms Stunden spoke to Mr Shephard on the phone and used words to the effect of: “No I am not fucking okay”, “No I fucking won’t be”, “You can’t do anything”, “You don’t fucking care”, and “If you cared, you wouldn’t make me work in an environment where I’m surrounded with idiots in the first place”; and
- (vii) on 13 December 2024, Ms Stunden spoke to Mr Shephard on the phone and used words to the effect of, “; “That’s a stupid fucking question” and “Don’t even fucking worry about it mate” and then hung up.

[6] In considering valid reason, the Deputy President rejected an allegation by Ms Stunden that she had been sexually harassed by an acting manager. The Deputy President also rejected Ms Stunden’s submissions that her ADHD caused others to either “misinterpret” her actions or “scapegoat” her. The Deputy President determined that even if Ms Stunden’s conduct was caused by her ADHD, it was an inherent requirement of Ms Stunden’s role that she be able to comply with the APS Code of Conduct. The Deputy President found that Services Australia had offered Ms Stunden accommodations to assist in her regulating her ADHD and mental health. The Deputy President determined that Ms Stunden had been given an opportunity to respond to the reasons for the dismissal. The Deputy President assessed other considerations under s 387. The Deputy President rejected Ms Stunden’s various contentions relating to the investigation including that there had been collusion between two witnesses in the investigation, that Ms B had been coerced into providing her phone to Services Australia and that the investigation had been unduly long. The Deputy President also rejected Ms Stunden’s contention that it was unfair that the Service Australia had not waited until the outcome of the MPC review before imposing a sanction. The Deputy President rejected Ms Stunden’s contention that the Services Australia decision to suspend Ms Stunden without pay was harsh or unlawful. The Deputy President did not consider that the medical evidence rendered the dismissal harsh. The Deputy President rejected Ms Stunden’s contention that it was harsh for her termination letter to be sent to her treating psychiatrist. The Deputy President considered that Ms Stunden demonstrated only superficial insight into the effect of her behaviour on others and downplayed the seriousness of her conduct.

[7] The Deputy President concluded that Ms Stunden’s dismissal was not harsh, unjust or unreasonable. The Deputy President dismissed Ms Stunden’s application for an unfair dismissal remedy.

Grounds of Appeal

[8] In ground 1, Ms Stunden contends that the Deputy President erred in principle by treating criminality as the criterion for whether the *Briginshaw* standard applied to disputed allegations of misconduct. Ground 1 does not disclose arguable error. The Deputy President considered that the *Briginshaw* standard did not apply to the allegations against Ms Stunden having regard to the nature of the allegations. In reaching this conclusion, the Deputy President expressed the view that none of the conduct alleged against Ms Stunden was an allegation of criminal conduct. The Deputy President’s reasoning does not disclose arguable error that he treated criminality as the criterion for the application of the *Briginshaw* standard. In any event, we note that the Deputy President concluded that even on application of the *Briginshaw* standard, there was sufficient basis for him to be satisfied that Ms Stunden had engaged in acts constituting misconduct.

[9] In ground 2, Ms Stunden contends that the Deputy President's erred in assessing that she was an "unreliable narrator" principally because she disputed whether particular expressions were disrespectful or insulting. Ground 2 does not disclose arguable error. The Deputy President was entitled to assess the credibility of the witnesses who gave evidence before him. There is nothing arguably illogical in the Deputy President's assessment of Ms Stunden's creditworthiness and his application of that assessment in the course of his reasons relating to disputed factual matters.

[10] In ground 3, Ms Stunden contends that the Deputy President erred by not considering that her diagnosed ADHD, vocal-modulation difficulty, distress intolerance, workplace stressors and an escalating mental-health crisis affected how particular conduct arose, how it was perceived, and the proportionality of dismissal. In ground 3, Ms Stunden also contends that the Deputy President erred by moving from the proposition that Code compliance was an inherent requirement to a conclusion that dismissal was not harsh, without assessing other relevant matters including the medical evidence that Ms Stunden retained capacity to succeed with appropriate disability and mental-health supports. Ground 3 does not disclose arguable error. The Deputy President considered the material relied upon by Ms Stunden regarding her mental health and referred in some detail to the opinion of Ms Stunden's psychiatrist. Furthermore, it is not arguable error that the Deputy President's reasoning that it was an inherent requirement to have capacity to comply with the APS Code resulted in him failing to take into account relevant considerations including Ms Stunden's mental health. It is not arguable that the Deputy President failed to consider matters related to Ms Stunden's mental health.

[11] In ground 4, Ms Stunden contends that the Deputy President erred in his assessment of the Services Australia's pre-dismissal treatment and suspension without remuneration. Ground 4 does not disclose arguable error. The Deputy President considered the pre-dismissal events relating to the investigation, the suspension, and the disciplinary process in assessing whether the dismissal was harsh unjust or unreasonable.

[12] In ground 5, Ms Stunden contends that the Deputy President erred in failing to consider the whole factual matrix and weigh all relevant circumstances cumulatively. Ground 5 does not disclose arguable error. The Deputy President's reasons show that he considered material matters in assessing whether the dismissal was harsh unjust or unreasonable including the evidence as to Ms Stunden's mental health. Ms Stunden's grounds suggest that the Deputy President did not consider background matters including her length of service and the circumstances in which she was transferred to the Toowong Office. The Deputy President was clearly aware of these background matters having recounted them in his reasons. In any event, such background matters are not material to the issue of whether the dismissal was harsh, just, or unreasonable.

[13] In ground 6, Ms Stunden contends that the Deputy President erred by making a significant error of fact that Services Australia had provided her adequate or appropriate supports to regulate her disability. Ground 6 does not disclose arguable error. The evidence before the Deputy President disclosed that Services Australia permitted Ms Stunden to step away and undertake breathing exercises when she was overwhelmed and in November 2024 had offered to engage an external provider to provide her early mental health intervention support. There is no arguable significant error of fact by the Deputy President finding that Services Australia had provided Ms Stunden adequate or appropriate supports to regulate her disability.

[14] In grounds 7 and 8, Ms Stunden contends that the Deputy President erred in making significant errors of fact. In Ground 7, Ms Stunden alleges that significant errors of fact concerned the drawing of inferences that were not reasonably supported by the evidence. In ground 8, the significant error of fact is alleged to constitute inconsistent treatment of contemporaneous accounts and later accounts of incidents in particular a counselling record. Grounds 7 and 8 also do not disclose arguable error. The evidence before the Deputy President provided a proper basis for findings he made and there is no arguable error that the Deputy President made a significant error of fact. We note that in the hearing before the Deputy President, Ms Stunden did not cross examine the witnesses called by Services Australia and there was ample evidence for the Deputy President to make the factual findings set out in his decision.

Additional Documents

[15] We note that three days prior to the hearing on permission to appeal, Ms Stunden notified the Commission and Services Australia that she sought to rely on two additional documents in support of a grant of permission to appeal. Those documents had not been in evidence before the Deputy President. Services Australia objected to admission of the two documents. The two documents were a Comcare's FOI decision dated 12 October 2026, and a Comcare WHS Help Desk's email dated 15 September 2026. The Full Bench indicated that it would receive the two documents and determine whether to admit the documents on the question of permission to appeal. We have considered the documents and the submissions made by Ms Stunden in support of their admission before the Full Bench on the issue of permission to appeal. We are of the view that the two documents are not relevant to identifying arguable error by the Deputy President or the issue of whether permission to appeal should be granted. We decline to admit the two documents before the Full Bench.

Whether Permission to Appeal

[16] Ms Stunden contends that it is in the public interest to grant permission to appeal as the decision raises arguable errors of principle with application beyond her individual case. Ms Stunden's notice of appeal sets out four grounds in support of the public interest. Ms Stunden otherwise submits that her appeal raises public interest questions about proof of APS misconduct and treatment of disability and suicidality where adverse action may aggravate the conduct later relied upon. We do not consider that there are any public interest issues raised in the appeal. We do not consider that it is in the public interest to grant permission to appeal. Mr Stunden's appeal does not raise any of the matters referred to in *Makin* and there are no other elements which engage the public interest. As we do not consider that it is in the public interest to grant permission to appeal, we are required by s 400(1) to refuse permission to appeal.

[17] In accordance with s 400(1), permission to appeal is refused.



DEPUTY PRESIDENT

Appearances:

J Stunden, applicant.

P Willoughby, counsel for the respondent, instructed by Kingston Reid.

Hearing details:

2026

Melbourne

15 October.

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