

2022 LOCAL GOVERNMENT, PLANNING & ENVIRONMENTAL LAW CONFERENCE

Recent cases concerning Council employment contracts
- the post pandemic workplace



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Prominent Court decisions

- *Peter Schneider v Warrnambool City Council* [2021] VSC 337, which is a Victorian Supreme Court case concerning a Council employment contract. Whilst this case is not binding in New South Wales, it is persuasive and important for Local Councils in New South Wales to consider and be aware of;
- *Eldridge v Wagga Wagga City Council* [2021] NSWSC 312, which is a New South Wales Supreme Court case concerning a Council employment contract; and
- *WorkPac Pty Ltd v Rossato & Ors* [2021] HCA 23, which is a High Court of Australia case. Whilst this case did not concern a Council employment contract, but rather a private casual employment contract, it provides important employment contract principles for Local Councils to consider.

Peter Schneider v Warrnambool City Council [2021] VSC 337



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Peter Schneider v Warrnambool City Council [2021] VSC 337

Key lessons:

- Risks for Councils seeking to rely on termination clauses in CEO and Senior Officer employment contracts which allow for termination for 'no reason' or which may otherwise be inconsistent with the Local Government Act, without considering issues of natural justice.
- Provisions in CEO and Senior Officer employment contracts which seem to grant Council the right to dismiss for 'no reason' should be treated with caution and may be invalid.
- The decision to dismiss a Council employee must be underpinned by a reason and that employee must be given the chance to respond to that reason before disciplinary action is taken.



Eldridge v Wagga Wagga City Council [2021] NSWSC 312



Eldridge v Wagga Wagga City Council [2021] NSWSC 312

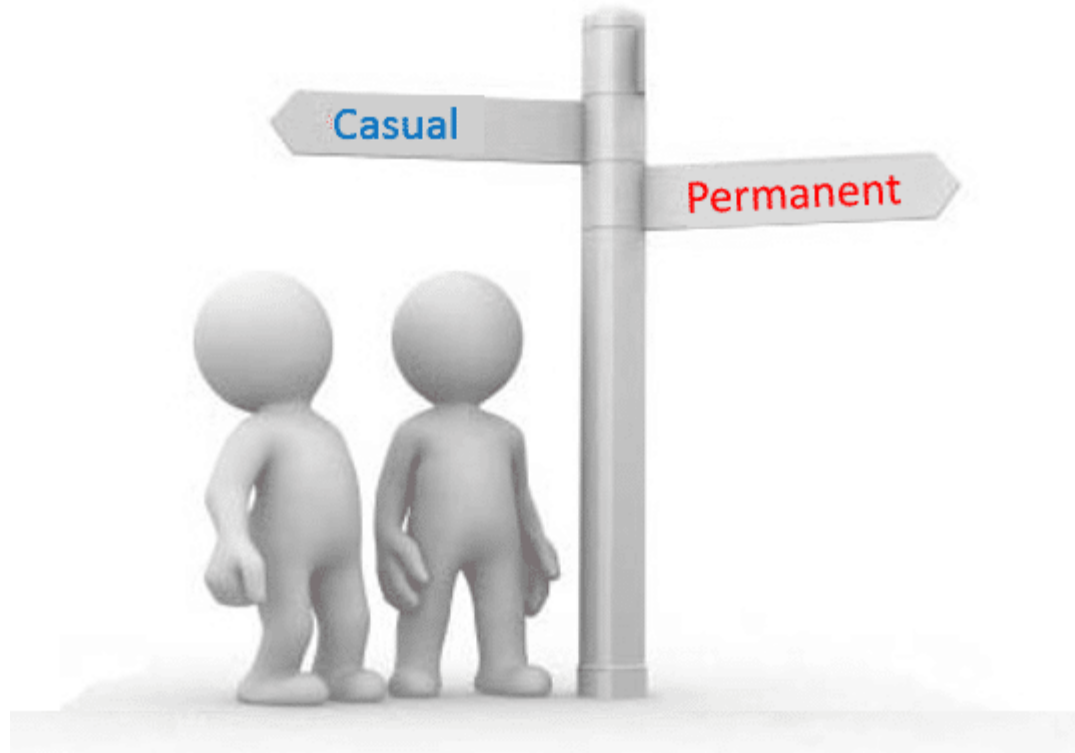
Key lessons:

- Although the Court was satisfied in the present case that Council was entitled to dismiss Mr Eldridge, the Court made it clear that the threshold for summary dismissal remains very high despite what the employment contract states.
- The decision also inadvertently confirms that CEOs of Local Councils and many Senior Employees are excluded from the unfair dismissal provisions contained in the *Industrial Relations Act 1996* (NSW). It follows that the only option available to Senior Executive Public Servants who want to challenge their dismissal is to sue for breach of contract.

LESSONS
LEARNED



WorkPac Pty Ltd v Rossato & Ors [2021] HCA 23



WorkPac Pty Ltd v Rossato & Ors [2021] HCA 23

Key lessons:

- Employers, including Local Councils, now have increased certainty that when they engage a casual employee on a written contract of employment that expressly describes the relationship as a casual one without a firm advance commitment of further work, the relationship is more likely a casual one.
- A note of caution is where the casual employment contract is only partly in writing, there may be more uncertainty about the nature of the relationship. It is best practice for Local Councils to have fulsome written employment contracts with its staff, regardless of whether they are casual, part-time, full-time or fixed-term.

Questions

