

FEDERAL COURT OF AUSTRALIA

Gillham v Melbourne Symphony Orchestra Pty Ltd (Liability) [2026] FCA 891

SUMMARY

In accordance with the practice of the Federal Court in cases of public interest, importance or complexity, the following summary has been prepared to accompany the orders made today. This summary is intended to assist in understanding the outcome of this proceeding and is not a complete statement of the conclusions reached by the Court. The only authoritative statement of the Court's reasons is that contained in the published reasons for judgment which will be available on the Court's website. This summary is also available there.

The Applicant, Mr Gillham, is a concert pianist. He contends that the Melbourne Symphony Orchestra (the **MSO**) took adverse actions against him in August 2024, contrary to s 340 of the *Fair Work Act 2009* (Cth), and that Mr Ross, the MSO's then Chief Operating Officer, was knowingly involved in one of those contraventions.

The claimed adverse actions were taken after Mr Gillham made statements that Israel had committed war crimes by targeting journalists in Gaza when he was introducing a new piece at a piano recital presented by the MSO on 11 August 2024. The MSO's actions were:

- (1) On Monday 12 August, the MSO cancelled the scheduled performance by Mr Gillham at a concert presented by the MSO scheduled for 15 August 2024. This is the **Cancellation**.
- (2) On Monday 12 August, the MSO emailed a message to those who had attended the 11 August recital stating that Mr Gillham would no longer be performing at the 15 August concert and apologising for his statements. This is the **Cancellation Message**.
- (3) On Wednesday 14 August, the MSO sought to impose through Mr Ross as a condition of Mr Gillham's performance on 15 August being reinstated that "there be no physical or verbal statement from the stage". This is known as the **Second Condition**.
- (4) On Thursday 15 August, the MSO emailed and published a statement about the (by then cancelled) 15 August concert which, among other things, did not contain an apology to

Mr Gillham for having previously cancelled his 15 August performance. This is the **Final Public Statement**.

Although these events are bound up with the Israel-Gaza conflict, it is not any part of the Court's role to enter upon those matters of considerable public controversy.

Mr Gillham's claims against the MSO raise three broad issues.

Issue 1: Did Mr Gillham have a "workplace right"?

The first issue is whether Mr Gillham had a "workplace right" within s 341(1) of the Fair Work Act. Mr Gillham says his workplace right is the right not to be treated unfavourably in the workplace because of his political belief, contained in the *Equal Opportunity Act 2010* (Vic). Mr Gillham says the Equal Opportunity Act is a "workplace law" for these purposes.

The Court finds that the Equal Opportunity Act is *not* a "workplace law" as defined in the Fair Work Act, for two reasons. First, Mr Gillham was an independent contractor of the MSO. The Equal Opportunity Act in its application to him was therefore not a law "regulating the relationship between employer and employee", as required by the definition of "workplace law". Second, the scheme of the Fair Work Act is that State anti-discrimination laws, such as the Equal Opportunity Act, apply of their own force, supplemented by specific anti-discrimination rights in the Fair Work Act. It would be contrary to this legislative scheme to treat the Equal Opportunity Act as a "workplace law", so as to re-apply as federal law the workplace discrimination provisions in the Equal Opportunity Act as "workplace rights" under s 340 of the Fair Work Act.

Issue 2: Were the MSO's actions "adverse actions"?

The second issue is whether the four actions set out above are "adverse actions" within s 342 of the Fair Work Act. The MSO admits that the Cancellation is an adverse action, but says that its other actions are not "adverse actions" as defined.

The Court finds that none of the MSO's other three actions is an adverse action.

None of these actions altered Mr Gillham's position as an independent contractor to his prejudice. That "position" refers to the existing advantages of his previous engagement as an independent contractor, and these actions were all taken *after* that engagement had been terminated.

Mr Gillham contends that the Second Condition and the Final Public Statement also discriminated against him in proposed contractual terms and conditions. On the facts, the Second Condition did not discriminate against Mr Gillham. And the MSO was not proposing to enter into a contract with Mr Gillham by the time of the Final Public Statement.

Issue 3: Were the MSO's actions taken "because" of Mr Gillham's workplace rights?

The third issue is whether the MSO's actions were taken "because" Mr Gillham had, or proposed to exercise, his workplace right. The onus is on the MSO to show that Mr Gillham's workplace right was *not* a substantial or operative reason for its actions.

The Court's reasons on this issue are underpinned by three findings:

- First, the Court finds that the MSO did have a policy of not expressing support for either side of the Israel-Gaza conflict. The description of that conflict in the MSO's policy might not be "neutral", but the MSO was committed to not supporting either side.
- Second, the Court finds that there is a custom or practice that classical musicians do not make statement on sensitive political or social issues from the stage without approval of the host. This custom is not universally observed, but that does not mean there is no custom or practice to begin with.

These first two matters help explain the MSO's subjective reasons for the actions it took.

- Third, the Court finds that the test of interconnection proposed by Mr Gillham is not the test for determining whether action was taken because of a prohibited reason.

Applying those findings, the Court concludes that the political content of Mr Gillham's remarks was not a substantial and operative reason for any of the MSO's actions. The substantial and operative reasons for the Cancellation and the Cancellation Message were to address the anticipated adverse impacts that Mr Gillham's remarks would have on the MSO's business and reputation. The substantial and operative reasons for the Second Condition and Final Public Statement were to address the adverse impacts on the MSO that had arisen from cancelling Mr Gillham's Thursday performance. The Court finds that the MSO would have taken the same actions if Mr Gillham had expressed a political belief in support of Israel, or if Mr Gillham had made statements on any other topic that had the same impact or anticipated impact on the MSO's business and reputation that Mr Gillham's actual remarks had.

These conclusions mean that Mr Gilham's claims against the MSO must fail. It follows that the associated claim against Mr Ross must also fail.

JUSTICE HILL

10 July 2026