

[2019] FWCA 7477

The attached document replaces the document previously issued with the above code on 20 December 2019.

The correct reference on page 4 should be <AC311692 PR713831>.

Yota Amanatidis

Dated 24 December 2019



DECISION

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009
Sch. 3, Item 16 - Application to terminate collective agreement-based transitional instrument

R.J Callaway & A.P Dudgeon & G.H Stephensen T/A Tasmanian Animal Hospitals
(AG2019/3798)

TASMANIAN ANIMAL HOSPITALS EMPLOYEE COLLECTIVE AGREEMENT 2007

Animal care and veterinary services

COMMISSIONER LEE

MELBOURNE, 20 DECEMBER 2019

Application for termination of the Tasmanian Animal Hospitals Employee Collective Agreement 2007.

[1] This matter involves an application made by R.J Callaway & A.P Dudgeon & G.H Stephensen T/A Tasmanian Animal Hospitals (the Applicant) for the termination of the *Tasmanian Animal Hospitals Employee Collective Agreement 2007* (the Agreement) pursuant to section 225 of the *Fair Work Act 2009* (the Act) and Item 16 of Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (the Transitional Act).

[2] The agreement is a collective agreement-based transitional instrument and has passed its nominal expiry date.

[3] Item 16 of Schedule 3 to the Transitional Act provides:

“16 Collective agreement-based transitional instruments: termination by FWA

(1) Subdivision D of Division 7 of Part 2-4 of the FW Act (which deals with termination of enterprise agreements after their nominal expiry date) applies in relation to a collective agreement-based transitional instrument as if a reference to an enterprise agreement included a reference to a collective agreement-based transitional instrument.

(2) For the purpose of the application of Subdivision D to an old IR agreement, the agreement’s nominal expiry date is taken to be the end of the period of the agreement.”

[4] Section 225 of the Act provides:

“225 Application for termination of an enterprise agreement after its nominal expiry date

If an enterprise agreement has passed its nominal expiry date, any of the following may apply to the FWC for the termination of the agreement:

- (a) one or more of the employers covered by the agreement;
- (b) an employee covered by the agreement;
- (c) an employee organisation covered by the agreement.

[5] Section 226 of the Act provides:

“226 When the FWC must terminate an enterprise agreement

If an application for the termination of an enterprise agreement is made under section 225, the FWC must terminate the agreement if:

- (a) the FWC is satisfied that it is not contrary to the public interest to do so; and
- (b) the FWC considers that it is appropriate to terminate the agreement taking into account all the circumstances including:
 - (i) the views of the employees, each employer, and each employee organisation (if any), covered by the agreement; and
 - (ii) the circumstances of those employees, employers and organisations including the likely effect that the termination will have on each of them.”

[6] The Agreement has passed its nominal expiry date. The employer covered by the Agreement has made and is entitled to make application to the Fair Work Commission to terminate the agreement.

[7] Ms Hayley Mayne, Human Resources Manager for the Applicant, provided a statutory declaration which states that the nominal expiry date was nine years ago. The relevant industry modern award is the *Animal Care and Veterinary Services Award 2010* (the Award), has since superseded the Agreement. There was confusion surrounding the interpretation of the Agreement and the Award. All employees now have new employment contracts bringing them into alignment with the Award.

[8] The effect that termination of the Agreement will have on the employees relates to:

"Clause 8.3 Wage Review. The Agreement allows for a 3.5% wage increase on the anniversary date of approval of agreement. Tasmanian Animal Hospitals have developed a competency-based remuneration framework to compensate for the low industry minimum wage. As such, Tasmanian Animal Hospitals pay well above the minimum Award rate and employees have been consulted that wage increases will

now be reflective of the remuneration framework and any national minimum wage increase will be taken into account and applied accordingly.”¹

[9] On 8 November 2019 my chambers wrote to the Applicant setting out the requirements of the legislation and directed the Applicant to take action to enable me to obtain information in relation to the views and circumstances of employees. Specifically, by the employer immediately forwarding or handing to employees a notice in the following terms:

“An application has been made by R.J Callaway & A.P Dudgeon & G.H Stephensen T/A Tasmanian Animal Hospitals to terminate the Tasmanian Animal Hospitals Employee Collective Agreement 2007.

The matter has been allocated to Commissioner Lee of the Fair Work Commission for determination.

If the application to terminate the Tasmanian Animal Hospitals Employee Collective Agreement 2007 is successful, your minimum employment entitlements will be regulated by the applicable modern award.

Commissioner Lee, when determining whether to terminate the agreement, is required to take into account the views of employees covered by the agreement.

If you have any views about the application to terminate the agreement, please advise the Commissioner by email at chambers.lee.c@fwc.gov.au or by calling (03) 8656 4753. Views are to be provided to the Fair Work Commission by close of business Tuesday, 19 November 2019.”

[10] On 12 November 2019, I received a statutory declaration, declared by Ms Mayne, stating that copies of the notice were issued to employees by email on 12 November 2019.

[11] No opposition to the application was received from or on behalf of any party.

[12] Having regard to the above, I am satisfied, in accordance with s. 226(a) of the Act, that it is not contrary to the public interest to terminate the agreement. I am also satisfied, in accordance with s. 226(b) that it is appropriate to terminate the agreement having regard to the circumstances of the matter. I am therefore required by s.226 of the Act to terminate the agreement.

¹ Statutory Declaration of Haley Mayne, dated 3 October 2019.

[13] The termination of the agreement shall operate from the date of this decision.



COMMISSIONER

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