



## DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

**Community of Cypriots of the Northern Suburbs of Melbourne Inc. t/a  
Grace of Mary Greek/Cypriot Elderly Hostel and St Andrews Hostel**  
(AG2019/3224)

### **COMMUNITY OF CYPRIOTS OF THE NORTHERN SUBURBS OF MELBOURNE INC., ANF AND HSU ENTERPRISE AGREEMENT 2017**

Aged care industry

DEPUTY PRESIDENT MANSINI

MELBOURNE, 24 DECEMBER 2019

*Application for approval of the Community of Cypriots of the Northern Suburbs of Melbourne Inc., ANF and HSU Enterprise Agreement 2017.*

[1] Grace of Mary Greek/Cypriot Elderly Hostel and St Andrews Hostel has applied for approval of a single enterprise agreement known as the *Community of Cypriots of the Northern Suburbs of Melbourne Inc., ANF and HSU Enterprise Agreement 2017* the Agreement), pursuant to s.185 of the *Fair Work Act 2009* (Cth) (the Act).

[2] Since the application was made, the Commission raised concerns about whether: the pre-approval requirements were met, the Agreement contravenes s.55 of the Act and passes the better off overall test. Further information was provided in relation to these concerns.

[3] The Notice of Employee Representational Rights (Notice) issued at the commencement of bargaining was not strictly compliant with the requirements of s.174 because it included additional content (logos and other written text). The Notice was also not strictly compliant with the requirements of s.181(2) because employees were requested to vote in less than 21 days from when the Notice was given. The Notice was otherwise compliant in all respects. In the circumstances and having regard to the decision in *Huntsman Chemical Company Australia Pty Limited t/a RMAX Rigid Cellular Plastics and Others*<sup>1</sup>, I am satisfied that:

- a) these constitute minor procedural or technical errors for the purposes of s.188(2)(a); and
- b) the employees to be covered by the Agreement were not likely to have been disadvantaged by the errors.

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<sup>1</sup> [2019] FWCFB 318.

[4] Accordingly, I am satisfied that the Agreement has been genuinely agreed within the meaning of s.188(2) of the Act.

[5] Written undertakings were given in accordance with s.190 of the Act and are attached at Annexure A (Undertakings). The bargaining representatives, either supported or did not oppose the Undertakings. I am satisfied that the Undertakings will not cause financial detriment to any employee covered by the Agreement and that the Undertakings will not result in substantial changes to the Agreement. Pursuant to s.201(3) of the Act, the Undertakings are taken to be terms of the Agreement.

[6] On the basis of the material contained in the application, further information provided on request of the Commission and the Undertakings, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met.

[7] The Australian Nursing and Midwifery Federation (Victorian Branch) and the Health Services Union Victorian No.1 Branch, being bargaining representatives for the Agreement, have respectively given notice under s.183 of the Act. In accordance with s.201(2) I note that the Agreement covers these organisations.

[8] The Agreement was approved on 24 December 2019 and, in accordance with s.54, will operate from 31 December 2019. The nominal expiry date of the Agreement is 30 June 2021.



DEPUTY PRESIDENT

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Annexure A

**IN THE FAIR WORK COMMISSION**

**FWC Matter No.:** AG2019/3224

**Applicant:**

**Community of Cypriots of the Northern Suburbs of Melbourne Inc.**

Section 185 – Application for approval of a single enterprise agreement

**Amended Undertakings- Section 190**

I, STEF VLAHOGEORGOS Director of Nursing of Community of Cypriots of the Northern Suburbs of Melbourne Inc. give the following undertakings with respect to the Community of Cypriots of the Northern Suburbs of Melbourne Inc., ANMF and HSU Enterprise Agreement 2017 ("the Agreement"):

1. I have the authority given to me by Community of Cypriots of the Northern Suburbs of Melbourne Inc. to provide these undertakings in relation to the application before the Fair Work Commission.
2. In respect of Clause 6.1 of the Agreement, that provision will be applied as if the following new sentence appeared following the second sentence contained therein:

“To the extent that a provision of the NES is more beneficial than a term in this Agreement, the NES term will prevail.”
3. In respect to the engagement of staff covered by the Wage Skill Groups in Appendix A and the classification definitions in Appendix B of the Agreement, the employer will not, during the life of this Agreement, employ staff in either Wage Skill Group 4 or 5.
4. In respect of Clause 27.7(c)(ii) of the Agreement, that provision will be applied as if the words “Public Holidays” were deleted and a new paragraph (iii) were inserted:

“(iii) Public Holidays –an amount equal to one thirty-eighth of the weekly wage appropriate to the employee's classification per hour plus, in the case of a HASA Employee, 75 percent and in the case of an Enrolled Nurse 100 per cent (including the casual loading).”

In addition, in respect of Clause 58.6(a) of the Agreement, that provision will be applied as if the second sentence read:

“ A casual Enrolled Nurse or HASA Employee shall be paid 200% or 175% respectively (including the 25% casual loading) for the time worked.”

5. In respect of the proviso contained in Clause 47.1 of the Agreement, that provision will also be applied to the following classifications:
  - Part-time Enrolled Nurses Pay Points 3 to 6 who work a Sunday AM shift and less than an additional 8 non-Sunday hours in the same week;
  - Part-time Trainee Enrolled Nurse who works a Sunday AM shift and less than an additional 2 non-Sunday hours in the same week;
  - Casual Enrolled Nurses Pay Points 3 to 5 who works a Sunday AM shift and less than an additional 8 non-Sunday hours in the same week; and
  - Casual Enrolled Nurses pay Points 3 to 8 who work only on a Sunday AM shift in a week.
6. In respect of Clause 27.12 of the Agreement, that provision will be applied on the basis that junior HASA staff will be paid no less than the weekly rate payable to an appropriately classified employee under the Aged Care Award 2010.
7. In relation to Clauses 27.3(a) and 46.3 of the Agreement, those provisions will be applied on the basis that part-time HASA employees who work hours in excess of their rostered hours on any day (but less than the full-time rostered shift length) will be paid overtime rates unless they have agreed in writing to do so at ordinary rates by changing their rostered shift length. Beyond the usual full-time rostered shift length for that shift the Employee will be paid at overtime rates.
8. In relation to Clause 44.2 of the Agreement, any such training which is required of an employee outside their rostered hours of work will be paid for at ordinary rates for up to twelve (12) hours in any year and thereafter at overtime rates.
9. In respect of Clause 47.3 of the Agreement, that provision will have no application during the life of the Agreement.
10. In respect of Clause 50.2 of the Agreement, that provision will not be applied inconsistently with the requirements of the Nurses Award 2010.
11. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

SIGNATURE:  \_\_\_\_\_

Stef Vlahogeorgos

DATE: 21 October 2019