



# DECISION

*Fair Work Act 2009*

s.185 - Application for approval of a single-enterprise agreement

**Warrnambool City Council Trading AS City of Warrnambool**  
(AG2025/2041)

## **WARRNAMBOOL CITY COUNCIL ENTERPRISE AGREEMENT NO 10 - 2025**

Local government administration

COMMISSIONER REDFORD

MELBOURNE, 10 JULY 2025

*Application for approval of the Warrnambool City Council Enterprise Agreement No 10 - 2025*

[1] An application has been made for approval of an enterprise agreement known as *the Warrnambool City Council Enterprise Agreement No 10 – 2025 (the Agreement)*. The application was made pursuant to s.185 of the *Fair Work Act 2009 (the Act)*. It has been made by Warrnambool City Council Trading AS City of Warrnambool (**City of Warrnambool**). The Agreement is a single enterprise agreement.

### **Casual employees**

[2] The F17B Declaration filed in support of this application indicated that there were 570 employees covered by the agreement at the time of the vote, 373 employees cast a valid vote and 242 voted to approve the agreement. It also indicated that 300 of those employees were casual employees. Taking into account the decision of the Full Bench in *Appeal by Kmart Australia Limited & Ors*<sup>1</sup> I was concerned that if employees voted in the ballot who were not eligible to vote the outcome may have been affected. However, City of Warrnambool confirmed that there was an error in its declaration, and there were 732 employees covered by the agreement at the time of the vote. It also confirmed that only 136 casual employees participated in the vote, being the number of casual employees eligible to participate (by having been rostered to work during the access period). On this basis, I am satisfied that only those employees who were eligible to vote participated in the vote and its outcome was not affected by the inclusion of ineligible employees.

### **Undertakings**

[3] In response to several issues raised with City of Warrnambool in relation to its application, it has provided written undertakings, a copy of which are attached in Annexure A. 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. The undertakings are taken to be a term of the agreement.

[4] The undertakings relate to:

- a. Clause 12.4 - Trainee Rates
- b. Clause 12.13.4 - Supported Wage Rates
- c. Clause 1.5(c) - Consultation Term

### **Interaction with the National Employment Standards**

[5] Clause 1.5(b) of the Agreement provides that where there are matters in the National Employment Standards (NES) which are not specifically included in the agreement then they shall apply to all employees covered by the agreement. The clause further provides that where the NES provide entitlements to employees which are more beneficial than those provided for in the Agreement then the provisions of the NES shall apply to the extent of any inconsistency (**the NES precedence clause**). On this basis, I am satisfied that the apparent inconsistencies with the NES outlined below do not prevent the approval of this agreement:

- a. Clause 5.8(ii) of the Agreement states severance pay is calculated on the basis of 2 weeks for each completed year of service. Section 119(2) of the Act provides for a severance payment calculated at 4 weeks in circumstances where an employee has worked for one year, but less than two years. On the basis of the NES precedence clause, the more favourable entitlement provided for in the NES will apply.

### **Consideration**

[6] Subject to the undertakings referred to above, 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 Agreement is approved and, in accordance with s.54 of the Act, will operate 7 days after approval.



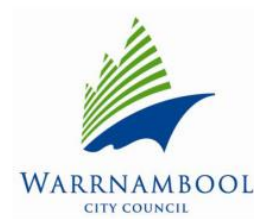
COMMISSIONER

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## ANNEXURE A

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IN THE FAIR WORK COMMISSION

FWC Matter No.:  
AG2025/2041 - Application for approval of the Warrnambool City Council Enterprise Agreement No 10 - 2025

Applicant:  
Warrnambool City Council  
25 Liebig Street  
Warrnambool VIC 3280

Section 185 – Application for approval of a single enterprise agreement

### Undertaking – Section 190

I, Andrew Mason, Chief Executive Officer have the authority given to me by Warrnambool City Council (The Council) to give the following undertakings with respect to the Warrnambool City Council Enterprise Agreement No 10 - 2025 ("the Agreement"):

1. That clause 12.4 of the Agreement be read as follows:

*"A trainee employed by a respondent to this Agreement shall be engaged in accordance with the terms and conditions of employment as prescribed in Schedule D of the Victorian Local Government Award 2015 as varied, except that trainees will be paid \$5 per week more than the relevant trainee rate contained in the Award."*

2. That clause 12.13.4 of the Agreement be read as follows:

*"Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this award/agreement for the class of work which the person is performing according to the following schedule:*


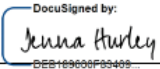
<i>Assessed capacity</i>	<i>Prescribed award rate</i>
10%*	11%
20%	21%
30%	31%
40%	41%
50%	51%
60%	61%
70%	71%
80%	81%
90%	91%

*Provided that the minimum amount payable shall be not less than \$200.00 per week.*

*\* Where a person's assessed capacity is 10%, they shall receive a high degree of assistance and support."*

3. That Despite the provisions of clause 1.5(c) of this Agreement, it is intended that clause 8 of Part B of the Agreement prevails over the terms of clause 3.1 of the Agreement to the extent of any inconsistency.

This undertaking is provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

Date signed:	9/7/2025   11:42 AEST
For and on behalf of the Employer by: [In accordance with s.190(5) of the FW Act]	Andrew Mason
Signature:	 Signed by: Andrew Mason A65288D87F0240F...
Witness name:	Jenna Hurley
Witness signature:	 DocuSigned by: Jenna Hurley DEB189606F63409...

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<sup>1</sup> [\[2019\] FWCFB 7599](#)