

[2025] FWCA 286 [Note: An appeal pursuant to s.604 (C2025/1449) was lodged against this decision - refer to Full Bench decision dated 9 September 2025 [[\[2025\] FWC FB 203](#)] for result of appeal.]



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

**The Corporation Of The Trustees Of The Roman Catholic Archdiocese Of
Brisbane Trading As Centacare T/A Centacare**
(AG2024/4858)

2024 CENTACARE COMMUNITY SERVICES ENTERPRISE AGREEMENT

Social, community, home care and disability services

DEPUTY PRESIDENT DOBSON

BRISBANE, 23 JANUARY 2025

Application for approval of the 2024 Centacare Community Services Enterprise Agreement

[1] This decision deals with an application made for approval of an enterprise agreement known as the *2024 Centacare Community Services Enterprise Agreement (the Agreement)*. The Application was made pursuant to s.185 of the *Fair Work Act 2009 (the Act)* by The Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane T/A Centacare (**the Applicant**). The Agreement is a single enterprise agreement.

[2] The Notice of Employee Representational Rights (NERR) distributed to employees appears to have a different name for the Agreement to that which was eventually made. However, I am satisfied that the Agreement would have been genuinely agreed to but for the minor procedural departure from the prescribed form requirements of the NERR under s.174(1A) of the Act and that the employees covered by the Agreement were not likely to have been disadvantaged by this. Accordingly, I exercise the discretion conferred by s.188(5) of the Act.¹ Hence, having regard to the submissions of the Applicant and the evidence before me, I find that this error constitutes a minor procedural and/or technical error in accordance with s.188(2) of the Act.²

[3] Further, I note the ASU made written submissions, that the NERR was not provided to all employees, nor that they were given access to the relevant documents at the appropriate time nor provided with an opportunity to vote. I also note the submissions and statutory declaration from the Applicant that this was not correct and that the Agreement is a replacement Agreement with the exact coverage of its predecessor and that all of those employees were given the NERR, access and an opportunity to vote. Further the Applicant advised that the ASU had not raised any concerns about any of these issues prior to the Application being filed.

[4] I listed the matter for a determinative conference on 22 January 2024. The Applicant, ASU, Australian Workers Union (AWU) and other bargaining representatives attended and representatives from the Applicant including Mr Thompson and Ms Roy were all put on oath. Parties were given an opportunity to make submissions and take me through the preceding and proposed Agreements.

[5] I am satisfied that the Zombie Agreement by reference to clauses 1.3 and 3.7.2.1 refer to the classifications defined in Schedules A and B of that Agreement which are clearly headed 'Disability' and 'Aged Care.' I am satisfied based on the uncontested evidence of all parties at the conference, that the new Agreement covers the cohort who were provided a copy of the NERR, had access to the required documents at the required time and subject to the clause above regarding casual employees, that all employees eligible to do so were given an opportunity to vote on the Agreement. I am therefore satisfied that the Agreement was genuinely agreed to by relevant employees.

[6] The Applicant has provided written 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.

[7] The views of each person who the Fair Work Commission knows is a bargaining representative for the Agreement have been sought in relation to the proposed Undertakings proffered on 20 January 2025.

[8] Pursuant to s.190(3) of the Act, I accept the undertakings.

[9] Subject to the undertakings referred to above, having regard to the Statement of Principles,³ on the basis of the material contained in the application and accompanying declarations, I am satisfied that each requirement of ss186, 187 and 188 as are relevant to this application for approval have been met. The undertakings are taken to be a term of the Agreement.

[10] The Agreement does not contain a model flexibility term compliant with the Act. Pursuant to s.202(4) of the Act, the model flexibility term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement

[11] I observe that the following provisions are likely to be inconsistent with the National Employment Standards (NES):

- Clause 16.4 – Varying of Redundancy Pay must be subject to an application under s.120 of the Act
- Clause 33.5(e) – Parental Leave definition of a child
- Clause 42 – Compassionate leave should not be restricted to the death of a family member
- Clause 34.2 – Public Holidays

However, noting clause 7.2 of the Agreement, I am satisfied the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[12] The Australian Workers Union (AWU) and Australian Municipal, Administrative, Clerical and Services Union (ASU) have each lodged a Form F18 statutory declaration giving notice under s.183 of the Act that they want the Agreement to cover them. In accordance with s.201(2) of the Act, I note the Agreement covers the AWU and ASU.

[13] The United Workers Union (UWU) also submitted a Form F18 however I note from the Applicant's material that the UWU did not have a bargaining representative involved in making the Agreement. I wrote to the UWU regarding this and giving them an opportunity to make submissions however they did not respond. On that basis I note the UWU is not entitled to be covered by the Agreement,⁴ and the Agreement does not cover the UWU.

[14] Both the ASU and my chambers raised concerns regarding the Better Off Overall Test (BOOT) with the Applicant. The Applicant made submissions in these regards and the ASU and AWU were given an opportunity to respond to those but did not do so. I have considered all of this material and have determined that given the more beneficial terms of the Agreement and the undertakings given, I am satisfied that the Agreement passes the BOOT.

[15] The Agreement is approved and will operate from 23 January 2025. The nominal expiry date of the Agreement is 22 January 2028.



DEPUTY PRESIDENT

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¹ *Huntsman Chemical Company Australia Pty Limited T/A RMAX Rigid Cellular Plastics & Others* [2019] FWCFB 318 [117].

² *Kingston City Council T/A King City Council* [2020] FWCA 2323, at [49].

³ Fair Work (Statement of Principles on Genuine Agreement) Instrument 2023.

⁴ Fair Work Act 2009 (Cth) s.183(1).