



# Express law

*fast track information for clients*

8 DECEMBER 2014

## Fair Work Commission provides guidance on interpreting enterprise agreements

The decision of the Full Bench of the Fair Work Commission (FWC) in [Australasian Meat Industry Employees Union v Golden Cockerel Pty Ltd \[2014\] FWCFB 7447](#) gives agencies guidance on how the FWC will interpret enterprise agreements made under the *Fair Work Act 2009* (FW Act).

Where disputed terms have a plain meaning, that meaning cannot be contradicted by evidence of the broader context of the agreement – for example, prior negotiations. The FWC also found that the *Acts Interpretation Act 1901* (AI Act) does not apply to enterprise agreements made under the FW Act.

### *Case summary*

---

The dispute arose when the respondent varied some employees' shift arrangements. The appellant applied to the FWC to deal with the dispute under the dispute settlement procedure in the relevant enterprise agreement. The appellant used emails and other documents created during negotiations for the agreement to argue that the disputed clauses did not allow changes to employees' working hours without their consent.

Senior Deputy President Richards determined the dispute in favour of the respondent. The Full Bench of the FWC agreed with Senior Deputy President Richards' construction of the agreement and refused leave to appeal.

### *General principles for interpreting an agreement*

---

The FWC held that the following principles apply when interpreting an enterprise agreement made under the FW Act (at [41]):

- It is first necessary to determine whether the agreement has a plain meaning or contains an ambiguity.
- In determining whether ambiguity exists, the FWC will look at the evidence of surrounding circumstances, including evidence of prior negotiations that establishes the objective background facts known to all parties, matters in common contemplation and notorious facts of which knowledge is presumed.
- If the agreement has a plain meaning, contradictory evidence of the surrounding circumstances will not be considered
- If the agreement is ambiguous, the FWC can use evidence of the surrounding circumstances to assist in interpreting the agreement.
- The FWC will consider the language of an agreement, understood in light of its context and purpose, to resolve disputes over the interpretation of an agreement.
- 'Context' includes the text of the agreement as a whole, the place of the disputed provision in the agreement and the legislative context in which it was made.

- The common intention of the parties will be determined objectively by interpreting the language used in the agreement in a way that a reasonable person would.
- The task of interpreting an agreement does not involve rewriting the agreement to achieve what might be regarded as a fair or just outcome.

The Full Bench rejected the appellant's contention that the agreement must be interpreted in accordance with the AI Act. The AI Act would apply to an instrument made by an authority that has the power to make the instrument under an Act (s 46). However, the FW Act does not give the FWC the power to make an enterprise agreement; the FWC's role is to approve an agreement that has already been made. Accordingly, the AI Act cannot be used when interpreting an agreement that the FWC has approved.

### ***Application of principles of construction to the agreement***

---

The FWC found that the disputed clauses had a plain meaning. The extrinsic material that the appellant relied on did not show that there was any ambiguity in the clauses ([57]). The FWC held that the dispute should be resolved by reference to the plain language of the agreement ([58]), which indicated that the respondent was entitled to alter the starting times of the employees without their consent.

### ***Implications***

---

The decision sets out the FWC's approach to interpreting enterprise agreements made under the FW Act. It gives agencies guidance on the general principles that the FWC will apply when interpreting these agreements.

The decision outlines the circumstances in which extrinsic material can be used when interpreting an agreement. Importantly, it explains that, if there is no ambiguity in the text of the agreement and a term has a plain meaning, extrinsic material cannot be relied on to contradict that meaning. The decision affirms that it is important for agencies to pay careful attention to the drafting and language used in their enterprise agreements.

*For further information please contact:*

**Amanda Johnston**

Senior General Counsel

T 02 6253 7591

[amanda.johnston@ags.gov.au](mailto:amanda.johnston@ags.gov.au)

---

**Important: The material in *Express law* is provided to clients as an early, interim view for general information only, and further analysis on the matter may be prepared by AGS. The material should not be relied upon for the purpose of a particular matter. Please contact AGS before any action or decision is taken on the basis of any of the material in this message.**

This message may contain confidential or legally privileged information. Only the addressee has the right to use or disseminate this information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS. Find out more about AGS at <http://www.ags.gov.au>.

If you do not wish to receive similar messages in the future, please reply to:

<mailto:unsubscribe@ags.gov.au>