

[2024] FWCA 1354 [Note: a [correction](#) has been issued to this document]
[Note: An appeal pursuant to s.604 (C2024/2835) was lodged against this decision- refer to Full Bench decision dated 23 July 2024 [\[\[2024\] FWCFB 317\]](#) for result of appeal.]



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

DP World Sydney Limited
(AG2024/1057)

DP WORLD SYDNEY ENTERPRISE AGREEMENT 2024

Stevedoring industry

COMMISSIONER MATHESON

SYDNEY, 16 APRIL 2024

Application for approval of the DP World Sydney Enterprise Agreement 2024

[1] An application has been made for approval of an enterprise agreement known as the *DP World Sydney Enterprise Agreement 2024* (Agreement). The application was made by DP World Sydney Limited (Applicant) pursuant to s.185 of the *Fair Work Act 2009* (Cth) (Act). The Agreement is a single enterprise agreement.

[2] Changes to the Act came into effect on 6 June 2023 in relation to genuine agreement. The Form F17A indicates that the notification time for the Agreement was 31 March 2023. In these circumstances and as a consequence of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Amending Act), clause 66 of Part 13 of Schedule 1 of the Act has the effect that despite the amendments made to the Act by Part 14 of Schedule 1 to the Amending Act, Part 2-4 of the Act continues to apply as if the amendments had not been made. The application has been assessed on this basis, taking into account the provisions of Part 2-4 of the Act in relation to genuine agreement in force immediately prior to 6 June 2023.

[3] I observe that certain provisions of the Agreement may be inconsistent with the National Employment Standards (NES). However, noting clause 5.3 of the Agreement, I am satisfied that the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[4] Pursuant to s.202(4) of the Act, the model flexibility term prescribed by the *Fair Work Regulations 2009* (Cth) (Regulations) is taken to be a term of the Agreement.

[5] Pursuant to s.205(2) of the Act, the model consultation term prescribed by the *Fair Work Regulations 2009* (Cth) (Regulations) is taken to be a term of the Agreement.

[6] On the basis of the materials before the Commission, I am satisfied that each of the requirements of ss.186, 187 and 188 of the Act as are relevant to the application for approval of the Agreement have been met.

[7] The Construction, Forestry and Maritime Employees Union being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) of the Act, I note that the Agreement covers the organisation.

[8] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 23 April 2024. The nominal expiry date of the Agreement is 31 January 2028.



COMMISSIONER

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