

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *In the termination of the Western Downs Regional Council Personal Carers and Support Workers Certified Agreement 2021 [2022] QIRC 333*

PARTIES: **Western Downs Regional Council**

AND

The Australian Workers' Union

The United Workers' Union

CASE NO: CB/2022/61

PROCEEDING: Termination of an agreement

DELIVERED ON: 26 August 2022

HEARING DATE: 25 August 2022

MEMBER: Dwyer IC

HEARD AT: Brisbane

ORDER: **1. *The Western Downs Regional Council Personal Carers and Support Workers Certified Agreement 2021 is terminated.***

CATCHWORDS: INDUSTRIAL LAW - COLLECTIVE BARGAINING - application for termination of agreement before nominal expiry date - requirements for termination - agreement terminated

LEGISLATION: *Industrial Relations Act 2016 (Qld) s 227*

Industrial Relations (Tribunals) Rules 2011 (Qld) r 178

APPEARANCES: Ms J Marrinan of Western Downs Regional Council

Mr G Taylor of the Australian Workers' Union

Mr S Ong for the United Workers' Union

Reasons for Decision

- [1] On 22 July 2022, Western Downs Regional Council ('the Applicant') applied, pursuant to s 227(1) of the *Industrial Relations Act 2016 (Qld)* ('the Act'), to terminate the *Western Downs Regional Council Personal Carers and Support Workers Certified Agreement 2021* ('the certified agreement').
- [2] The certified agreement has a nominal expiry date of 27 August 2024.
- [3] Section 227 of the Act provides:
- (1) On or before the nominal expiry date of a certified agreement or arbitration determination, the employer **and** the organisations to which the agreement or determination applies may apply to the commission to terminate the agreement or determination.
 - (2) The commission must approve the termination if, and must not approve the termination unless, satisfied a valid majority of the **relevant employees at the time** approve the termination.
 - (2) The termination takes effect when the commission's approval takes effect.
- (Emphasis added)
- [4] The application was filed on 22 July 2022 in the Industrial Registry, together with an affidavit of Mr Daniel Paul Fletcher, The Acting Chief Executive Officer of Western Downs Regional Council and a Notice of Intention to terminate a Certified Agreement.¹
- [5] The affidavit of Mr Daniel Paul Fletcher outlines that the termination of the certified agreement is sought because the Western Downs Regional Council's residential aged care services, community care services and related facilities were transferred to a private facility (Southern Cross Care Queensland) on 1 April 2022. Subsequently, the Applicant no longer engages employees that fall under the certified agreement. Mr Fletcher also notes in his affidavit that the Applicant has no intention of becoming a health services or community care services provider in the future.

¹ I note that s 227 requires 'the employer *and* the organisation' to make the application. Given the relevant organisations have expressed consent for the termination, I am prepared to characterise this as a joint application.

- [6] Mr Fletcher further deposes to the fact that the persons to whom the certified agreement applied were notified in accordance with Rule 178 of *the Industrial Relations (Tribunals) Rules 2011* (Qld) ('the Rules').
- [7] The Australian Workers' Union ('AWU') and the United Workers' Union ('UWU') confirmed their consent to this application at the hearing. I consider this important in this application because, given the functions and facilities previously operated by the Applicant were transferred to a private provider in April 2022, there is unlikely to be any 'relevant employees' remaining for the purposes of s 227(2). I am confident that if there was any dissent about the application for termination it would have been identified by the AWU or the UWU.
- [8] In the circumstances where notice was given of the application in accordance with the Rules, and where the AWU and the UWU consent, I am satisfied that there is no barrier to termination of the certified agreement.
- [9] Section 227(3) of the Act provides that termination takes effect when the Commission's approval takes effect.
- [10] Accordingly, I approve the termination of the *Western Downs Regional Council Personal Carers and Support Workers Certified Agreement 2021* with effect from 25 August 2022.
- [11] I make the following order:
- 1. The *Western Downs Regional Council Personal Carers and Support Workers Certified Agreement 2021* is terminated.**