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The Full Federal Court has ruled that a 'no further claims' clause in an enterprise agreement cannot prevent an employer and its employees from agreeing to vary an enterprise agreement in accordance with the *Fair Work Act 2009*.

Validity of 'no further claims' clauses in enterprise agreements

The Full Federal Court's decision in *Toyota Motor Corporation Australia Ltd v Marmara* [2014] FCAFC 84 examined the validity of clauses in enterprise agreements that purport to prevent further variations to terms or conditions of employment ('no further claims' clauses). The Full Court found that 'no further claims' clauses cannot prevent an employer and its employees from agreeing to vary an enterprise agreement in accordance with Div 7 of Pt 2-4 of the *Fair Work Act 2009* (Cth). To the extent that a 'no further claims' clause might have that effect, the clause is invalid because of inconsistency with the statutory rights of an employer and employees to agree variations under the Fair Work Act.

Federal Court decision

Toyota wrote to employees covered by the Toyota Motor Corporation Australia (TMCA) Workplace Agreement (Altona) 2011 proposing 29 variations to that agreement. The Federal Court agreed that Toyota's proposals were 'further claims' within the meaning of the 'no further claims' clause in the agreement. The 'no further claims' clause relevantly provided that parties '[would] not prior to the end of [the agreement] make any further claims in relation to wages or any other terms and conditions of employment …'.

The primary judge, Bromberg J, held that the 'no further claims' clause itself would have been invalid for inconsistency with the Act but for the fact that Toyota and its employees could vary or remove the 'no further claims' clause in accordance with the Fair Work Act. Bromberg J found that Toyota's conduct in proposing the variations to the agreement contravened the 'no further claims' clause of the agreement.

Full Federal Court decision

Toyota appealed this decision to the Full Federal Court (Jessup, Tracey and Perram JJ). The Full Federal Court found that the 'no further claims' clause is 'inconsistent with or repugnant to' the Fair Work Act to the extent that it purports to prevent the employer and employees covered by the agreement from agreeing to vary the agreement in accordance with the Fair Work Act. The Parliament has expressly provided in Div 7 of Pt 2-4 of the Fair Work Act a right for an employer and employees to agree variations to their enterprise agreement. The Court said it would be inconsistent with that right if a 'no further claims' clause in an agreement could operate to restrict or qualify that statutory right.

Further, the Court held that the 'no further claims' clause could not be 'saved from invalidity' because Toyota and its employees could vary the agreement to vary or remove the 'no further claims' clause by agreement (contrary to what Bromberg J said at first instance).

Implications for agencies

Most agency enterprise agreements include a 'no further claims' clause. This case makes it clear that, even where an agreement includes such a clause, the clause cannot prevent an agency from seeking the approval of employees to vary (or terminate) the agreement in accordance with the Fair Work Act. Although it is not legally necessary, agencies could seek to clarify this issue by, for example, making expressly clear that the 'no further claims' clause in their next enterprise agreement does not prevent actions taken in accordance with the Fair Work Act.

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