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Court rules that external document not incorporated into agreement

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Incentive payment provisions in a remuneration document referenced in abattoir operator Teys Australia's enterprise agreement did not vary or become incorporated terms of the agreement, a full Federal Court has ruled.

The case no longer has any consequences on the ground for the parties, because in May this year they reached a settlement under which Teys was to backpay workers who were not properly compensated under the remuneration arrangement, which provided for an incentive payment scheme (see [Related Article](#)).

The long-running "saga" involved claims by Teys Australia Beenleigh Pty Ltd that the incentive payment system — which the company applied to the wages of its Beenleigh abattoir workers from 2010 to 2013 — had not been validly incorporated into the [Teys Bros \(Beenleigh\) Pty Ltd/AMIEU Production Department Enterprise Agreement 2010](#).

After the 2010 agreement was made, but before it was approved by the Commission, a remuneration document, setting out an alternative wage and incentive structure for certain employees, was signed off on by both Teys Australia and the AMIEU on November 9, 2009.

Teys appealed Justice Mordy Bromberg's [January decision](#), which rejected Teys Australia's claims the incentive payment system was not validly incorporated because the incorporation was not permitted by [s257](#) of the Fair Work Act (see [Related Article](#)).

However, Justices Chris Jessup, Robert Tracey and Michael Barker partly allowed Teys appeal, finding that the incentive payment provisions of the remuneration document did not have effect as a variation of, and did not become terms of, the agreement.

It said that s257 has a "limited, targeted operation" and while it allows for minor modifications to be made to an agreement from "time to time", it does not vary the terms of the agreement.

"It was not intended to make effective a provision in an enterprise agreement that purported to provide for the future variation of the agreement otherwise than by recourse to the procedure for which Division 7 provided.

"Its function was only to qualify the impact of [s46AA](#) of the Acts Interpretation Act," the full court said.

Court makes determination without reference to principal claim

The full court said that it made its determination without consideration to one of Teys Australia's principal claims that the "instrument" referred to in s257 had to be "in force" at the time of the enterprise agreement being made.

It found that the facts of the case did not require the court to resolve the difficult issues between the operation of s257 and the timing of the making, and approval, of an agreement.

"In short, it would be inappropriate for the present case, with its very particular facts, to be the vehicle for a categorical determination of the kind sought by [Teys Australia], the full court said.

The full court held the remuneration document did not form part of, and did not vary, the enterprise agreement.

It set aside "[Order 1](#)" made by Justice Bromberg on January 5.

[Teys Australia Beenleigh Pty Ltd v Australasian Meat Industry Employees' Union \[2016\] FCAFC 122 \(9 September 2016\)](#)

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