

AUSTRALIA / JUDGMENT

Hy-Tec Industries Pty Ltd – Maxi Concrete Contract Determination Variation 2026

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Industrial Relations Commission New South Wales Medium Neutral Citation: Hy-Tec Industries Pty Ltd – Maxi Concrete Contract Determination Variation 2026 [2026] NSWIRComm 1092
Hearing dates: On the papers Date of orders: 25 September 2026 Decision date: 25 September 2026 Jurisdiction: Industrial Relations Commission Before: Commissioner Muir Decision: Pursuant to section 320 of the Industrial Relations Act 1996 the Hy-Tec Industries Pty Ltd – Maxi Concrete Contract Determination 2025 is varied as set out in the Schedule of the Amendments to the Application, with an effective date of 1 November 2025. Catchwords: EMPLOYMENT AND INDUSTRIAL LAW – Contracts of Carriage – application for variation to contract determination – consent position – variation made – effective date Legislation Cited: Industrial Relations Act 1996, ss 146(2), 313, 318, 320 Cases Cited: In re Butchers, Wholesale (Cumberland) Award 1971 AR 425 Transport Industry – General Carriers Contract Determination [2016] NSWIRComm 3 Transport Industry - General Carriers Contract Determination Application by Australian Road Transport Industrial Organisation, New South Wales Branch for removal of Special Fuel Price Surcharge [2010] NSWIRComm 133 Category: Principal judgment Parties: Hy-Tec Industries Pty Ltd (Applicant) Transport Workers’ Union of NSW (respondent) Representation: A Rafter (Solicitor) (Applicant) B Ryan (TWU) (Respondent) File Number(s): 2026/00377887 Publication restriction: Nil DECISION The Hy-Tec Industries Pty Ltd – Maxi Concrete Contract Determination 2025 (Determination) was made on 27 October 2025. It was made on application by Hy-Tec Industries Pty Ltd (Hy-Tec) with the consent of the Transport Workers’ Union of New South Wales (TWU). The Determination was made with effect from 1 November 2025. Application for the Determination followed several months of negotiations in the form of conciliation in the Industrial Relations Commission of NSW (Commission). Conciliation in the Commission was preceded by lengthy direct negotiations between the parties. On 11 September 2026, Hy-Tec, with the agreement of the TWU applied to vary the Determination (Application), pursuant to s 320 of the Industrial Relations Act 1996 (IR Act). The Application sets out that: While much of the Determination was the subject of “robust” negotiation, some terms were not. Some of the less discussed clauses have since exposed differences of opinion as to whether those clauses reflect a joint understanding that those clauses, while set out at greater length than in previous contract determinations, were intended to reflect existing practice. To reflect the original intent of the parties, and to avoid future conflict, the parties have agreed on amendments (Amendments) to

the Determination. The Hy-Tec TWU delegates, the TWU and Hy-Tec have all indicated their agreement to the Amendments. The Application seeks an order of the Commission varying the Determination in accordance with the Amendments. At a Directions listing on 17 September 2026, Hy-Tec, represented by Alana Rafter, solicitor, and the TWU, represented by Bailey Ryan, TWU Legal Officer, both: Submitted that the Application spoke for itself; and Supported the Amendments being made based on the matters set out in the Application. They submitted the Commission should deal with the Application “on the papers”. In the Decision I issued setting out reasons for making the Determination, I adopted submissions by Hy-Tec as to why the Determination should be made, including the following: “7. Submissions The remainder of [Hy-Tec’s] Submissions, save as to matters set out above at [5], were that: ‘ ... 4.1 In Transport Industry – General Carriers Contract Determination [2016] NSWIRComm 3, Kite AJ considered the approach the Commission should adopt when faced with applications to vary a contract determination. 4.2 His Honour referred to the TWU submissions which stated: The parties’ outlines of submissions indicate substantial agreement as to the general principles to be applied by the Commission, namely:

- (a) the Commission is vested with a broad discretion to make contract determinations under s313 of the Industrial Relations Act 1996 (NSW) (Act);
- (b) that discretion is fettered by the objects set out in section 3 of the Act and the mandatory considerations set out in section [146(2)] of the Act; and
- (c) the determination making process should, in broad terms, abide by the principles applicable to award making processes including that the object of the exercise is to set fair and reasonable conditions of work. 4.3 His Honour also made reference to the decision of Haylen J in Transport Industry - General Carriers Contract Determination Application by Australian Road Transport Industrial Organisation, New South Wales Branch for removal of Special Fuel Price Surcharge [2010] NSWIRComm 133 which stated: There was no dispute between the parties that there was a general and wide discretion provided by s 320 of the Act to vary a Determination. It was broadly accepted that, in exercising that power to vary a Determination, the Commission may be guided by similar considerations contained within s 10 and s 17, namely, that the Determination should set fair and reasonable rates and that in making a variation, the public interest is to be considered provided there is a substantial reason for making the variation. 4.4 In considering the approach that he intended to take, Kite AJ stated that: It has long been recognized that Industrial Tribunals are in a different position to the general courts. The duty of the Commission is to make an award or determination which prescribes fair and reasonable rates and conditions. In doing so the Commission is not bound by the rules of evidence or to act in a formal manner but ‘is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.’ See s 163 (1)(c) of the Act. ... There must be information before the Commission which allows it to be satisfied that the determination or award, if made, will provide just and reasonable rates and conditions. The assessment of the adequacy of that material will vary according to the nature of the case, including the degree of consent,

before the Commission: see *In re Butchers, Wholesale (Cumberland) Award 1971 AR 425* especially at 437- 440.” I approach the Application in accordance with the above. I consider matters set out above at [8] support making the Amendments as sought, including because: The Amendments do not seek to materially alter the Determination; The assessment in making the Determination, that it sets fair and reasonable conditions is, accordingly, not disturbed; The assessment in making the Determination, that the requirements of s 146(2) of the IR Act are met, is, accordingly, not disturbed; There is a substantial reason for making the Amendments, being the agreement of the parties in an attempt to avoid future disputation; I was informed that the business operations covered by the Determination have been conducted since commencement of the Determination on the basis set out in the Amendments; The Amendments will give better effect to the bargain the parties themselves considered had been struck. A contract determination may be expressed to apply retrospectively, but not earlier than the date the application was made for the determination, or the date a dispute giving rise to the determination was notified to the Commission: s 318(3) IR Act. The dispute which gave rise to the Determination was notified to the Commission on 13 May 2025. The application for the Determination, as made, was filed on 7 October 2025. Given the matters set out in [11] above, the Amendment can be given an effective date earlier than the effective date of the Determination, although rationally it cannot have a date earlier than the Determination’s effective date. Given the last two points from [10] above, it is appropriate that the amendment be given an effective date of 1 November 2025. The Application was accompanied by: A version of the Determination as made; A draft version of the Determination with the Amendments (deletions and additions) set out in mark-up to the original Determination; A draft version of the Determination incorporating the Amendments (without mark-up); and A Schedule of the Amendments. I intend to vary the Determination by order in the form of the Schedule of Amendments. I consider this is the proper form, and will better allow the Amendments to be understood should the need arise in the future.

Orders

Pursuant to section 320 of the Industrial Relations Act 1996, the Hy-Tec Industries Pty Ltd – Maxi Concrete Contract Determination 2025 is varied as set out in the Schedule of the Amendments to the Application, with an effective date of 1 November 2025. C Muir Commissioner

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Prepared on 29 October 2026 · Esheria