



DECISION

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009
Sch. 3, Item 20A(4) - Application to extend default period for agreement-based transitional instruments

Basketball Victoria Inc T/A Basketball Victoria
(AG2023/4885)

BASKETBALL VICTORIA CERTIFIED AGREEMENT 2003 - 2005

Sporting organisations

DEPUTY PRESIDENT SLEVIN
COMMISSIONER CONNOLLY
COMMISSIONER TRAN

SYDNEY, 30 JANUARY 2024

Application to extend the default period for Basketball Victoria Certified Agreement 2003 - 2005

[1] Basketball Victoria Inc has applied under Item 20A(4) of Sch 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (*Transitional Act*) to extend the default period for the *Basketball Victoria Certified Agreement 2003 – 2005* (Agreement).

[2] The Agreement is a collective agreement-based transitional instrument under item 2(5)(c) of Sch 3 of the *Transitional Act*. It is a pre-reform certified agreement that the Australian Industrial Relations Commission certified under s 170LT of the *Workplace Relations Act 1996*. It came into force on 18 November 2003.

[3] The application seeks to extend the default period of the Agreement to 30 June 2024 on the grounds that bargaining for a replacement agreement is occurring or, alternatively, that it is reasonable the circumstances to do so.

[4] The application to extend the default period is granted under item 20A(6)(a) as the criteria in subitem (7) is satisfied. Our reasons follow.

Applicable Law

[5] Item 20A of Sch 3 to the *Transitional Act* provides for the automatic sunset of agreement-based transitional instruments by the end of the default period on 6 December 2023. Specified parties may apply to the Commission for an extension of that period for up to four years in prescribed circumstances. The main features of item 20A of Sch 3 are described in detail in the Full Bench decision in *Suncoast Scaffold Pty Ltd*.¹

[6] In summary, the Commission must extend the default period under item 20A(6)(a) if one of the subitems (7), (8) or (9) applies and it is otherwise appropriate to do so, or under 20(6)(b) if it is reasonable in the circumstances to do so. The Applicant relies on item 20A(6)(a) and subitem (7), or 20A(6)(b) in the alternative.

[7] In the matter of *ISS Health Services Pty Ltd*,² the Full Bench stated that in order for subitem (7) to apply, three requirements must be satisfied:

1. The application must be made at or after the notification time for a proposed enterprise agreement; and
2. The proposed enterprise agreement must cover the same or substantially the same group of employees covered by the Agreement; and
3. Bargaining for the proposed enterprise agreement must be occurring.

[8] *ISS Health Services Pty Ltd* related to an application under item 26A(4) of Sch 3A, which relates to Division 2B State employment agreements. The wording in item 26A is substantially the same as the wording in item 20A.

Background to Application

[9] Basketball Victoria Inc agreed to commence bargaining for a proposed enterprise agreement on 16 November 2023 and issued a Notice of Employee Representational Rights on 17 November 2023.

[10] The Agreement covers 67 employees, and all of the employees of Basketball Victoria except for the CEO are proposed to be covered by the proposed enterprise agreement.

[11] Eight employee bargaining representatives were appointed. Bargaining meetings were held on 23 November 2023, 30 November 2023 and 5 December 2023. An in-principle agreement was reached on 5 December 2023. On 17 January 2024, an agreement was made after the proposed agreement was voted on by employees.

Consideration

[12] The application satisfies the three requirements of subitem (7):

1. the application was made on 5 December 2023, which is after the notification time of proposed enterprise agreement, which was 16 November 2023; and
2. the proposed agreement covers the same or substantially the same employees as the Agreement; and
3. bargaining for the proposed agreement was occurring and well advanced at the date of the application.

[13] We must therefore extend the default period if we consider it appropriate in the circumstances to do so.

[14] Negotiations for a proposed enterprise agreement have commenced and have progressed to the stage of an agreement being made. All employee bargaining representatives support an extension of the Agreement to provide the Applicant with sufficient time to seek approval under s 185 of the *Fair Work Act 2009* (Cth) of the proposed agreement. We find that it is appropriate to extend the default period to allow this to occur.

[15] The Applicant has asked that the default period be extended to 30 June 2024. This is an appropriate timeframe within which the Applicant can apply to the Commission for approval of the Agreement.

Order

[16] We order that the default period for the Agreement is extended to 30 June 2024, in accordance with item 20A(6) of Sch 3 of the Transitional Act.

[17] The Agreement is published, in accordance with subitem 20A(10A) of Sch 3 of the Transitional Act, as an Annexure to this decision.



DEPUTY PRESIDENT

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¹ 2023 FWCFB 105.

² [\[2023\] FWCFB 122](#) at [4].