

[2024] FWCFB 65[Note: A copy of the zombie agreement to which this decision relates ([AC315362](#)) is available on our website.]



DECISION

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009
Sch. 7, Item 30(4) - Application to extend default period for enterprise agreements made during the bridging period

Reserve Hotels Pty Ltd Lamb Spit Restaurant Pty Ltd T/A West Thebarton Hotel
(AG2023/4931)

WEST THEBARTON HOTEL/LHMU COLLECTIVE AGREEMENT 2008-2011

Hospitality industry

DEPUTY PRESIDENT ROBERTS
COMMISSIONER CRAWFORD
COMMISSIONER TRAN

SYDNEY, 9 FEBRUARY 2024

Application to extend the default period for West Thebarton Hotel/LHMU Collective Agreement 2008-2011

[1] **Reserve Hotels Pty Ltd trading as West Thebarton Hotel** has applied under item 30(4) of Sch 7 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (Transitional Act) to extend the default period for the *West Thebarton Hotel/LHMU Collective Agreement 2008-2011* (the Agreement).

[2] The Agreement is an enterprise agreement made during the bridging period.

[3] The application seeks to extend the default period of the Agreement to 30 June 2024 on the grounds that employees would be financially better off under the Agreement than the relevant award and also on the grounds that the application is made at or after the notification time for a proposed enterprise agreement that will cover the same, or substantially the same, group of employees as the Agreement and bargaining for a proposed enterprise agreement is occurring. The latter grounds are advanced under subitems 30(6) and (7) of Sch 7.

[4] The application to extend the default period is granted as the criteria in subitems (6)(a) and (7) of Sch 7 are satisfied. Our reasons follow.

Applicable Law

[5] Item 30 of Sch 7 to the Transitional Act provides for the automatic sunseting of all remaining enterprise agreements made during the bridging period 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. Item 30 of Sch 7 is in

substantially similar terms as item 20A of Sch 3, the main features of which 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 30(6)(a) if one of the subitems (7) or (8) applies and it is otherwise appropriate to do so, or under item 30(6)(b) if it is reasonable in the circumstances to do so. The Applicant relies on item 30(6)(a) and subitem (7).

[7] In the matter of *ISS Health Services Pty Ltd*,² the Full Bench stated that in order for subitem (7) to apply, 3 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 similar to the wording in item 30 of Schedule 7.

Background to Application

[9] The Applicant began discussions with employees and the relevant union, the United Workers' Union, about the termination of the Agreement and its replacement around 7 June 2023. According to a chronology of negotiations supplied by the Union, the first negotiation meeting for a proposed enterprise agreement was 29 August 2023. The Applicant did not issue a Notice of Employee Representational Rights for a proposed enterprise agreement until 23 December 2023.

[10] The Agreement covers 10 employees and all 10 employees are to be covered by the proposed enterprise agreement.

Consideration

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

1. The application was made on 5 December 2023, which is after the notification time. Section 173(2) of the *Fair Work Act 2009* (Cth) defines the notification time as the time when the employer agrees to bargain or initiates bargaining. The evidence establishes that the employer agreed to bargain by participating in an enterprise bargaining negotiation meeting on 29 August 2023. We note that the Notice of Employee Representational Rights was not issued until after the relevant required time frame under s 173(3), which is 14 days after the notification time. This will be a matter that the parties need to address in any application to approve the proposed agreement.
2. The proposed agreement covers the same employees as the Agreement.

3. Bargaining for the proposed agreement is occurring.

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

[13] Negotiations for a proposed enterprise agreement have started. The parties have advised the Commission that they are in the final stages of negotiation, with multiple meetings scheduled.

[14] The Union as default bargaining representative for the proposed enterprise agreement supports this extension application and provided information on the progress of bargaining. An individual employee bargaining representative also indicated their agreement with this extension application. We are satisfied that it is appropriate to extend the default period.

[15] The Applicant has asked that the default period be extended to 30 June 2024. This is an appropriate timeframe within which the Applicant and employees covered by the Agreement and the proposed agreement can finalise their negotiations, including voting for the proposed agreement and applying to the Commission for approval if the vote is in favour of the proposed agreement.

Order

[16] We order that the default period for the Agreement is extended to 30 June 2024, in accordance with item 30 of Sch 7 of the Transitional Act.

[17] The Agreement is published, in accordance with subitem 30A(9A) of Sch 7 of the Transitional Act, as an Annexure to this decision.



DEPUTY PRESIDENT

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<AC315362 PR771150>

¹ [\[2023\] FWCFB 105](#).

² [\[2023\] FWCFB 122](#) at [4].