

[2024] FWCFB 68 [Note: A copy of the zombie agreement to which this decision relates ([AG836367](#)) ([AC324241](#)) ([AC325281](#)) is available on our website.]



## 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

### **Australian Administration Services Pty. Limited**

(AG2023/4805)

### **AAS ENTERPRISE AGREEMENT**

[AG836367] [PR950973]

### **Link Business Services Pty Limited**

(AG2023/4807)

### **LINK BUSINESS SERVICES COLLECTIVE AGREEMENT 2009**

[AC324241]

### **Link Advice Pty Ltd formerly known as Money Solutions Pty Ltd**

(AG2023/4808)

### **MONEY SOLUTIONS COLLECTIVE AGREEMENT 2009**

[AC325281]

Banking, finance and insurance services industry

DEPUTY PRESIDENT ROBERTS  
DEPUTY PRESIDENT SLEVIN  
COMMISSIONER CRAWFORD

SYDNEY, 9 FEBRUARY 2024

*Applications to extend the default period for the AAS Enterprise Agreement, Link Business Services Collective Agreement 2009 and Money Solutions Collective Agreement 2009*

### **Background**

[1] The following applications have been made pursuant to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (**Transitional Act**), to extend the default period for the following agreements:

- a. Matter AG2023/4805: This is an application made by Australian Administration Services Pty. Limited (**AAS**) to extend the operation of the *AAS Enterprise Agreement* (**AAS Agreement**). The AAS Agreement is a certified agreement that was approved by the Australian Industrial Relations Commission on 18 August 2004. AAS' application seeks to extend the default period for the AAS Agreement to 6 December 2024 pursuant to Sch 3 of the Transitional Act.

- b. Matter AG2023/4807: This is an application made by Link Business Services Pty Limited (**LBS**) to extend the operation of the Link Business Services Collective Agreement 2009 (**LBS Agreement**). The LBS Agreement is a collective agreement that was approved by the Workplace Authority on 29 June 2009. LBS' application seeks to extend the default period for the LBS Agreement to 6 December 2024. Although LBS' application identifies that the application is made pursuant to Sch 7 of the Transitional Act, we do not consider the LBS Agreement is an enterprise agreement made during the bridging period. The LBS Agreement is a collective agreement made and approved under the *Workplace Relations Act 1996*. We have decided to amend LBS' application to reflect that the application is made pursuant to Sch 3 of the Transitional Act.
- c. Matter AG2023/4808: This is an application made by Link Advice Pty Ltd which was formerly known as Money Solutions Pty Ltd (**MLS**) to extend the operation of the Money Solutions Collective Agreement 2009 (**MLS Agreement**). The MLS Agreement is a collective agreement that was approved by the Workplace Authority on 24 August 2009. MLS' application seeks to extend the default period for the MLS Agreement to 6 December 2024. Although MLS' application identifies that the application is made pursuant to Sch 7 of the Transitional Act, the MLS Agreement is not an enterprise agreement made during the bridging period. We consider the MLS Agreement is a collective agreement made and approved under the *Workplace Relations Act 1996*. We have decided to amend MLS' application to reflect that the application is made pursuant to Sch 3 of the Transitional Act.

[2] 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, subject to the capacity to apply to the Commission for an extension of that period for up to four years in prescribed circumstances. The agreements to which these provisions apply are known as 'zombie agreements'. The main features of item 20A of Sch 3 are described in detail in the Full Bench decision in *Suncoast Scaffold Pty Ltd*<sup>1</sup> and we rely upon what is said in that decision.

[3] Under subitem 20A(6) of Sch 3, where an application is made under subitem 20A(4) for the default period to be extended, the Commission must extend the default period for a period of no more than four years if either (a) subitem (7), (8) or (9) applies and it is otherwise appropriate in the circumstances to do so, or, (b) it is reasonable in the circumstances to do so. Subitem (7) applies if bargaining for a replacement agreement is occurring. Subitem (8) relates to individual agreement-based transitional instruments. Subitem (9) applies if the application relates to a collective agreement-based transitional agreement and it is likely that as at the time the application is made the award covered employees, viewed as a group, would be better off overall if the agreement continued to apply than if the relevant modern award applied.

### **Grounds for application**

[4] All three applications seek an extension of the default period on the basis that subitems 20A(6)(a) and (7) of Sch 3 are satisfied.<sup>2</sup> Specifically, that there has been a notification time and bargaining is occurring for employees within the coverage of the zombie agreements for

the purposes of subitem 20A(7), and that it is “otherwise appropriate in the circumstances” to extend the default period for the purposes of subitem 20A(6)(a).

[5] The evidence in support of all three applications is contained in a witness statement from Jodi Blaufuhs-Croall (Employee Relations Manager for the Retirement and Savings Solutions business of the Link Group) dated 4 December 2023. The key elements of that evidence are:

- a. On 14 November 2023, AAS, LBS and MLS each separately issued a notice of employee representational rights (**NERR**) to the employees currently covered the AAS Agreement, LBS Agreement and MLS Agreement. Copies of the three NERRs were provided to the Commission.
- b. On 20 November 2023, AAS, LBS and MLS held the first bargaining meeting with the Finance Services Union (**FSU**) for a new consolidated enterprise agreement to replace the AAS Agreement, LBS Agreement, and the MLS Agreement. The agenda for this meeting was provided to the Commission.
- c. The AAS Agreement currently applies to 99 employees, the LBS Agreement applies to 2336 employees and the MLS Agreement applies 33 employees.
- d. It is anticipated that the process of negotiating a consolidated agreement will be reasonably complex given the three existing agreements and the number of impacted employees. It will be complicated for the three employing entities to make the payroll arrangements necessary to transition the relevant employees from the existing zombie agreements to the *Banking, Finance and Insurance Award 2020* (if the zombie agreements terminate), and then onto the terms of the new consolidated agreement during the course of around 12 months.

### **Consideration**

[6] The Full Bench in *ISS Health Services Pty Ltd*<sup>3</sup> described the three requirements for subitem (7) to apply. The first is the requirement that the application is made at or after the ‘notification time’ for a proposed agreement as defined in s 173(2) of the *Fair Work Act 2009* (**FW Act**). The second is that the proposed agreement must cover the same or substantially the same group of employees as the zombie agreement. The Full Bench stated that this could be established by comparing the NERR for the proposed agreement to the coverage clause of the zombie agreement. The third is that bargaining for the proposed agreement is occurring.

[7] We are satisfied based on the evidence of Jodi Blaufuhs-Croall that the applications have been made at or after the notification time for a proposed agreement, the group of employees covered by the proposed agreement as reflected in the NERRs, is the same or substantially the same as those covered by the zombie agreements, and that bargaining is occurring with the FSU.

[8] As subitem 20A(7) is met, subitem 6(a) requires consideration of whether it is otherwise appropriate in the circumstances to extend the default period. In *ISS Health Services*, the Full

Bench considered it appropriate to do so where the parties sought time to negotiate a replacement agreement and are not simply seeking to extend an agreement for the maximum period for the sake of convenience. The Full Bench also took into account that while the zombie agreement remained in place, the employees would be better off overall than if the modern award applied.

[9] AAS, LBS and MLS have submitted that the relevant employees will be better off overall under the existing zombie agreements than they would be under the Award. This has not been contested by the FSU or any other party.

[10] We are satisfied that it is appropriate in all of the circumstances to extend the default period for the AAS Agreement, LBS Agreement and MLS Agreement. AAS, LBS and MLS are committed to negotiating a replacement agreement and need time beyond 6 December 2023 to do so. It would be unfair for the employees' terms and conditions to revert to the Award while bargaining is occurring. This will not only have an adverse impact on their conditions of employment but alter the dynamics of bargaining.

[11] As we are satisfied that subitem 6(a) applies, we are required to extend the default period. As the Full Bench observed in *Suncoast Scaffolding Pty Ltd*<sup>4</sup> the Commission has a discretion as to the length of the extension, subject to the limitation that the extension cannot be more than four years. The nature of the discretion is such that we are not bound to grant the period of extension sought in the application.<sup>5</sup>

[12] In *ISS Health Services Pty Ltd* the Full Bench ordered an extension of 12 months in circumstances where subitem (7) applied. The Full Bench considered this sufficient time for a replacement agreement to be finalised in circumstances where there was some complexity in the bargaining, including issues of contested scope. The Full Bench noted that should the parties require assistance to finalise an agreement then s.240 of the FW Act provides the parties with access to the Commission to resolve any disputes that arise. The Full Bench noted that the additional 12 months amounted to an 18-month period in which to conclude an agreement where the NERR in that matter had been issued in June 2023.

[13] We accept that the bargaining process may have some complexity given the number of employees involved and the consolidation of the existing zombie agreements. In the circumstances, we believe that extending the default periods to 6 December 2024 as sought by AAS, LBS and MLS is reasonable.

[14] An order extending the default periods for the AAS Agreement, LBS Agreement and MLS Agreement to 6 December 2024, will be published separately. The AAS Agreement, LBS Agreement and MLS Agreement will be published, in accordance with subitem 20A(10A), on the Commission's website.



DEPUTY PRESIDENT

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<sup>1</sup> [\[2023\] FWCFB 105](#).

<sup>2</sup> The equivalent provisions in Schedule 7 are in item 30, subitems (6)(a) and (7).

<sup>3</sup> [\[2023\] FWCFB 122](#) at [4].

<sup>4</sup> [\[2023\] FWCFB 105](#), [18].

<sup>5</sup> See *Suncaost Scaffolding Pty Ltd* [\[2023\] FWCFB 105](#), [18] and *Applications by APESMA* [\[2023\] FWCFB 137](#), [31].