

[2024] FWCFB 83 [Note: A copy of the zombie agreement to which this decision relates ([AC300834](#)) ([AE871556](#)) 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

Hobart City Council
(AG2023/4813; AG2023/4816)

TATTERSALL'S HOBART AQUATIC CENTRE AGREEMENT 2006
[AC300834]

TASMANIAN TRAVEL AND INFORMATION CENTRE ENTERPRISE AGREEMENT 2009
[AE871556]

Local government administration

DEPUTY PRESIDENT WRIGHT
DEPUTY PRESIDENT SLEVIN
COMMISSIONER ALLISON

SYDNEY, 15 FEBRUARY 2024

Application to extend the default period for the Tattersall's Hobart Aquatic Centre Agreement 2006 and the Tasmanian Travel and Information Centre Enterprise Agreement 2009

[1] This decision concerns two applications made by Hobart City Council to extend the default period of two pre-2010 Agreements – namely the *Tattersall's Hobart Aquatic Centre Agreement 2006* (**Aquatic Agreement**) and the *Tasmanian Travel and Information Centre Enterprise Agreement 2009* (**Travel Agreement**). Together we will refer to the Aquatic Agreement and the Travel Agreement as “the pre-2010 Agreements”. It is appropriate that these applications are considered together as both extensions are sought on the basis that bargaining is currently occurring to replace the pre-2010 Agreements with one proposed enterprise agreement.

[2] In accordance with the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (**Transitional Act**) both the pre-2010 Agreements will terminate with effect from 6 December 2023 (the end of the default period) unless the Agreements are extended by the Commission.¹

[3] The applications are made under different schedules in the Transitional Act reflecting the different status of the pre-2010 Agreements.² However, both applications submit that the respective agreements should be extended because bargaining is occurring to replace the pre-2010 Agreements with a proposed enterprise agreement. Furthermore, the matters the

Commission must consider in determining whether to extend the pre-2010 Agreements in relation to a claim that bargaining is occurring are the same for both applications.³ The Full Bench in *ISS Health Services Pty Ltd* described the requirements that must be met for the Commission to extend the default period on the basis that bargaining for a replacement agreement is occurring.

[4] Hobart City Council has provided witness evidence from Mr Kevin Midson, Hobart City Council Manager for Workplace Relations, in support of the applications. The Australian Municipal, Administrative, Clerical and Services Union (ASU) also supports the application in relation to the Aquatic Agreement and is involved in bargaining for the proposed enterprise agreement.

[5] We are satisfied on the material provided that the requirements as detailed in *ISS Health Services Pty Ltd* have been met for both applications and that it is otherwise appropriate in the circumstances to extend the default period of the pre-2010 Agreements.

[6] Having determined to extend the default period for the pre-2010 Agreements, we turn now to consider the length of the extension. Both the Hobart City Council and the ASU have sought that the default period be extended to 6 December 2024. The parties seek additional time for bargaining, noting that the proposed enterprise agreement covers approximately 746 employees and incorporates the coverage of the Aquatic Agreement (which currently covers 126 employees), the Travel Agreement (which currently covers 18 employees) and the *Hobart City Council Enterprise Agreement 2021*. The overwhelming majority of employees to be covered by the proposed enterprise agreement are currently covered by the *Hobart City Council Enterprise Agreement 2021* which has a nominal expiry date of 30 June 2024. In these circumstances, we are satisfied it is appropriate to extend the default period until 6 December 2024 to allow appropriate time for the bargaining and approval processes of the proposed enterprise agreement to be finalised.

[7] An order to give effect to this decision will be published separately. The Aquatic Agreement and the Travel Agreement are published on the Fair Work Commission's website, in accordance with the relevant schedules.⁴



DEPUTY PRESIDENT

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<[PR771497](#)>

¹ In relation to the Aquatic Agreement see item 20A(1) and (2), Schedule 3, Transitional Act. In relation to the Travel Agreement see item 30(1) and (2), Schedule 7, Transitional Act.

² In relation to the Aquatic Agreement see item 20A(4) of Schedule 3, Transitional Act which applies to agreement-based transitional instruments. In relation to the Travel Agreement see item 30(4) of Schedule 7, Transitional Act which applies to enterprise agreements made during the bridging period.

³ In relation to the Aquatic Agreement see subitems 20A(6)(a) and (7), Schedule 3, Transitional Act. In relation to the Travel Agreement see subitems 30(6)(a) and (7), Schedule 7, Transitional Act.

⁴ In relation to the Aquatic Agreement see subitem (10A)(c), Schedule 3, Transitional Act. In relation to the Travel Agreement see subitem 30 (9A)(c), Schedule 7, Transitional Act.