



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

Application by Davbridge Properties TA Davbridge Constructions (AG2023/4430)

Building, metal and civil construction industries

DEPUTY PRESIDENT WRIGHT
DEPUTY PRESIDENT SLEVIN
DEPUTY PRESIDENT GRAYSON

SYDNEY, 19 January 2024

Application to extend the default period for Davbridge Properties Pty Ltd T/A Davbridge Constructions Collective Agreement 2009

[1] Pursuant to subitem 20A(4) of Sch 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), Davbridge Properties TA Davbridge Constructions has applied to extend the default period for the *Davbridge Properties Pty Ltd T/A Davbridge Constructions Collective Agreement 2009* (the Agreement).

[2] The application is made in accordance with subitem 20A(6), on the ground that the bargaining is occurring for a proposed enterprise agreement that will cover the same, or substantially the same, group of employees as are covered by the Agreement and that it is appropriate to do so. The application was made after the notification time for the proposed enterprise agreement.

[3] The Full Bench in *ISS Health Services Pty Ltd*¹ described the requirements that must be met for an application to extend the default period where bargaining for a replacement agreement is made.

[4] The Applicant commenced bargaining for a proposed enterprise agreement on 1 November 2023 (the notification time) by issuing the Applicant's employees with a Notice of Employee Representational Rights. The Applicant lodged its application to extend the default period for the Agreement on 20 November 2023. Accordingly, the application was made after the notification time for the proposed agreement pursuant to subitem (7)(a).

[5] All of the Applicant's employees will be covered by the new agreement. The Agreement covers 31 of the Applicant's employees. 9 additional employees are intended to be covered by the new agreement as a result of a broadening of the classification structure. The proposed enterprise agreement will therefore cover "the same or substantially the same group of employees" as the zombie agreement does for the purposes of subitem (7)(b).

[6] Finally, the applicant submits that at least six meetings with the employee bargaining representative occurred following the notification time in 2023. The Applicant contends that bargaining for a new agreement will recommence early in 2024. Therefore, bargaining for the proposed enterprise agreement is occurring, as required by subitem (7)(c).

[7] We are satisfied on the material provided that the requirements in subitem (6)(a) are met and that it is appropriate to extend the default period. The applicant has commenced bargaining for a replacement agreement, and we consider that an extension until 6 April 2024 is sufficient time for a replacement agreement to be made and approved.

[8] Pursuant to item 20A(6) of Sch 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), we order that the default period for the Agreement, is extended until 6 April 2024.

[9] The Agreement is published, in accordance with subitem 20A(10A), on the Fair Work Commission's website.



DEPUTY PRESIDENT

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¹ [\[2023\] FWCFB 122](#) at [4]