



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

Tasmanian Canine Defence League Inc t/as Dogs' Home of Tasmania
(AG2023/4007)

TASMANIAN CANINE DEFENCE LEAGUE INC EMPLOYEE ENTERPRISE AGREEMENT 2009

Animal care and veterinary services

DEPUTY PRESIDENT WRIGHT
DEPUTY PRESIDENT ROBERTS
DEPUTY PRESIDENT SLEVIN

SYDNEY, 30 JANUARY 2024

Application to extend the default period for the Tasmania Canine Defence League Inc. Employee Enterprise Agreement 2009

[1] The Tasmanian Canine Defence League Inc t/as Dogs' Home of Tasmania (**the Applicant**) 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 *Tasmania Canine Defence League Inc. Employee Enterprise Agreement 2009* (**Agreement, or the zombie agreement**) until 6 December 2024.

[2] The Agreement was made during the 'bridging period' as defined in Schedule 1 of the Transitional Act and approved under the *Fair Work Act 2009* (Cth) (**FW Act**) on 28 April 2010¹. Agreements of this kind are a species of what are commonly referred to as 'zombie agreements.'

[3] The main aspects of the statutory framework for applications for the extension of zombie agreements were detailed in the Full Bench decision in *Suncoast Scaffold Pty Ltd.*² The Full Bench there dealt with an application to extend a 'WR Act agreement' under item 20A of Sch 3 to the Transitional Act. The terms of item 20A of Sch 3 are relevantly the same as item 30 of Sch 7. The Full Bench's analysis of those provisions applies equally to item 30 of Sch 7 and it is not necessary to repeat it here.

[4] The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (**SJBP Act**) amended the Transitional Act to include item 30 in Sch 7. Item 30 provides for the sunset of remaining enterprise agreements made during the bridging period on 6 December 2023 unless extended by the Commission. Subitem 30(6) provides that where an application is made under subitem 30(4) for the 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) or (8) applies and it is otherwise appropriate in the circumstances to do so; or

(b) it is reasonable in the circumstances to do so.

[5] The present application made on the basis that subitem (7) applies. Subitem (7) applies if 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 zombie agreement and bargaining for the proposed agreement is occurring.

[6] The Applicant is a not-for-profit canine welfare organisation. It runs dogs' homes in Hobart, Launceston, Burnie and Devonport and helps lost, abandoned or unwanted dogs find homes. The Agreement covers 35 employees and applies to classifications including administrative staff, veterinary nurses, animal attendants, supervisory and management staff. The modern award that will apply if the Agreement terminates is the Animal Care and Veterinary Services Award 2020.

[7] Bargaining commenced on the new agreement to replace the zombie agreement on 30 June 2023 with the issuing of a Notice of Employee Representational Rights (**NERR**). Negotiations have been ongoing since the NERR was issued. The Applicant advises that the bargaining process is currently nearing completion with a vote of employees to be covered under the replacement agreement anticipated to occur shortly. A reason for the application is said to provide time for the agreement to be voted upon and be approved by the Commission.

[8] The Applicant acknowledges that the employees would be better off overall if the Award applied rather than the Agreement. It informs us that it pays all employees rates of pay that are in excess of the Agreement and those rates are at or above the minimum rates required under the Modern Award. The Applicant accepts that given the age and the consequential developments in workplace relations since the Agreement was made the Modern Award contains a number of provisions and conditions which were not included or even envisaged at the time of the approval of the zombie agreement.

[9] The application is also made in order to minimise operational disruption associated with moving from the Agreement to the Award and then to the replacement agreement, once approved, in a short period of time. The Applicant is willing to provide an undertaking to backdate the application of entitlements in the replacement agreement such as penalties under the proposed Agreement when approved by the Commission to 7 December 2023.

[10] The Australian Services Union – Victoria and Tasmania (**ASU**) is a bargaining representative for the replacement agreement. The Applicant informs us that the ASU supports the application.

[11] The Full Bench in *ISS Health Services Pty Ltd*³ described the requirements that must be met for an application to extend the default period where bargaining for a replacement agreement is occurring. Those requirements are met here. For the purposes of subitem (6)(a) we are satisfied on the material provided that subitem (7) applies and that it is appropriate to extend the default period. The Applicant has commenced bargaining for a replacement agreement and states that the bargaining is near completion. We note the Applicant's intention to apply the terms of the replacement agreement from 7 December 2023.

[12] The Applicant seeks a 12 month extension of the default period. We have a discretion as to the length of the extension. We believe a 6 month extension is sufficient for the replacement agreement to be finalised and approved.

[13] Pursuant to item 30(6) of Sch 7 to the Transitional Act, we order that the default period for the Agreement is extended until 6 June 2024.



DEPUTY PRESIDENT

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¹ [\[2010\] FWAA 3334](#)

² [\[2023\] FWCFB 105](#) at [3]-[18].

³ [\[2023\] FWCFB 122](#)