

[2024] FWCFB 94 [Note: A copy of the zombie agreement to which this decision relates ([AC318698](#)) ([AG842618](#)) 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

The Onemda Association Inc

(AG2023/4898)

Lora Maree Trawn

(AG2023/4778)

ONEMDA ASSOCIATION ANCILLARY STAFF COLLECTIVE AGREEMENT 2008

[AC318698]

The Australian Education Union

(AG2023/4860)

ONEMDA ASSOCIATION DISABILITY SERVICES VICTORIA (PART 1) ENTERPRISE AGREEMENT 2005

[AG842618]

Health and welfare services

DEPUTY PRESIDENT WRIGHT
DEPUTY PRESIDENT SLEVIN
COMMISSIONER ALLISON

SYDNEY, 16 FEBRUARY 2024

Application to extend the default period for the Onemda Association Ancillary Staff Collective Agreement 2008 and the Onemda Association Disability Services Victoria (Part 1) Enterprise Agreement 2005.

[1] This decision concerns three applications made pursuant to item 20A(4) of Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (**Transitional Act**), to extend the default period of two agreement-based transitional instruments covering the workforce of Onemda Association Inc (**Onemda**).

[2] The first two applications are made by Onemda and Ms Lora Trawn respectively, in relation to extending the default period of the *Onemda Association Ancillary Staff Collective Agreement 2008* (**the Ancillary Staff Agreement**). Ms Trawn makes her application in the capacity of an employee covered by the Ancillary Staff Agreement.

[3] The third application is made by the Australian Education Union (AEU) in relation to the *Onemda Association Disability Services Victoria (Part 1) Enterprise Agreement 2005 (AG842618) (the Disability Services Agreement)*. This application is supported by Onemda, subject to its views regarding the proposed extension date.

[4] Pursuant to item 20A(1) and (2), Schedule 3 of the Transitional Act, the Ancillary Staff Agreement and the Disability Services Agreement (together, **the Agreements**) will terminate with effect from 6 December 2023 (the end of the default period) unless the Agreements are extended by the Commission. The three applications before the Commission are made in accordance with subitem 20A(6)(a) 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 that are covered by the Agreements and that it is otherwise appropriate to do so.

Consideration

[5] In relation to subitem (7) we note the Full Bench in *ISS Health Services Pty Ltd*¹ considered the three requirements under this subitem in some detail and we rely on the analysis in that decision.

(7)(a) Are the applications made at or after the notification time?

[6] We are satisfied that the requirement under (7)(a) has been met. Onemda issued a Notice of Employee Representational Rights on 1 June 2023 to employees covered by the proposed enterprise agreement, a copy of which has been provided to the Commission. Accordingly, the applications, which were made in December 2023, were made after the notification time.

(7)(b) Does the proposed agreement cover substantially the same group of employees covered by the Agreements?

[7] The proposed enterprise agreement covers employees engaged in the classifications provided for in the *Social, Community, Home Care and Disability Services Industry Award 2010 (SCHADS Award)*. The proposed enterprise agreement covers the group of employees covered by the Disability Services Agreement. The proposed enterprise agreement also covers the administrative staff under the Ancillary Staff Agreement. It is noted that there is a small number of maintenance workers who are currently covered by the Ancillary Staff Agreement who are not covered by the proposed enterprise agreement. This matter is addressed below.

[8] We are satisfied that the proposed enterprise agreement covers substantially the same group of employees that are covered by the Agreements.

(7)(c) Is bargaining for the proposed enterprise agreement occurring?

[9] Onemda provided the Commission with a list of dates where regular bargaining meetings have occurred since August 2023 for the proposed enterprise agreement, including a number of proposed dates for February 2024. The AEU application supported this position stating that ‘The AEU and the employer have engaged in a series of bargaining meetings since July 2023’ and that bargaining meetings have been ‘productive’. Ms Trawn’s application also

confirmed the regular occurrence of bargaining meetings. As bargaining for the proposed enterprise agreement is occurring, we are satisfied that the requirement at (7)(c) has been met.

Application of subitem (6)(a)

[10] As outlined above, under subitem (6)(a) the Commission is required to extend the default period of the Agreements if satisfied that subitem (7) applies and ‘it is otherwise appropriate in the circumstances to do so’. For the reasons given above we are satisfied subitem (7) applies. In addition we are also satisfied that it is otherwise appropriate in the circumstances to extend the default period noting the following:

- In relation to the small number of maintenance workers who are not covered by the proposed agreement, we have accepted Onemda’s submission that these workers will not be disadvantaged by the extension of the default period. This is because:
 - All workers covered by the Ancillary Staff Agreement receive the SCHADS Award rate of pay;
 - While the award shift allowances and weekend penalties are more beneficial than the equivalent allowances in the Ancillary Staff Agreement, maintenance staff are not engaged in shift or weekend work.
 - The Ancillary Staff Agreement appears to provide for increased personal leave and increased long service leave entitlements which the maintenance staff will continue to benefit from.
- An extension of the default period will allow the parties adequate time to conclude bargaining, noting the bargaining involves some complexity in bringing the two Agreements under one proposed enterprise agreement.

[11] Accordingly, as we are satisfied as to the matters in subitems (6)(a) and (7), we are required to extend the default period.

Length of the Extension

[12] Having determined we are required to extend the default period, we turn now to consider the length of the extension. The parties have proposed different times for the extension of the default period of the Agreements.

[13] In relation to the Ancillary Staff Agreement, Onemda has sought an extension until 5 April 2024 and Ms Trawn has sought an extension to 24 December 2024.

[14] In relation to the Disability Services Agreement, the AEU has sought an extension to 30 June 2024. Onemda proposes that the extension should only be to 5 April 2024.

[15] Noting the parties’ positions in relation to the extension of the default period, we consider that an extension of both the Agreements until 6 June 2024 is sufficient time for a replacement agreement to be made and approved. We note that if the parties encounter

difficulties in bargaining, they may access the assistance of the Commission under s.240 of the FW Act.

[16] 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 Agreements is extended until 6 June 2024.

[17] The Agreement is published, in accordance with subitem 20A(10A) of Sch 3 of the Transitional Act, on the Fair Work Commission's website.



DEPUTY PRESIDENT

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¹ *ISS Health Services Pty Ltd* [\[2023\] FWCFB 122](#)