



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

CPC Services (NQ) Pty Ltd T/A Coral Expeditions (AG2023/3909)

Diving services

DEPUTY PRESIDENT WRIGHT
DEPUTY PRESIDENT ROBERTS
DEPUTY PRESIDENT SLEVIN

SYDNEY, 1 FEBRUARY 2024

Application to extend the default period for the CPC Services (NQ) PTY LTD Enterprise Agreement

[1] Pursuant to subitem 20A(4) of Sch 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), CPC Services (NQ) Pty Ltd T/A Coral Expeditions (Coral Expeditions) has applied to extend the default period for the *CPC Services (NQ) PTY LTD Enterprise Agreement* (the Agreement).

[2] Coral Expeditions operates a marine tourism business. The modern awards that cover employees covered by the Agreement are the *Marine Tourism and Charter Vessels Award 2020* and the *Seagoing Industry Award 2020*.

[3] The application is made in accordance with subitem 20A(6)(a) on the ground that 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.

[4] Coral Expeditions notified employees of its intention to bargain on 12 October 2023 and the first bargaining meeting occurred on 2 November 2023.

[5] Coral Expeditions is seeking an extension of the default period of the Agreement until 1 September 2024 to allow sufficient time for enterprise bargaining to occur for a replacement agreement. Coral Expeditions expects negotiations for the proposed agreement will be completed in early 2024, however notes that the bargaining may be more complex than is initially expected, requiring additional time. The Australian Institute of Marine and Power Engineers (AIMPE) and the Australian Maritime Officers Union (AMOU) are employee bargaining representatives and do not oppose the extension.

[6] 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.

[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. As the Full Bench observed in *Suncoast Scaffolding Pty Ltd*² 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.³

[8] In *ISS Health Services Pty Ltd* the Full Bench ordered an extension of 12 months in circumstances where bargaining for a replacement agreement was occurring. 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 that the existing agreement covered a number of different sites and a diverse range of classifications, pay rates were linked to a South Australian public sector industrial instrument, and that a previous attempt at bargaining lasted for an extended period and did not succeed.

[9] We note that these or similar circumstances do not arise in the current application before us and that the subject matter of the bargaining is not as complex as other matters that have been before the Commission where an extension longer than six months has been granted.⁴

[10] Taking into account these matters, we consider that an extension until 6 June 2024 is sufficient time for a replacement agreement to be made and approved.

[11] 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 June 2024.

[12] 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](#)

² [\[2023\] FWCFB 105](#) at [18]

³ See *Suncaost Scaffolding Pty Ltd* [\[2023\] FWCFB 105](#) at [18] and *Applications by APESMA* [\[2023\] FWCFB 137](#) at [31]

⁴ See *ISS Health Services Pty Ltd* [\[2023\] FWCFB 105](#); *Annecto Inc* [\[2023\] FWCFB 169](#); *Cancer Council of Victoria* [2023] FWCFB199; *Endavour Foundation* [\[2023\] FWCFB 197](#).