



# 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 James Joshua Page**  
(AG2023/4682)

## **BAROSSA ENGINEERING SERVICES AND TRADES PTY LTD AMCOR GLASS OPERATIONS COLLECTIVE WORKPLACE AGREEMENT**

Manufacturing and associated industries

DEPUTY PRESIDENT WRIGHT  
DEPUTY PRESIDENT SLEVIN  
DEPUTY PRESIDENT GRAYSON

SYDNEY, 30 JANUARY 2024

*Application to extend the default period for Barossa Engineering Services and Trades Pty Ltd Amcor Glass Operations Collective Workplace Agreement*

[1] Pursuant to subitem 20A(4) of Sch 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), James Joshua Page has applied to extend the default period for the *Barossa Engineering Services and Trades Pty Ltd Amcor Glass Operations Collective Workplace Agreement* (the Agreement).

[2] Item 20A of Sch 3 to the Transitional Act provides for the automatic sunset of agreement-based transitional instruments by the end of the default period on 6 December 2023, subject to the capacity to apply to the Commission for an extension of the default period for up to four years in prescribed circumstances. The main features of item 20A of Sch 3 are described in detail in the Full Bench decision in *Suncoast Scaffold Pty Ltd*<sup>1</sup> and we rely upon what is said in that decision.

[3] The application is opposed by the Aherns Group Pty Ltd (Aherns), the employer covered by the Agreement. Aherns opposes the application on the basis that Mr Page has no standing to bring the application.

[4] Aherns is covered by the Agreement as a consequence of its acquisition of Barossa Engineering Services and Trades Pty Ltd (BES) on 1 July 2014. In those circumstances schedule 11 of the Transitional Act applied to the transfer of business and the Agreement continued to cover former employees of BES who were transferring employees. No order was made to extend the coverage of the Agreement to non-transferring employees. Instead, to ensure consistency in the terms and conditions, Aherns afforded non-transferring employees the terms of the Agreement as a matter of practice. It did this by referring to the Agreement in letters of

offer of employment, albeit those offers indicate that the terms of the Agreement did not form a part of the employees' contracts of employment.

[5] Mr Page was employed by Aherns on 5 June 2023. He is not a transferring employee for the purpose of the Sch 11 to the Transitional Act. The terms of the Agreement were referred to in his offer of employment in accordance with the practice described above.

[6] Aherns wrote to Mr Page on 1 December 2023 informing him that the Agreement would terminate in accordance with the Transitional Act and explaining that it would continue to apply the terms of the Agreement albeit with some modifications to reflect the requirements of the *Fair Work Act 2009* and the relevant modern award, the *Manufacturing and Associated Industries an Occupation Award 2020*.

[7] An application to extend the default period of an agreement-based transitional instrument may only be made by the persons described in subitem 20A(4) being:

- (a) an employer covered by the instrument;
- (b) an employee covered by the instrument;
- (c) an industrial association that is entitled to represent the industrial interests of one or more of the employees covered by the instrument.

[8] As Mr Page is not an employee covered by the agreement-based transitional instrument it follows that he does not have standing to apply for an extension to the default period of the Agreement. As there is no standing for the application, there is no application before us<sup>2</sup> and the Agreement otherwise terminated in accordance with Item 20A of Schedule 3 of the Transitional Act on 6 December 2023.

[9] The application is dismissed.



DEPUTY PRESIDENT

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<sup>1</sup> [\[2023\] FWCFB 105](#).

<sup>2</sup> See eg *Joseph Shorey v FES Coal Pty Ltd and CFMMEU* [\[2018\] FWCFB 6100](#)