LPA Guide

Fair Work Bargaining Kit

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Fair Work Bargaining Kit

Introduction

Enterprise bargaining has been a feature of the federal industrial relations system since the late 1980s, and was introduced to increase productivity by tailoring work conditions to the specific requirements of a business. Flexibility is still a key focus of the new system so that productivity and economic growth can be promoted. However, the *Fair Work Act 2009* (the Act) has changed the enterprise bargaining provisions to not only allow traditional bargaining as we have seen it over the last few years but also to open it up to employees who have not previously been able to access the bargaining process.

There is also a shift away from individual to collective bargaining to protect employees from being disadvantaged. This may have ramifications for our industry in that those employees who have not previously been involved in enterprise bargaining (for example, clerical and administrative employees, employees of commercial venues including production and front of house staff, cinema employees and exhibition industry employees) may well now be able to access wage increases and changes to conditions of employment through enterprise bargaining.

As explained later in this Kit, unions now have the ability to force employers to bargain for an enterprise agreement, whether they want one or not. This is one of the biggest risks for employers under the new legislation, especially in cinema and commercial theatre with regard to front of house staff. In both areas, employees are usually paid at the minimum award rate of pay, and any increase to this rate will have significant cost implications.

The legislation also allows a union to seek multi employer agreements within an industry, which could mean that a number of employers could be forced to bargain for a common enterprise agreement in that industry (e.g. Cinemas), known as a multi-enterprise agreement.

This Kit outlines the key changes relating to workplace agreements (now called enterprise agreements) and contains an Employer Bargaining Checklist (Appendix A) that may be used and the forms that will be required to make and lodge a new agreement (Appendix B).

1. Types of Agreements

An enterprise agreement is a collective agreement made at the enterprise level (ie. for a business, activity, project or undertaking) between employer(s) and their employees and provides the terms and conditions of employment for the employees it covers.

A) Single Enterprise Agreement

- These are made between a group of employees and either an employer or two or more employers that are single interest employers (related bodies corporate, engaged in a joint venture or common enterprise, or have been specified in a single interest employer authorisation that permits employers with a close connection to bargain together, such as franchisees).

B) Multi-Enterprise Agreement

- These are made between two or more employers and groups of their employees. The employers must voluntarily agree to bargain together unless they are subject to a **low-paid authorisation order** (LPAO). See **Bargaining Period** for more information on LPAOs.

C) Greenfields Agreement

- Greenfields agreements can only be made in relation to a **genuine new enterprise** (this does not include an existing enterprise that an employer(s) acquires, or proposes to acquire, which has been previously carried out by another employer) before the employer has engaged any employees who will be covered by the enterprise agreement.

- The nature of the genuine new enterprise may be the same or similar to the employer's existing enterprise, particularly if it is a new project.

- A multi-enterprise greenfields agreement cannot be made with two or more employers specified in a low-paid authorisation order, since this would mean that they had already employed the people to be covered by the agreement.

2. Terms of Agreements

The terms of the agreement should start being negotiated once the employees are notified of their representational rights.

A) Content Rules – Permitted Matters

- An enterprise agreement may be made about:
  - Matters pertaining to the relationship between the employer and the employees that will be covered by the agreement;
  - Deductions from wages for any purpose authorised by an employee who will be covered by the agreement; and
  - How the agreement will operate.

- However, an agreement must not contain **unlawful terms**, which are:
  - discriminatory terms (discriminates because of, or for reasons including, the employee's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin);
  - would be inconsistent with the unfair dismissal provisions of the Act;
  - would be inconsistent with the industrial action provisions of the Act;
  - would be inconsistent with the right of entry provisions of the Act; or
  - would result in an exercise of State or Territory occupational health and safety rights in a way that is inconsistent with the right of entry provisions.

B) Terms to be Included

- The Act requires that certain terms be included in any new enterprise agreement, namely a flexibility term, a consultation term and a dispute settlement term. There are **model terms** that apply in default if these are not included in an agreement except for the dispute settlement term, which must be included by the parties or the agreement will not receive FWA approval. They can be found in Appendix C.

- The **flexibility term** can be used to make individual flexibility arrangements with a particular employee to vary the effect of the agreement in relation to that employee and the employer. However, the employee must be better off overall under the arrangement in comparison to the agreement. Although it may seem that this requirement favours the employee, there must be genuine agreement and so an employer will not be expected to make concessions to an employee that are impractical for the business. The flexibility term must set out the particular terms of the agreement which are to be varied. A flexibility arrangement can vary the agreement provisions relating to when work is performed, overtime or penalty rates, allowances or leave loading. An individual flexibility arrangement must be about permitted matters and cannot include an unlawful term. Importantly, an individual flexibility arrangement cannot be used as a condition of employment and may be terminated on either side by giving 28 days' written notice.

- The **consultation term** must require the employer(s) to consult the employees covered by the agreement about any major workplace changes likely to have a significant effect on those employees (eg. Redundancy, organisation change). It must allow for them to be represented during consultation, which could be an elected employee or a representative from a union.

- The **dispute settlement term** sets out the procedure for the settlement of disputes about matters arising under the agreement and in relation to the National Employment Standards (explained below), and must provide for FWA or another person who is independent of the parties to deal with a dispute and for the representation of employees in the process. Whilst there is a **model dispute settlement term**, which may be used in the agreement, it will not be taken to be a term of an agreement if the parties fail to include one.

- The agreement must contain a **nominal expiry date** not more than 4 years after it receives FWA approval.

- Until 31 December 2009, the agreement must **not disadvantage** the employees when it is compared with the relevant Award.

- From 1 January 2010, the agreement must pass the **better off overall test** (BOOT) and leave the employees better off overall in comparison to the modern Award (which commences on 1 January 2010). This is a point in time test and so it is judged at the time that a bargaining representative makes the application to FWA for approval of the agreement. If over time an employee's base rate of pay under an agreement is less than that under the relevant award or national minimum wage order, the employee is entitled to be paid at a rate equal to the award or national minimum wage order.

- The **National Employment Standards** (NES) will replace the Australian Fair Pay Commission's Standard from 1 January 2010 and will act as a safety net for all federal employees, including those that earn over $100,000 and are award-free. The NES prescribe a maximum number of weekly hours, allow for requests for flexible working arrangements, prescribe leave entitlements (parental, annual personal/carer's & compassionate, community service and long service leave), public holidays, notice of termination and redundancy pay and require an employer to furnish upon any new employee a Fair Work Information Statement. Whilst an enterprise agreement must not contravene the NES, it may contain terms that are ancillary to or supplement the NES. (For a complete overview of the NES click on the link marked NES on the LPA Member's website).

3. Bargaining Period (the period during which the employer notifies the employees that a new enterprise agreement is being bargained and what their representational rights are)

Information about bargaining and what an employer needs to tell their employees.

A) Methods of Starting to Bargain

Employer(s) may initiate or, on notification by a relevant union, may agree to bargain for a new enterprise agreement with their employees. Alternatively, employer(s) may also be subject to a majority support determination, a scope order or a low-paid authorisation on application of the relevant union as outlined below, which will also start the bargaining period.

(i) Low Paid Authorisation Order

- A union may apply to FWA for a **low-paid authorisation order** in relation to employees on minimum wages and basic award conditions and seek to have it cover several businesses in an industry under a multi-enterprise agreement. The result of such action would provide increased rates of pay to those employees and consequently impact financially on an employer's operations. There is no definition of who is "low-paid"; this is up to FWA to determine. FWA, in considering such an application, will have regard to factors such as the history of bargaining in the industry, the bargaining power of the employees and whether it would be in the public interest to grant the order. There is a dual effect to FWA granting a LPAO; it will begin the bargaining period, and it will also impose certain rules in relation to the agreement that would not otherwise apply. If no agreement can be genuinely agreed upon then FWA has the power to impose a **low-paid workplace determination** on the employer in addition to the relevant award. This demonstrates the expanded powers of FWA, which may impact on Members' operations by increasing costs.

(ii) Majority Support Determination

- If an employer refuses to bargain with its employees, a bargaining representative can apply to FWA for a **majority support determination**. If FWA determines that the majority of employees support bargaining for an enterprise agreement and considers it reasonable in all the circumstances to issue a majority support determination, the employer must bargain and must meet the good faith bargaining requirements.

(iii) Scope Order

- A bargaining representative may also apply to FWA for a **scope order** to determine which group of employees at the enterprise are to be covered by the agreement. When a scope order is in operation in relation to an enterprise agreement and the agreement, for example, does not cover all of the employees specified in the scope order, FWA must be satisfied that approving the agreement would not be inconsistent with, or undermine, good faith bargaining.

B) Notice of Employee Representational Rights

- The employer must notify the employees within 14 days of the decision to bargain of their right to be represented by a bargaining representative. The form to be used for this notification is Schedule 2.1, which can be found in the Appendix B of this Kit.

- The notice must state that the employee may appoint a bargaining representative to represent them in this bargaining process and explain that if they are a member of a union entitled to represent their industrial interests, such as MEAA, and they do not appoint another person as their bargaining representative, then that union will automatically be their bargaining representative.

- The notice must also explain that the employer must be given a copy of the document appointing a bargaining representative for the employee.

- The notice may be given to the employee in person, by email, by pre-paid post to their residential address, by fax or by displaying the notice in a conspicuous location at the workplace that is known and readily accessible to the employees such as a notice board.

C) Good Faith Bargaining

- During the bargaining process, a certain standard of conduct known as **good faith bargaining** is required to be displayed by the bargaining parties. This includes the following:

    - Attending and participating in meetings at reasonable times;
    - Disclosing relevant information in a timely manner (but this does not include confidential or commercially sensitive information);
    - Responding to proposals made by other bargaining representatives in a timely manner;
    - Giving genuine consideration to the proposals of other bargaining representatives and reasons for responses to those proposals;
    - Refraining from capricious or unfair conduct that undermines freedom of association or collective bargaining;
    - Recognising and bargaining with other bargaining representatives for the agreement.

- However, good faith bargaining does **not** require that a bargaining representative make concessions during the bargaining process or that a bargaining representative reach agreement on the terms of the agreement.

- A failure to adhere to this standard of conduct during bargaining can result in FWA making a **bargaining order** against the party in question to ensure that good faith bargaining is proceeding fairly and efficiently. Breach of such an order can attract a penalty of up to $6,600 or the making of a serious breach declaration for serious and sustained contraventions that significantly undermine bargaining for the agreement. A serious breach declaration requires the representatives to settle all the matters at issue within 21 days from the declaration, otherwise FWA will make a workplace determination.

- A party can also seek a bargaining order if the bargaining process is not proceeding efficiently or fairly because there are multiple bargaining representatives for the agreement.

4. Access Period

Information on the approval process for enterprise agreements.

Employees cannot be asked to vote on the agreement until at least 21 days from when they were notified of their representational rights. Since the employees must have a 7 day access period before the vote to view the agreement, at least 14 days should pass after the notification of representational rights before the employer notifies the employees of the time and place of the vote and the method of voting that will be used, which may be by ballot or by an electronic method. This marks the beginning of the access period.

When notifying the employees of the details of the vote, the employer must also:

- Give the employees a copy of the written text of the agreement and any other material referred to in the agreement. For instance, if the agreement refers to an award, that should also be made available to the employees.

- Explain the terms of the agreement and the effect of those terms to the employees in an appropriate manner taking into account the particular circumstances and needs of the employees such as cultural or linguistic diversity, young employees or employees who do not have a bargaining representative. If the new enterprise agreement is similar to an existing agreement that is being replaced, it may be easier to state that this is the case and then outline the changes that will occur under the new enterprise agreement such as the model clauses mentioned above, any wage or allowance increases, and any other matter that is different.

5. Approval Process

The forms and process that an employer will need to use when bargaining for a new agreement.

The method of agreement approval varies according to the type of enterprise agreement that is involved:

- A single enterprise agreement is approved if a majority of the employees who will be covered by the agreement cast a valid vote for it. For single interest employers, the agreement is made when it is approved by a majority of the employees (taken as a group) who will be covered by the agreement and who cast a valid vote for it.

- Approval for a multi enterprise agreement is on an enterprise by enterprise basis; a multi-enterprise agreement is made immediately after the voting process where the employees of each of the employers that will be covered by the proposed agreement have voted for the agreement and it has been approved by a majority of the employees of at least one of those employers who cast a valid vote for the agreement.

- A greenfields agreement (whether a single-enterprise or multi-enterprise agreement) is made when it is signed by each employer and each employee organisation that will be covered by the agreement.

Once the agreement is made, a bargaining representative for the agreement must apply to FWA for final approval of the agreement. This may be the employer or the union, however the agreement must be lodged **within 14 days from the date of the vote for single and multi-enterprise agreements or from the date of signing the Agreement for greenfields agreements** and so it is suggested that the employer lodge the enterprise agreement to ensure that it is lodged on time. Whilst FWA may grant an extension of time, it is better to adhere to this time frame so that the bargaining process does not need to be started again. A union that was a bargaining representative in the bargaining process may also request that FWA make the agreement cover them as well.

Form F16 must be lodged together with a copy of the agreement that is signed by the bargaining representatives to the agreement, as well as declarations by the employer (Form F17) and the union (Form F18), which can be found in the Appendix B. The agreement and forms can be lodged with FWA electronically through the eFiling facility on their website (www.fwa.gov.au), by email, in hardcopy (must lodge at least 6 copies and include the original), by fax or by post.

When considering the agreement, FWA must be satisfied of the following factors:

- The agreement has been made with the genuine agreement of those involved.
- The agreement passes the no-disadvantage/better off overall test and does not include any unlawful terms or designated outworker terms.
- The group of employees covered by the agreement was fairly chosen.
- The agreement specifies a date as its nominal expiry date (not more than four years after the date that Fair Work Australia approves it).
- The agreement provides a dispute settlement term.
- The agreement includes a flexibility clause and a consultation clause.

However, FWA may nonetheless approve an enterprise agreement that does not meet the above requirements if it is satisfied that a written undertaking meets the concern. Nonetheless, FWA must first seek the views of each bargaining representative and must be satisfied that the undertaking is not likely to cause financial detriment to any employee or result in substantial changes to the agreement.

The agreement becomes operational at the time FWA approves the agreement and not before. The employer and employees are to abide by the industrial instrument (award, old agreement) until approval is given by FWA.

APPENDIX A – EMPLOYER BARGAINING CHECKLIST

As a quick reference guide, employers are required to take the following steps when bargaining:

1. Provide Notice of Employee Representational Rights

At the commencement of bargaining employers are required to take all reasonable steps to give notice to each employee who will be covered by the agreement of their right to be represented by a bargaining representative – known as the notice of employee representational rights.

2. Provide Access to a Proposed Enterprise Agreement

Employers are required to take all reasonable steps to ensure that during the access period (the 7 day period ending immediately before the start of the voting process for the agreement) employees that will be covered by the agreement are given a copy of, or access to, the proposed agreement and any other material incorporated by reference in the agreement. This may include new employees that commence employment during that period.

3. Approval of Enterprise Agreement

An employer may request employees to approve a proposed enterprise agreement by voting for it.

The request by an employer for employees to vote must not be made until at least 21 days after the last notice of employee representational rights has been issued.

An agreement is made when a majority of the employees who cast a valid vote approve the agreement.

4. Application for approval by Fair Work Australia

Once an agreement has been made, a bargaining representative, such as the employer or employee organisation, must make an application for the agreement to be approved by Fair Work Australia.

The application must be lodged with Fair Work Australia within 14 days after the agreement was made with a signed copy of the agreement and any declarations that are required by Fair Work Australia's procedural rules.

The agreement becomes operational when Fair Work Australia approves it.

APPENDIX B – FORMS

SCHEDULE 2.1 Notice of Employee Representational Rights

Fair Work Act 2009, subsection 174(6)

[Name of employer] gives notice that it is bargaining in relation to an enterprise agreement (*[name of the proposed enterprise agreement]*) which is proposed to cover employees that *[proposed coverage]*.

What is an enterprise agreement?

An enterprise agreement is an agreement between an employer and its employees that will be covered by the agreement that sets the wages and conditions of those employees for a period of up to 4 years. To come into operation, the agreement must be supported by a majority of the employees who cast a vote to approve the agreement and it must be approved by an independent authority, Fair Work Australia.

If you are an employee who would be covered by the proposed agreement:

You have the right to appoint a bargaining representative to represent you in bargaining for the agreement or in a matter before Fair Work Australia about bargaining for the agreement. You can do this by notifying the person in writing that you appoint that person as your bargaining representative. You can also appoint yourself as a bargaining representative. In either case you must give a copy of the appointment to your employer.

[If the agreement is not an agreement for which a low-paid authorisation applies – include:]

If you are a member of a union that is entitled to represent your industrial interests in relation to the work to be performed under the agreement, your union will be your bargaining representative for the agreement unless you appoint another person as your representative or you revoke the union's status as your representative.

[If a low-paid authorisation applies to the agreement – include:]

Fair Work Australia has granted a low-paid bargaining authorisation in relation to this agreement. This means the union that applied for the authorisation will be your bargaining representative for the agreement unless you appoint another person as your representative, or you revoke the union's status as your representative, or you are a member of another union that also applied for the authorisation.

[If the employee is covered by an individual agreement-based transitional instrument – include:]

If you are an employee covered by an individual agreement:

If you are currently covered by an Australian Workplace Agreement AWA), individual transitional employment agreement (ITEA) or a preserved individual State agreement, you may appoint a bargaining representative for the enterprise agreement if:

- the nominal expiry date of your existing agreement has passed; or
- a conditional termination of your existing agreement has been made (this is an agreement made between you and your employer providing that if the enterprise agreement is approved, it will apply to you and your individual agreement will terminate).

Questions?

If you have any questions about this notice or about enterprise bargaining, please speak to either your employer, bargaining representative, go to www.fairwork.gov.au or contact the Fair Work Australia Infoline on 1300 799 675.

Form F16—Application for Approval of Enterprise Agreement

IN FAIR WORK AUSTRALIA

FWA MATTER NO:

Applicant (Employee):

Respondent (Employer):

APPLICATION FOR APPROVAL OF ENTERPRISE AGREEMENT

Fair Work Act 2009—s.185

1. Please provide the following details in relation to the bargaining representative lodging this application

Name:	
	ABN:
Address:	
Contact Person:	
Phone:	**Mobile:**
Facsimile:	**Email:**

Is the applicant?

[ ] The employer
[ ] An employee organisation
[ ] A bargaining representative appointed by the employer
[ ] A bargaining representative appointed by an employee
Other (Please specify):

2. Please provide contact details of a representative to whom enquiries and documents related to this application may be directed.

Name:	
	ABN:
Address:	
Contact Person:	
Phone:	**Mobile:**
Facsimile:	**Email:**

3. What is the name of the agreement?

4. Please provide details of the employer to be covered by the agreement?

Legal Name:	
Trading Name:	
	ABN:
Address:	
Contact Person:	
Phone:	**Mobile:**
Facsimile:	**Email:**

If the agreement is a multi -enterprise agreement, please attach a separate sheet identifying each of the employers which were bargaining representatives to the proposed agreement. All of the above details must be provided for each employer.

5. Please provide details of any employee organisations that were bargaining representatives for the agreement

Employee Organisation 1	
Name:	
	ABN:
Address:	
Contact Person:	
Phone:	**Mobile:**
Facsimile:	**Email:**

If the agreement covers more than one employee organisation, please attach a separate sheet identifying each of the employee organisations which were bargaining representatives for the agreement. Please provide all of the details identified above for each organisation.

Date:

Signature:

Name:

Capacity/Position:

Service requirements

A copy of this application must be served on each employer, employee organisation or employee bargaining representative, as soon as practicable after the application is lodged.

Note: Rules 9 and 10 deal with how service is effected.

Other requirements

When lodging this application, the applicant must ensure that it is accompanied by declarations completed by each employer and each employee organisation which was a bargaining representative for the agreement. These declarations may be found at:

- Form F17 for employer representatives; and
- Form F18 for employee representatives.

When lodging this application, the application must be accompanied by:

- an original of the written agreement signed by the bargaining representatives to the agreement;
- three copies of the agreement; and
- sufficient additional copies to enable a copy to be provided to each bargaining representative in the event of approval by Fair Work Australia.

Form F17—Employer's Declaration in Support of Application for Approval of Enterprise Agreement

IN FAIR WORK AUSTRALIA

FWA MATTER NO:

Applicant (Employee):

Respondent (Employer):

EMPLOYER'S DECLARATION IN SUPPORT OF APPLICATION FOR APPROVAL OF ENTERPRISE AGREEMENT

Fair Work Act 2009—s.185

I, [*name*], of [*address*], [*occupation*], on whose behalf this statutory declaration is made, do solemnly and sincerely declare as follows:

Part 1: About the agreement
1.1 What is the name of the agreement?
1.2 Is the agreement a single enterprise agreement or multi-enterprise agreement?
1.3 What is the name of the employer or employers to be covered by the agreement?
1.4 What is the name and address of the business or businesses of the employer or employers covered by the agreement?
1.5 What is the kind of work that is to be done by employees under the agreement?

Part 2: Requirements for approval
2.1 Please specify the date on which the agreement was made (s.182).
2.2 If the date specified in question 2.1 is more than 14 days before this application for approval of the agreement was lodged, please provide details of the circumstances which Fair Work Australia should take into account in deciding if it is fair to extend the time for lodging this application (s.185(3)(b))
2.3 Please specify the steps taken by the employer (at least 7 days before the start of the voting process) to ensure that the relevant employees were given, or had access to, the written text of the agreement and any other material incorporated by reference in the agreement (s.180(2)(a)).
2.4 Please specify the steps taken by the employer (at least 7 days before the start of the voting process) to notify all relevant employees of the time and place at which the vote was occur and the voting method to be used. (s.180(3))
2.5 Please specify the steps taken by the employer to explain the terms of the agreement, and the effect of those terms, to relevant employees (s.180(5)). *Note: your answer must include information on the manner in which the explanation took account of particular circumstances and needs of the relevant employees (For example, where the employees were from a non- English speaking background, were young employees or did not have a bargaining representative)*
2.6 Please indicate the date on which the employer first requested that the employees approve the agreement by voting for it (s.181).
2.7 Please indicate the date on which the employer provided the last notice to employees under s 173(1) (which deals with giving notice of employee representational rights).
2.8 Please provide details of the total number of employees to be covered by the agreement

2.9 Please provide details of the total number of employees who cast a valid vote in relation to the proposed agreement
2.10 Please provide details of the number of employees who voted in support of the proposed agreement
2.11 If the agreement is a multi-enterprise agreement, please state whether each employer genuinely agreed to the making of the agreement and that no employer was coerced or threatened with coercion to make the agreement. (s.186(2)(b))
2.12 Please identify any terms of the agreement that deal with the matters contained in the National Employment Standards
2.13 Please identify any terms of the agreement that exclude in whole, or in part, the National Employment Standards
2.14 Please identify any terms of the agreement that are detrimental to an employee in any respect when compared to the National Employment Standard
2.15 Does the agreement cover all employees of the employer or employers? [ ] YES [ ] NO
2.16 If the answer to question 2.15 is no, please provide details of the geographical, operational or organisational basis for the choosing the group of employees to be covered by the agreement (s.186(3) and (3A))

2.17 Does the agreement contain any discriminatory terms? (s.194(a))

[ ] YES

[ ] NO

If the answer is yes, please identify the relevant terms of the agreement.

2.18 Does the agreement contain any objectionable terms? (s.194(b))

[ ] YES

[ ] NO

If the answer is yes, please identify the relevant terms of the agreement.

2.19 Does the agreement contain any terms that deal with the rights of employees in relation to unfair dismissal? (s.194(c) and (d))

[ ] YES

[ ] NO

If the answer is yes, please identify the relevant terms of the agreement.

2.20 Does the agreement contain any terms that deal with the taking of industrial action and that are inconsistent with Part 3 – 3 of Chapter 3 of the Act? (s.194(e))

[ ] YES

[ ] NO

If the answer is yes, please identify the relevant terms of the agreement.

2.21 Does the agreement contain any terms that deal with the rights of officials of employee organisations to enter the employer's premises? (s.194(f) and (g))

[ ] YES

[ ] NO

If the answer is yes, please identify the relevant terms of the agreement.

2.22 Does the agreement contain any designated outworker terms? (s.186(4A))

[ ] YES

[ ] NO

If the answer is yes, please identify the relevant terms of the agreement.

2.23 Please identify the term of the agreement which specifies the nominal expiry date of the agreement (s.186(5))

2.24 Please identify the term of the agreement which specifies a procedure for FWA, or another independent person, to settle disputes about any matter arising under the agreement, and, from 1 January 2010, to settle disputes in relation to the National Employment Standards (s.186(6)(a)).

2.25 Does the term identified in question 2.24 allow for the representation of employees covered by the agreement for the purposes of the dispute settling procedure? (s.186(6)(b))

[ ] YES

[ ] NO

2.26 Has a scope order been issued in relation to the agreement? (s.187(2))

[ ] YES

[ ] NO

If the answer is yes, please provide the unique print number and date of the order.

PR _ _ _ _ _ _ Date_ _ /_ _/ _ _

2.27 If the agreement is a multi-enterprise agreement, do the provisions of s.184 of the Act apply?

[ ] YES

[ ] NO

2.28 If the answer to question 2.27 is yes, has a bargaining representative to the agreement varied the agreement as required by s.184(2)?

[ ] YES

[ ] NO

2.29 If the answer to question 2.28 is yes, has a bargaining representative to the agreement provided the relevant notices to the other bargaining representatives as required by s.184(3)?

[ ] YES

[ ] NO

2.30 Does the agreement cover any shiftworkers? (s.196)

[ ] YES

[ ] NO

If the answer is yes, please identify any terms of the agreement that define or describe the employees as a shiftworker for the purposes of the National Employment Standard.

2.31 Does the agreement cover any pieceworkers? (s.197)

[ ] YES

[ ] NO

If the answer is yes, please identify any terms of the agreement that deal with the entitlements of pieceworkers.

2.32 Does the agreement contain terms providing for school-based apprentices or trainees to receive loadings in lieu of paid leave? (s.199)

[ ] YES

[ ] NO

If the answer is yes, please identify any terms of the agreement that deal with such loadings.

2.33 Does the proposed agreement cover any outworkers? (s.200)

[ ] YES

[ ] NO

If the answer is yes, please identify any terms of the agreement that deal with entitlements of outworkers.

2.34 Please identify the flexibility term in the agreement (s.202, 203, 204)

2.35 Please identify the consultation term in the agreement (s.205)

3. Comparison Data

3.1 Please identify all relevant awards or notional agreements preserving State awards to be used for the purposes of the no-disadvantage test.

(see clauses 4 and 5 of Part 2 of Schedule 7 of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009

3.2 Please identify any awards that have been determined by FWA, prior to the lodging of the application for approval of the agreement, to be a designated award in relation to an employee or class of employees.

3.3 Does the agreement contain any terms or conditions of employment that are less beneficial than any of the terms and conditions contained in the reference instruments identified in questions 3.1 or 3.2?

[ ] YES

[ ] NO

3.4 If the answer to question 3.3 is yes, please identify the terms and conditions of the reference instrument that are more beneficial than the agreement, the employees affected and the specific terms in the agreement that bring about the reductions.

Note: your answer must indicate whether all or only some of the employees are affected and, if only some employees are affected, identify which ones.

3.5 If the answer to question 3.3 is yes, please identify the terms in the agreement which may result, on balance, in terms and conditions that are more beneficial to one or more relevant employees than the terms and conditions contained in the reference instruments identified above.

Note: your answer must indicate whether all or only some of the employees are affected and, if only some employees are affected, identify which ones.

3.6 If the agreement would not pass the no-disadvantage test as set out in Division 2 of Part 2 of Schedule 7 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, please identify any exceptional circumstances that Fair Work Australia should consider when deciding whether approving the agreement would not be contrary to the public interest (s.189).

4. Statistical Information

4.1 Of the employees to be covered by the agreement, how many employees are in the following demographic groups?

4.1.1 Female

4.1.2 Non-English speaking background

4.1.3 Aboriginal and Torres Strait Islander people

4.1.4 Disabled

4.1.5 Part-time

4.1.6 Casual

4.1.7 Under 21 years of age

4.1.8 Over 45 years of age (mature age)

4.2 In what state/territory will the agreement be in operation? (mark all applicable boxes with an 'X')

ACT [ ] NSW [ ] NT [ ] Qld [ ] SA [ ] Tas [ ] Vic [ ] WA [ ]

4.3 Please list all agreements, excluding AWAs and ITEAs that operated in relation to the employees prior to the making of this agreement?

4.4 What is the primary activity of the employer? (e.g. music retailer, plumbing contractor, steel fabricator)

I make this solemn declaration by virtue of the *Statutory Declarations Act 1959*, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

[*signature of person making the declaration*]

Declared at [*place*] on [*date*]

Before me,

[*signature of person before whom the declaration is made*]

[*title of person before whom the declaration is made*]

Please provide your contact details for any future enquiries related to this declaration.

Name:	
	ABN:
Address:	
Contact Person:	
Phone:	**Mobile:**
Facsimile:	**Email:**

Form F18—Declaration of Employee Organisation in Support of Application for Approval of Enterprise Agreement

IN FAIR WORK AUSTRALIA

FWA MATTER NO:

Applicant (Employee):

Respondent (Employer):

DECLARATION OF EMPLOYEE ORGANISATION IN SUPPORT OF APPLICATION FOR APPROVAL OF ENTERPRISE AGREEMENT

Fair Work Act 2009—s.185

I, [*name*], of [*address*], [*occupation*], on whose behalf this statutory declaration is made, do solemnly and sincerely declare as follows:

1.1 What is the name of the agreement?
1.2 What is the name of the employer or employers to be covered by the agreement?
1.3 Were you a bargaining representative for a member or members of your organisation who is an employee or are employees and are covered by the agreement?
1.4 Were you entitled to represent the industrial interests of the employee or employees referred to in question 1.3 in relation to work that will be performed under the agreement?. [ ] YES [ ] NO
1.5 Have you read the statutory declarations lodged on behalf of the employer or employers? [ ] YES [ ] NO

1.6 In so far as the matters contained in the statutory declarations are within your knowledge, do you agree with the answers given to each question addressed in the statutory declaration? [ ] YES [ ] NO
1.7 If the answer to question 1.6 is no – please identify the relevant statutory declaration and the question or questions and provide your answers.

I make this solemn declaration by virtue of the *Statutory Declarations Act 1959*, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

[*signature of person making the declaration*]

Declared at [*place*] on [*date*]

Before me,

[*signature of person before whom the declaration is made*]

[*title of person before whom the declaration is made*]

Please provide your contact details for any future enquiries related to this declaration.

Name:	
	ABN:
Address:	
Contact Person:	
Phone:	**Mobile:**
Facsimile:	**Email:**

APPENDIX C – MODEL CLAUSES

MODEL CONSULTATION TERM

1) This term applies if:
    a. the employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
    b. the change is likely to have a significant effect on employees of the enterprise.
2) The employer must notify the relevant employees of the decision to introduce the major change.
3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
4) If:
    a. a relevant employee appoints, or relevant employees appoint, a representative for the purposes
    of consultation; and
    b. the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.
5) As soon as practicable after making its decision, the employer must:
    a. discuss with the relevant employees:
        i. the introduction of the change; and
        ii. the effect the change is likely to have on the employees; and
        iii. measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
    c. for the purposes of the discussion — provide, in writing, to the relevant employees:
        i. all relevant information about the change including the nature of the change proposed; and
        ii. information about the expected effects of the change on the employees; and
        iii. any other matters likely to affect the employees.
6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
8) If a term in the enterprise agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in subclauses
(2), (3) and (5) are taken not to apply.
9) In this term, a major change is ***likely to have a significant effect on employees*** if it results in:
    a. the termination of the employment of employees; or
    b. major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
    c. the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
    d. the alteration of hours of work; or
    e. the need to retrain employees; or
    f. the need to relocate employees to another workplace; or
    g. the restructuring of jobs.
10) In this term, ***relevant employees*** means the employees who may be affected by the major change.

MODEL FLEXIBILITY TERM

1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
    a. the agreement deals with 1 or more of the following matters:
        i. arrangements about when work is performed;
        ii. overtime rates;
        iii. penalty rates;
        iv. allowances;
        v. leave loading; and
    b. the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
    c. the arrangement is genuinely agreed to by the employer and employee.
2) The employer must ensure that the terms of the individual flexibility arrangement:
    a. are about permitted matters under section 172 of the *Fair Work Act 2009*; and
    b. are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
    c. result in the employee being better off overall than the employee would be if no arrangement was made.
3) The employer must ensure that the individual flexibility arrangement:
    a. is in writing; and
    b. includes the name of the employer and employee; and
    c. is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
    d. includes details of:
        i. the terms of the enterprise agreement that will be varied by the arrangement; and
        ii. how the arrangement will vary the effect of the terms; and
        iii. how the employee will be better off overall in relation to the terms and conditions of his
        or her employment as a result of the arrangement; and
    e. states the day on which the arrangement commences.
4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
5) The employer or employee may terminate the individual flexibility arrangement:
    a. by giving no more than 28 days written notice to the other party to the arrangement; or
    b. if the employer and employee agree in writing — at any time.

MODEL DISPUTE SETTLEMENT PROCEDURE TERM

1) If a dispute relates to:
    a. a matter arising under the agreement; or
    b. the National Employment Standards;

this term sets out procedures to settle the dispute.

2) An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
3) In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Australia.
5) Fair Work Australia may deal with the dispute in 2 stages:
    a. Fair Work Australia will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
    b. if Fair Work Australia is unable to resolve the dispute at the first stage, Fair Work Australia may then:
        i. arbitrate the dispute; and
        ii. make a determination that is binding on the parties.

Note If Fair Work Australia arbitrates the dispute, it may also use the powers that are available to it under the Act. A decision that Fair Work Australia makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

6) While the parties are trying to resolve the dispute using the procedures in this term:
    a. an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
    b. an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
        i. the work is not safe; or
        ii. applicable occupational health and safety legislation would not permit the work to
        be performed; or
        iii. the work is not appropriate for the employee to perform; or
        iv. there are other reasonable grounds for the employee to refuse to comply with the direction.
7) The parties to the dispute agree to be bound by a decision made by Fair Work Australia in accordance
with this term.