

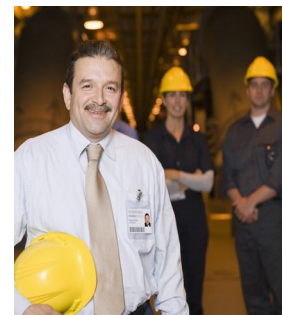


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## FAIR WORK ACT 2009 - FACT SHEET 5 Enterprise Agreements

**JUNE 2010**

Since the early 1990's, enterprise/workplace agreements have been a feature of Federal and State industrial/workplace relations legislation. Originally focused on collective agreements (made by an employer with either its employees or a union), the ability to also make individual workplace agreements (known as Australian Workplace Agreements—AWA's) was introduced in 1996. The key advantage of an enterprise/workplace agreement is that it enables the parties to the agreement to develop terms and conditions of employment which have relevance to the particular enterprise and its workforce, overriding the content of Awards to the extent of common subject matter.



Until 1 July 2009, the making of workplace agreements was regulated by the *Workplace Relations Act 1996* (WRA). This legislation was replaced by the *Fair Work Act 2009* (FWA) on 1 July 2009. Under the FWA, enterprise agreements are made either with a single enterprise or with multiple enterprises. They may be Greenfields agreements (i.e. made with a genuine new enterprise) or not. They may be made by an employer or employers with employees or with an employee association (union).

The key changes introduced by the FWA apply to content and the approval process, as well as a new requirement for bargaining representatives to meet good faith bargaining requirements.

### ***Permitted content***

Under the FWA (*section 172*) the following permitted matters may be included in an enterprise agreement:

- matters pertaining to the relationship between an employer that will be covered by the agreement and that employer's employees who will be covered by the agreement;
- matters pertaining to the relationship between the employer or employers and the employee organisation or organisations that will be covered by the agreement;
- deductions from wages for any purpose authorised by an employee who will be covered by the agreement;
- how the agreement will operate.

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## ***Approval process***

Under the FWA (*section 186*) the approval process is conducted by Fair Work Australia. In order to be approved, Fair Work Australia must be satisfied that:

- if the agreement is not a Greenfields agreement, that the agreement has genuinely been agreed to by the employees covered by it; and
- if the agreement is a multiple-enterprise agreement, that the agreement has genuinely been agreed to by the employees covered by it and that no person coerced or threatened to coerce any of the employers to make the agreement; and
- the terms of the agreement do not exclude a National Employment Standard; and
- the agreement passes the **better off overall** test - to pass this test, Fair Work Australia must be satisfied that, at the test time, each award covered employee would be better off overall if the agreement applied to the employee than if the relevant modern award applied; and
- the employees covered by the agreement was fairly chosen; and
- the agreement does not include any **unlawful terms** - a term will be unlawful (*section 194*) if it is:
  - a discriminatory term; or
  - an objectionable term; or
  - if an employee is otherwise entitled to protection from unfair dismissal, a term that confers an entitlement in the event of dismissal which is unfair; a term that excludes the application of provisions of the FWA in relation to unfair dismissal or modifies its application in a way that is detrimental to the person;
  - a term which is inconsistent with the provisions of the FWA concerning industrial action;
  - a term which provides for an entitlement to enter premises or hold discussions other than in accordance with the right of entry provisions of the FWA;
  - a term that provides for the exercise of a State or Territory OHS right other than in accordance with the right of entry provisions in the FWA;
- the agreement does not include any designated outworker terms; and
- the agreement specifies a date as a **nominal expiry date** and this date is not more than four years after the day on which the agreement is approved; and
- the agreement contains a **dispute resolution procedure** that allows Fair Work Australia or another party independent of the employers, employees and employee associations, to settle disputes about any matters arising under the agreement, and in relation to National Employment Standards and that allows for representation of employees covered by the agreement for the purposes of that procedure; and

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- approving the agreement would not be inconsistent with or undermine good faith bargaining by one or more bargaining representatives.

## ***Good faith bargaining***

The FWA introduced a requirement for all bargaining representatives to meet the following good faith bargaining requirements:

- attending and participating in meetings at reasonable times;
- disclosing relevant information (other than confidential or commercially sensitive information) in a timely manner;
- responding to proposals made by other bargaining representatives for the agreement in a timely manner;
- giving genuine consideration to the proposals of other bargaining representatives for the agreement and giving reasons for the bargaining representatives responses to those proposals;
- refraining from capricious or unfair conduct that undermines freedom of association or collective bargaining;
- recognising and bargaining with the other bargaining representatives for the agreement.

A bargaining representative can seek the assistance of Fair Work Australia to facilitate in the process of negotiating a proposed enterprise agreement.

## **DO YOU HAVE ANY QUESTIONS OR WOULD LIKE TO KNOW MORE?**

Getting the answers you need is as easy as giving us a call or sending us an email. We look forward to hearing from you.

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