Guide to Enterprise Bargaining

Prepared by: NECA’s Employee Relations Department
Date: January 2014

Disclaimer

This is intended as a guide only. You should not rely on it without first seeking independent legal advice. You should contact NECA prior to taking any steps.
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THE FAIR WORK ACT 2009 AND ENTERPRISE BARGAINING:
WHY ALL MEMBERS SHOULD GET AN AGREEMENT TODAY

The Fair Work Act 2009 was introduced on 1 July 2009 and many members are unaware of the impact of the new laws on their business.

The Federal Government has now completed its review of the awards system, compressing 3,000 awards across all states and territories into 123 modern awards, which will apply to all employers except non constitutional corporations in Western Australia.

A copy of the Electrical, Electronic and Communications Contracting Industry Award 2010 is available and applicable to employers in the Electrical Contracting Industry. The award is available on NECA’s website www.neca.asn.au or copies can be made available to members upon request to NECA’s Employee Relations Department.

The Modern Award represents some significant changes to employee entitlements. In particular the Travel Allowances, Hours of Work Provisions, Apprentice Conditions and Rostered Days Off rules have changed considerably. Making an Enterprise Agreement will allow your business to maintain its current payroll systems or perhaps, more importantly, streamline your current processes to make them simpler.

Is Agreement making easy?
Making an Enterprise Agreement under the new legislation is simple.

Essentially you need to provide a copy of your proposed agreement to your employees; wait at least 22 days; hold a discussion meeting; conduct a vote; and provided a valid majority of your employee approve the agreement then it will need to be signed and lodged with Fair Work Commission.

Upon receipt by Fair Work Commission, your agreement will be subjected to the Better off Overall Test (BOOT). The test is to ensure that your agreement provides for terms and conditions no less favourable than the Modern Award.

There is no longer any requirement for the agreement to be assessed by the Australian Industrial Relations Commission. The Agreement is assessed by the Fair Work Commission without requiring the parties to make a court appearance.

So no matter how large or small your business may be, it makes more business sense to get an Enterprise Agreement.

Please contact NECA’s Employee Relations Department for more information.
GUIDE TO ENTERPRISE BARGAINING

Required Documentation
The following attached documentation will be required to seek the approval from your employees:

1. Notice of Employee Representation Rights.
2. How and When for Approval Statement.
3. Letter appointing NECA as a Bargaining Agent.
4. Employee Representation Election Form.
5. Form F16 – Application for Approval of an Enterprise Agreement.
6. Form F17 – Employer Declaration in Support of Application for Approval of an Enterprise Agreement.
7. NECA’s template Enterprise Agreement.

About the approval process
In order to make an Enterprise Agreement under the Fair Work Act 2009 (‘the Act’) certain steps must be taken to ensure the agreement is valid.

Pre-approval steps to be taken by Members
You must ensure that:

- Each of your employees must receive a copy of the Notice of Representation Rights (no exceptions). The employee vote to approve the agreement must not occur until at least 22 days after the day on which employees were given a copy of the Notice of Employee Representation Rights.
- During the period 7 days prior to the employee vote to approve the agreement, the terms of the agreement, and the effect of those terms, must be explained to your employees.
- You must ensure that the explanation of the Agreement is provided in an appropriate manner (eg appropriate for young employees or employees from culturally diverse backgrounds). If you are unsure of what is required to explain your agreement please contact NECA’s Employee Relations Department on (02) 9744 1099.

The 7 day period
At the commencement of the 7 day period prior to the employee vote to approve the agreement, you are required to provide your employees with copies of the following:

- The proposed Enterprise Agreement.
- Any other material incorporated by reference in the agreement.

You must also notify each employee of:

- The date, time and place where the vote will occur.
- The voting method that will be used.

Attached is a copy of NECA’s “how and when for approval statement” that can be used to advise your employees of the above requirements.

Employee Representation
Please note that after your employees have been provided with a copy of the Notice of Employee Representation Rights, your employees will have 14 days to nominate a bargaining representative.

Any union who has a member that would be covered by the agreement has the right to participate in the negotiation of your agreement through Good Faith Bargaining. An employee who is a union member and does not wish to be represented by a Union can revoke the Unions rights. Attached is an Employee Representation Election Form for your use.

If you have employee’s that are members of a Union or you are not sure of their status you should contact NECA to discuss your bargaining obligations.

Good Faith Bargaining
If an Employee elects a bargaining representative, you and the bargaining representative are required to bargain in good faith.
The following are the good faith bargaining requirements that a bargaining representative for a proposed enterprise agreement must meet:

- 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 representative’s 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.

The good faith bargaining requirements do not require a bargaining representative to:

- Make concessions during bargaining for the agreement
- Reach agreement on the terms that are to be included in the agreement.

Please note that where your company is required to negotiate with an employee bargaining representative, you should not commence the 7 day period until you have properly engaged in good faith bargaining.

**Bargaining Agents**

NECA recommends that when your company is required to engage in Good Faith Bargaining with a Union you should appoint NECA as your bargaining agent.

There are a number of advantages in appointing NECA as your bargaining agent; the most important will be to ensure that you properly engage in good faith bargaining so as to reduce the likelihood of good faith bargaining orders being made against your company.

Once a bargaining period has commenced you can nominate NECA as your bargaining agent by completing the attached form and forwarding it to NECA’s Employee Relations Department and your Employee’s Bargaining Representative.

**Voting Procedures**

For assistance with voting procedures, refer to Sample Documents 5 and 6.

**When is a vote successful?**

Your agreement is made when a majority of eligible employees cast a valid vote endorsing the agreement.

**Applying to Fair Work Commission for Approval**

Once your enterprise agreement has been approved you should forward copies of the following documentation to NECA at PO Box 1106, BURWOOD NORTH NSW 2134 or by email to gordon.jervis@neca.asn.au:

1. The signed Enterprise Agreement;
2. Notice of Employee Representation Rights *(sample document 1)*
3. Form F16 – Application for Approval of an Enterprise Agreement
4. Form F17 – Employer Declaration in Support of Application for Approval of an Enterprise Agreement;

Please note that Form F17 needs to be witnessed. Refer to the list below as a guide for persons eligible to witness your signature:

- Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
- Bailiff
- Bank officer with 5 or more continuous years of service
- Building society officer with 5 or more years of continuous service
- Chief executive officer of a Commonwealth court
- Chiropractor
- Clerk of a court
- Dentist
- Justice of the Peace
Legal practitioner
Medical practitioner
Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants.
Nurse
Optometrist
Patent attorney
Pharmacist
Physiotherapist
Police Officer
Psychologist
Trade marks attorney
Veterinary surgeon

Once NECA is in receipt of your documentation, we will make an application to Fair Work Commission for the approval of your agreement.

The application must be lodged with Fair Work Commission within **14 days** of the agreement being approved by your workforce accordingly time will be of the essence.

**Better Off Overall Test**
Before approving an enterprise agreement, Fair Work Commission must ensure the agreement passes the Better Off Overall Test.

This test ensures that the agreement does not, or would not result, on balance, in a reduction in the overall terms and conditions of employment of the employees when compared to the Electrical, Electronic and Communications Contracting Industry Award 2010.

**More Information**
Please contact the NECA Employee Relations Department for further information regarding any of the above on (02) 9744 1099.
Date: ____________________

Notice of Employee Representation Rights

Fair Work Act 2009, subsection 174(6)

Company Name Pty Limited gives notice that it is bargaining in relation to an enterprise agreement Company Name Pty Limited Single Enterprise Agreement 2014 which is proposed to cover employees that are engaged in Electrical Services in Australia.

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 Commission.

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 Commission 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 Commission 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 Commission Infoline on 1300 799 675.)
How and When for Approval – Enterprise Agreements

Discussion Meeting

On this date ____/____/____ at (insert time) and (insert venue for meeting) Company Name Pty Limited will be conducting a meeting to explain the contents of the enterprise agreement.

If you are under the age of 18 years, you are entitled to have a parent, guardian or representative present during the discussion meeting.

Please advise your supervisor if you have any special needs which need to be accommodated when having the agreement explained.

Approval Meeting

On this date ____/____/____ at (insert time) and (insert venue for meeting) Company Name Pty Limited will hold a vote to approve the making of the enterprise agreement, known as Company Name Pty Limited Single Enterprise Agreement 2014 by secret ballot.

If a majority of eligible employees (see below) who cast a valid vote decide that they want to approve the making of the enterprise agreement, it will be approved.

For the purpose of making an Enterprise Agreement an eligible employee is one: who will be covered by the enterprise agreement. This will include employees employed under an ITEA or AWA and whose employment would be covered by the enterprise agreement if they were not employed under an ITEA or AWA.

Instructions for employers: Each eligible employee, when making an enterprise agreement, must be given a completed copy of this How and When for Approval Form at least 7 days prior to seeking approval.

A copy of the Company Name Pty Ltd Single Enterprise Agreement 2014 is enclosed.

The Electrical, Electronic and Communications Contracting Award 2010 and the National Employment Standards are available at [insert details eg on site, at the company depot](#)

If you have any questions, please speak to either your employer, bargaining representative, go to [www.fairwork.gov.au](http://www.fairwork.gov.au) or contact Fair Work Commission Infoline 1300 799 675.
Dear Mr ______

Re: ____________ Pty Limited Single Enterprise Agreement 2014

We write to advise that ____________ Pty Limited has appointed Gordon Jervis of NECA NSW as the Bargaining Agent for the purposes of negotiating our Enterprise Agreement.

Please contact Mr Jervis directly on (02) 9744 1099 for all future enquiries relating to the negotiation of our Enterprise Agreement.

Yours faithfully

____________________
Name and Company
(Insert Date)

Dear (Insert Employee Name),

Re: Company Name Pty Limited Single Enterprise Agreement 2014

This notice is provided further to the Notice of Employee Representational Rights which was provided to all employees on (Insert date here).

As you would be aware the Notice of Employee Representational Rights provides all employees with the right to nominate a bargaining representative to represent them in the negotiation of the (Insert Company Name) Pty Limited Single Enterprise Agreement 2014 (the Agreement).

To date the Company has not received any notices from any employees indicating a wish to be represented in the current negotiations.

The Company is requesting employees (if you are not members of the Union or if you are a member of the Union) to sign at the appropriate place below to indicate preference for representation.

Please tear off the slip below and return to your supervisor.

If you have any questions, please speak to either your employer or go to www.fairwork.gov.au or contact the Fair Work Commission Infoline 1300 799 675.

I, (insert employee name),

have received, read and understood the Notice of Employee Representation Rights provided to me on (insert date).

I hereby indicate my preference in relation to representation during the negotiation of the (insert Company Name) Pty Limited Single Enterprise Agreement 2014 as follows:

<table>
<thead>
<tr>
<th>Revoke the Union Rights</th>
<th>Represent Yourself</th>
<th>Appoint Other (Insert Name)</th>
<th>Union as Bargaining Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Place a cross in the appropriate box to indicate your preference)

_________________________________________  ____________________________________  
Employee Name                                      Date
VOTING PROCEDURES

Company Name Pty Limited Single Enterprise Agreement 2015

1. Print only the number of ballots that you require based on the number of eligible employees.
2. Place your initials or a signature in the box for authenticity in the bottom right hand corner of the ballot.
3. As employees arrive for the ballot, strike their names of an attendance list, ensure they are eligible to vote and provide them with a copy of the ballot.
4. Have a large sealed box available with an opening in the top and ask your employees to place their completed ballots in the box.
5. Once all ballots have been collected you will need to arrange for an employee representative and a representative of management to scrutineer the votes.
6. Ensure that the box is opened in front of both parties and place all yes votes in one pile and no votes in another pile.
7. Once the votes have been separated, count the number of each yes votes and no votes and place the result in the space below:

The votes collected for the approval of the Company Name Pty Limited Single Enterprise Agreement 2015 are as follows:

Yes [ ] No [ ]

The above voting procedure has been followed and the number of votes recorded above are a true and correct record:

Management Scrutineer

| Signed: | |
| Date: | |
| Name in full (printed): | |

Employee Scrutineer

| Signed: | |
| Date: | |
| Name in full (printed): | |
COMPANY NAME PTY LIMITED BALLOT PAPER

Please indicate in the appropriate space, your answer:

Do you approve the making of the Company Name Pty Limited Single Enterprise Agreement 2015?

Yes ☐

No ☐

Mark of Authenticity

COMPANY NAME PTY LIMITED BALLOT PAPER

Please indicate in the appropriate space, your answer:

Do you approve the making of the Company Name Pty Limited Single Enterprise Agreement 2015?

Yes ☐

No ☐

Mark of Authenticity
Form F16—Application for approval of an enterprise agreement

*Fair Work Act 2009, s.185; Fair Work Commission Rules 2013, rule 24 and Schedule 1*

This is an application to the Fair Work Commission for approval of an enterprise agreement in accordance with Part 2-4 of the *Fair Work Act 2009*.

The Applicant

These are the details of the person who is making the application.

<table>
<thead>
<tr>
<th>Name of Applicant</th>
<th>Contact person</th>
</tr>
</thead>
<tbody>
<tr>
<td>Postal address</td>
<td>Suburb</td>
</tr>
<tr>
<td>State or territory</td>
<td>Postcode</td>
</tr>
<tr>
<td>Phone number</td>
<td>Fax number</td>
</tr>
<tr>
<td>Email address</td>
<td></td>
</tr>
</tbody>
</table>

Who is the Applicant?

[ ] The employer (or one of the employers) to be covered by the agreement

[ ] An employee organisation that acted as a bargaining representative (e.g. a union)

[ ] A bargaining representative appointed by the employer

[ ] A bargaining representative appointed by an employee

If the Applicant is a company or organisation please also provide the following details

<table>
<thead>
<tr>
<th>Legal name of business</th>
<th>Trading name of business</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABN/ACN</td>
<td>Contact person</td>
</tr>
</tbody>
</table>

Does the Applicant have a representative?

A representative is a person or business who is representing the Applicant. This might be a lawyer, an employer association or a union. There is no requirement to have a representative.

[ ] Yes—Provide representative’s details below

[ ] No

Applicant’s representative
These are the details of the person or business who is representing the Applicant.

<table>
<thead>
<tr>
<th>Name of person</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firm, union or company</td>
</tr>
<tr>
<td>Postal address</td>
</tr>
<tr>
<td>Suburb</td>
</tr>
<tr>
<td>State or territory</td>
</tr>
<tr>
<td>Phone number</td>
</tr>
<tr>
<td>Email address</td>
</tr>
</tbody>
</table>

1. The Agreement

1.1 What kind of agreement is the enterprise agreement?
   - [ ] A single enterprise agreement
   - [ ] A multi-enterprise agreement

1.2 What is the name of the agreement (write the name exactly as it appears in the title clause of the agreement)?

1.3 Are you aware of any other agreement(s) that has been filed or dealt with by the Commission that has identical or substantially identical terms?
   - [ ] Yes
   - [ ] No

If yes—Provide information to identify that agreement(s). If you can, include: the name of the identical agreement, the name of the employer covered by the identical agreement, the agreement ID number, the date of the Commission's decision and the name of the Commission Member who dealt with such agreement.

1.4 Was that agreement(s) approved with undertakings?
   - [ ] Yes
   - [ ] No
   - [ ] I don’t know

2. The Employer

2.1 What is the industry of the employer(s)?
2.2 Is the Applicant the employer (or one of the employers) to be covered by the agreement?
[ ] Yes—Go to question 2.3
[ ] No—Provide the name of the employer(s) below.

<table>
<thead>
<tr>
<th>Name of business</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>ABN/ACN</td>
<td></td>
</tr>
<tr>
<td>Contact person</td>
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<tr>
<td>Postal address</td>
<td></td>
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<tr>
<td>Suburb</td>
<td></td>
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<tr>
<td>State or territory</td>
<td>Postcode</td>
</tr>
<tr>
<td>Phone number</td>
<td>Fax number</td>
</tr>
<tr>
<td>Email address</td>
<td></td>
</tr>
</tbody>
</table>

2.3 Will more than one employer be covered by the agreement?
[ ] Yes—Provide the name(s) of the other employers to be covered by the agreement.
[ ] No—Go to question 3

<table>
<thead>
<tr>
<th>Name of organisation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ABN/ACN</td>
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<tr>
<td>Contact person</td>
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<td>Postal address</td>
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<td>Suburb</td>
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<td>State or territory</td>
<td>Postcode</td>
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<td>Phone number</td>
<td>Fax number</td>
</tr>
<tr>
<td>Email address</td>
<td></td>
</tr>
</tbody>
</table>

3. Employer Bargaining Representatives

3.1 Did the employer(s) appoint a bargaining representative?
[ ] Yes—Go to question 3.2
[ ] No—Go to question 4

3.2 If you answered yes to question 3.1—Provide the name(s) of the employer bargaining representative(s).

<table>
<thead>
<tr>
<th>Name of organisation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ABN/ACN</td>
<td></td>
</tr>
<tr>
<td>Contact person</td>
<td></td>
</tr>
</tbody>
</table>
4. Union Bargaining Representatives

4.1 Were there any employee organisations (unions) involved in the agreement making process as bargaining representatives?
   [ ] Yes—Go to question 4.2
   [ ] No—Go to question 5

4.2 If you answered yes to question 4.1—Provide the name(s) of the other union(s).

<table>
<thead>
<tr>
<th>Name of union</th>
<th>Contact person</th>
<th>Postal address</th>
<th>Suburb</th>
<th>State or territory</th>
<th>Postcode</th>
<th>Phone number</th>
<th>Fax number</th>
<th>Email address</th>
</tr>
</thead>
</table>

Attach additional pages if necessary

5. Employee Bargaining Representatives

5.1 Were there any employee bargaining representatives involved in the agreement making process?
   [ ] Yes—Go to question 5.2
   [ ] No

5.2 If you answered yes to question 5.1—How many instruments of appointment signed by an employee(s) appointing a bargaining representative were given to the employer?

5.3 If you answered yes to question 5.1—Provide the name(s) of the employee bargaining representatives.

<p>| Name |</p>
<table>
<thead>
<tr>
<th>Position/relationship</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Postal address</td>
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<tr>
<td>State or territory</td>
<td>Postcode</td>
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<tr>
<td>Phone number</td>
<td>Fax number</td>
</tr>
<tr>
<td>Email address</td>
<td></td>
</tr>
</tbody>
</table>

Attach additional pages if necessary

**Signature**

⚠️ If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

<table>
<thead>
<tr>
<th>Signature</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td></td>
</tr>
<tr>
<td>Capacity/Position</td>
<td></td>
</tr>
</tbody>
</table>

Where this application form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS
Form F17—Employer’s statutory declaration in support of an application for approval of an enterprise agreement

*Fair Work Act 2009*, s.185; *Fair Work Commission Rules 2013*, rule 24 and Schedule 1

This is a declaration in support of an application to the Fair Work Commission for approval of an enterprise agreement in accordance with Part 2-4 of the *Fair Work Act 2009*.

I,  

<table>
<thead>
<tr>
<th>Name</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Postal address</td>
<td></td>
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<tr>
<td>Suburb</td>
<td></td>
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<tr>
<td>State or territory</td>
<td>Postcode</td>
</tr>
<tr>
<td>Occupation</td>
<td></td>
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</tbody>
</table>

Make the following declaration under the *Statutory Declarations Act 1959*

**Part 1—Preliminary**

1.1 What is the name of the employer?

| Legal name |  |
| Trade name |  |

1.2 What is the name of the agreement (write the name *exactly* as it appears in the title clause of the agreement)?

1.3 Are you aware of any other agreement(s) that has been filed or dealt with by the Commission that has identical or substantially identical terms?

- [ ] Yes
- [ ] No

If you have answered yes to question 1.3—specify the name of the identical agreement, the name of the employer covered by the identical agreement, the agreement ID number, the date of the Commission’s decision and the name of the Commission Member who dealt with such agreement

1.4 Was that agreement approved with undertakings?

- [ ] Yes
- [ ] No
- [ ] Don’t know
1.5 Has a scope order or a low paid authorisation been issued in relation to this agreement?

[ ] Yes
[ ] No

If yes—Provide the unique print number (PR) and the date the order was made

<table>
<thead>
<tr>
<th>Print number</th>
<th>Date of order</th>
</tr>
</thead>
</table>

1.6 Have you notified all employees that will be covered by the agreement that an application has been made to the Commission for approval of the agreement?

See Rule 40 of the *Fair Work Commission Rules 2013*. Notification should be made through the usual means that are adopted by the employer for communicating with employees.

[ ] Yes
[ ] No

Part 2—Requirements for approval

Nominal expiry date

2.1 What is the nominal expiry date of the agreement? Provide the clause number in the agreement that specifies the date.

See section 186(5) of the *Fair Work Act 2009*

<table>
<thead>
<tr>
<th>Clause number</th>
<th>Expiry date</th>
</tr>
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</table>

Scope of the agreement

2.2 Does the agreement cover all the employees of the employer (other than senior executives)?

[ ] Yes
[ ] No

See sections 186(3) and (3A) of the *Fair Work Act 2009*

If no—what group(s) of employees are covered by the agreement. Explain why you think the Commission should be satisfied that this group(s) was fairly chosen. If appropriate, describe any geographical, operational or organisational qualities that make the group(s) distinct.

| Scope of the agreement |

2.3 Did the employer take all reasonable steps to give notice of their right to be represented by a bargaining representative to each employee who will be covered by the agreement?

[ ] Yes—please attach a copy of the notice given to employees
[ ] No
Describe the steps that were taken to give employees notice of their right to be represented by a bargaining representative.

<table>
<thead>
<tr>
<th>Describe the steps taken</th>
<th>Date</th>
</tr>
</thead>
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</tbody>
</table>

2.4 What steps were taken by the employer and on what date were they taken 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 into the agreement during the 7 day period ending immediately before the start of the voting process?

See section 180(2)(a) of the *Fair Work Act 2009*

2.5 Describe the action that was taken to notify all relevant employees of:

- the date and place at which the vote was to occur and
- the voting method to be used.
Describe the action taken | Date
--- | ---

### 2.6 What steps were taken by the employer to explain the terms of the agreement, and the effect of those terms, to the relevant employees?

See section 180(5) of the *Fair Work Act 2009*

### 2.7 When you explained the terms of the agreement to the employees, what did you do to take into account the particular circumstances and needs of the relevant employees?

Examples of employees who have ‘particular circumstances and needs’ include employees from non-English speaking backgrounds, young employees, employees who don’t have a bargaining representative, etc.

### 2.8 Please provide the following dates:

See sections 181, 181(2) and 182 of the *Fair Work Act 2009*

| Date | 
| --- | --- |
| The date of the last notice of representational rights given to an employee who will be covered by the agreement. |  |
| The date voting for the agreement commenced (voting commences on the first date that an employee is able to cast a vote) |  |
| The date that the agreement was made (that is, the date on which the voting process by which the employees approved the agreement concluded). |  |

### 2.9 Is the agreement lodged within 14 calendar days of the date the agreement was made?

[ ] Yes
[ ] No
If you have answered no to question 2.9—Please provide details of the circumstances the Commission should take into account in deciding if it is fair to extend the time for lodging this application.

See section 185(3)(b) *Fair Work Act 2009*

2.10 Please provide the following details about the vote on the agreement:

- How many employees will be covered by the agreement?
- How many employees cast a valid vote?
- How many employees voted to approve the agreement?

**Interaction with the National Employment Standards**

2.11 List any terms of the agreement that exclude in whole, or in part, the National Employment standards?

See Part 2-2—National Employment Standards of the *Fair Work Act 2009*

2.12 List any terms of the agreement that are detrimental to an employee in any respect when compared to the National Employment Standards.

**Right of entry**

2.13 Does the agreement contain any terms that deal with the rights of officials or employees or employee organisations to enter the employer’s premises?

See section 186(4) and sections 194(f) and (g) of the *Fair Work Act 2009*

[ ] Yes
[ ] No

If you have answered yes to question 2.13—Please identify the clauses in the agreement dealing with right of entry
Unlawful terms
2.14 Does the agreement contain any of the following:
- [ ] discriminatory terms—s186(4), s194(a), s195
- [ ] objectionable terms—s12, s186(4), s194(b)
- [ ] terms dealing with employee rights in relation to unfair dismissal—s186(4), s194(c)-(d)
- [ ] designated outworkers terms—s186(4)
- [ ] terms that deal with the taking of industrial action that are inconsistent with Part 3-3 of Chapter 3 of the *Fair Work Act 2009*—s186(4), s194(a)
- [ ] a term that does not comply with the superannuation contribution requirements for default fund employees—s194(h)

If you have selected any of the above please identify the relevant terms of the agreement.

---

Required terms
2.15 Please provide the clause numbers in the agreement for these required terms:

<table>
<thead>
<tr>
<th>Dispute resolution procedure—s186(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flexibility term—s202(1), s203</td>
</tr>
<tr>
<td>Consultation term—s205(1) s205(1A)</td>
</tr>
</tbody>
</table>

---

Particular types of workers
2.16 Can shift workers be employed under the agreement?

See section 196 of the *Fair Work Act 2009*

[ ] Yes
[ ] No – Go to question 2.17

Please identify the clause(s) in the agreement that define shift workers for the purpose of the NES.
Please advise if the agreement provides for an additional week of annual leave for shift workers and identify the relevant clause(s) number of the agreement.

2.17 Does the agreement?
[ ] cover any pieceworkers—s197
[ ] cover any outworkers—s200
[ ] contain terms for school based apprentices or trainees that provide for loadings in lieu of paid leave—s199

Part 3—Better off overall test
Reference instruments

3.1 List the modern award(s), if any, that currently cover the employer and any of the employees covered by this agreement.

3.2 List the pre-reform award(s) or NAPSA(s) that covered the employer and any of the employees covered by this agreement as at 31 December 2009.

Translating classifications

3.3 Are any of the classifications in the agreement different from the classifications in any of the reference instrument(s) listed in questions 3.1 and 3.2?
[ ] Yes
[ ] No

If you have answered yes to question 3.3—Please attach a table that identifies how the classifications in the agreement relate to the classifications in the reference instrument(s).

Improvements and reductions

3.4 Does the agreement contain any terms or conditions of employment that are more beneficial than equivalent terms and conditions in the reference instrument(s) listed in questions 3.1 and 3.2 and/or does the agreement confer any entitlements that are not conferred by those reference instruments?
[ ] Yes
[ ] No

If you have answered yes to question 3.4—Identify the terms and conditions of the agreement that are more beneficial than, or are not conferred by the reference instruments. Your answer should indicate whether all or only some of the employees are affected and, if only some employees are affected, identify the groups of employees affected.
3.5 Does the agreement contain any terms that are less beneficial than equivalent terms and conditions in the reference instrument(s) listed in questions 3.1 and 3.2 and/or does the agreement confer any entitlements that are not conferred by those reference instruments?

[ ] Yes
[ ] No

If you have answered yes to question 3.5—Identify the terms and conditions of the agreement that are less beneficial and are not conferred by the reference instruments. Your answer should indicate whether all or only some of the employees are affected and, if only some employees are affected, identify the groups of employees affected.

Exceptional circumstances (where the agreement fails the better off overall test)

3.6 Do you think that the agreement passes the better off overall test?

Section 193 of the Fair Work Act 2009 sets out when an agreement will pass the better off overall test.

[ ] I think the agreement does pass the better off overall test
[ ] I don’t think the agreement passes the better off overall test

If the employer considers that the Agreement does not pass the better off overall test—Identify any exceptional circumstances that the Commission should consider when deciding whether approving the Agreement would not be contrary to the public interest.

Section 189 of the Fair Work Act 2009 sets out when the Commission may approve an enterprise agreement that does not pass the better off overall test.

Part 4—Statistical information

This information is necessary to enable the Fair Work Commission to comply with its statutory reporting obligations under s653 of the Fair Work Act 2009

4.1 What is the primary activity of the employer?
For example music retailer, plumbing contractor, steel fabricator, etc.

4.2 What states and territories will this agreement be operating in?
[ ] Australian Capital Territory
[ ] New South Wales
[ ] Northern Territory
[ ] Queensland
[ ] South Australia
[ ] Tasmania
[ ] Victoria
[ ] Western Australia

4.3 Please provide the following details about the vote on the agreement:

<table>
<thead>
<tr>
<th>Demographic group</th>
<th>Number of employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td></td>
</tr>
<tr>
<td>Non-English speaking background</td>
<td></td>
</tr>
<tr>
<td>Aboriginal or Torres Strait Islander</td>
<td></td>
</tr>
<tr>
<td>Disabled</td>
<td></td>
</tr>
<tr>
<td>Part-time</td>
<td></td>
</tr>
<tr>
<td>Casual</td>
<td></td>
</tr>
<tr>
<td>Under 21 years of age</td>
<td></td>
</tr>
<tr>
<td>Over 45 years of age</td>
<td></td>
</tr>
</tbody>
</table>

4.4 Please list the full and precise name of all collective agreement(s) (including ID numbers) that covered any employees covered by this agreement immediately prior to the time this agreement was made.
I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

**Signature of person making the declaration**

<table>
<thead>
<tr>
<th>Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>Declared at (place)</td>
</tr>
<tr>
<td>on (day) of (month) (year)</td>
</tr>
</tbody>
</table>

**Before me,**

<table>
<thead>
<tr>
<th>Signature of person before whom the declaration is made</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full name of person before whom declaration is made</td>
</tr>
<tr>
<td>Qualification of person before whom declaration is made</td>
</tr>
<tr>
<td>Address of person before whom declaration is made</td>
</tr>
<tr>
<td>Suburb</td>
</tr>
<tr>
<td>State or territory</td>
</tr>
<tr>
<td>Phone number</td>
</tr>
</tbody>
</table>

**Note 1:** A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment of which is imprisonment for a term of 4 years—see section 11 of the *Statutory Declarations Act 1959*.

**Note 2:** Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959*—see section 5A of the *Statutory Declarations Act 1959*.

A statutory declaration must be made before a “prescribed person”. For a full description of prescribed persons please see the Commission’s [Guide—Statutory Declarations](#).

**PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS**
Form F18—Declaration of Employee Organisation in Support of Application for Approval of Enterprise Agreement

IN FAIR WORK COMMISSION

FWA Matter No.: [Insert FWA matter number appearing on the main application form, if known.]

Applicant: [Insert name of Applicant from main application.]

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

Fair Work Act 2009—s.185

I, [name]

Of [address]

[occupation]

Make the following declaration under the Statutory Declarations Act 1959:

1. What is the name of the agreement?

2. What is the name of the employer or employers to be covered by the agreement?

3. Were you a bargaining representative for a member or members of your organisation who is an employee or employees covered by the agreement?

4. Were you entitled to represent the industrial interests of the employee or employees referred to in question 3 in relation to work that will be performed under the agreement?

   [ ] Yes
   [ ] No

5. Have you read the statutory declarations lodged on behalf of the employer or employers?

   [ ] Yes
   [ ] No
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

7. If the answer to question 6 is “No”, please identify the relevant statutory declaration and the question or questions and provide your answers:

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are 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.]

[Set out the witness' full name, qualification to witness a statutory declaration and address (all in printed letters). Note: A statutory declaration must be made before a “prescribed person”: s.8, Statutory Declarations Act 1959 (Cth). For a full description of prescribed persons, go to www.fwa.gov.au/index.cfm?pagename=resourcefactsstatdecs.]

Please provide your contact details for any future inquiries related to this declaration:

<table>
<thead>
<tr>
<th>Name:</th>
<th>Address:</th>
<th>State:</th>
<th>Postcode:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suburb:</td>
<td>Telephone:</td>
<td>Mobile:</td>
<td>Email:</td>
</tr>
<tr>
<td>Facsimile:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>