



s.185 single enterprise agreement legislative checklist

This checklist has been prepared by the Fair Work Commission's administrative staff. It may not reflect the views of the Commission Member dealing with the enterprise agreement approval application, who will form their own views about the matters set out in this checklist.

Matter:

Member:

Summary of issues with the application

Section 1: Forms and representation
Section 2: Pre-approval requirements - Form F17
Section 3: Terms of the Agreement
Section 4: National Employment Standards (NES)

Summary of boot

Better off overall test (BOOT) summary - for detailed analysis, see section 5 of the checklist

Summary of application

Administrative information

Prepared by	
Name of Employer(s)	
Lodgment Date	

Agreement information

Background Information (industry, union involvement, number of employees, whether involved in engagement session etc.)	The Agreement covers employees working within XXX industry in XXX. Employees under the Agreement are currently covered by the XXX. The XXX is a Union Bargaining Representative to the matter and are un/supportive of approval. The Agreement covers XX employees of which XX voted and XX approve.
Modern Award(s) (Q8 F17)	
Award(s) Incorporated	
NES Precedence Term	

Miscellaneous considerations

Consideration	Marked if 'Yes'
Request to be expedited	<input type="checkbox"/>
Are there any missing documents including material incorporated?	<input type="checkbox"/>
Separate signature page(s)	<input type="checkbox"/>
Confidentiality request	<input type="checkbox"/>
Request for s.586 correction	<input type="checkbox"/>
Pre-emptive undertaking	<input type="checkbox"/>
Inconsistencies or omissions on declaration	<input type="checkbox"/>

Details of any issues or considerations for Member:

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Section 1: forms and representation

Requirement	Marked if an issue
<p>Form F16 (s.185, rule 24 FW Rules)</p> <p>Signed and dated by employer or bargaining representative (if bargaining representative, instrument of appointment must be provided)</p>	<input type="checkbox"/>
<p>Form F17 (s.185, rule 24(1) and (2) FW Rules)</p> <p>Signed by employer including date signed</p>	<input type="checkbox"/>
<p>Form F18 (s.183, s.185, rule 24(3) FW Rules) and/or Form F18A (s.183, s.185, rule 24 FW Rules)</p> <p>Signed by employee organisation or employee representative including date signed</p> <p>Has every union bargaining representative listed on the Form F16 lodged a Form F18?</p> <p>Does the union/s object to the approval of the agreement and/or have they raised any issues?</p>	<input type="checkbox"/>
<p>Agreement (s.185(2), reg. 2.06A FW Regs)</p> <p>Signed by the employer and at least 1 employee/employee representative and includes full name, address and authority of each person.</p>	<input type="checkbox"/>
<p>Requests for documents</p>	<input type="checkbox"/>

Details of any issues or considerations for Member:

Section 2: pre-approval requirements – form f17

Requirement	Marked if issue	Comments (if there is an issue)
<p>Employees covered by the agreement - (s.186(3), s.186(3A)) (Q4)</p> <p>Does the agreement cover all employees – if not, was the group fairly chosen considering geographical, operational and organisational distinctness?</p>	<input type="checkbox"/>	
<p>NERR Provision (s.173, s.174, s.188(2), Sch 2.1 of FW Regs) (Q17, Q18, Q19)</p> <p>The Notice of employee representational rights is in prescribed form.</p> <p>The employer took all reasonable steps taken to give the Notice to each employee covered by the agreement and employed at the time of notification.</p>	<input type="checkbox"/>	
<p>NERR Provision – Timeliness (s.173(3), s.181, s.186(2)(a), s.188) (Q17, Q18, Q19, Q25)</p> <p>The employer provided the Notice of employee representational rights no later than 14 days after notification time.</p> <p>Employees provided with the Notice of employee representational rights at least 21 days before commencement of voting.</p>	<input type="checkbox"/>	
<p>Voting Notification (s.186(2)(a), s.188) (s.180(3)) (Q20, Q25)</p> <p>The employer took all reasonable steps to notify employees of the time, place and method of vote by the start of the access period. Ensure that this is at least 7 clear days before voting commenced.</p>	<input type="checkbox"/>	
<p>Provision of/access to agreement (s.186(2)(a), s.188) (s.180(2)) (Q21, Q25)</p> <p>The employer took all reasonable steps to give a copy of the agreement and incorporated material to employees during the access period or provide employees with access to it by the start of access period.</p>	<input type="checkbox"/>	

Requirement	Marked if issue	Comments (if there is an issue)
<p>Agreement explanation - (s. 186(2)(a), s. 188) (s.180(5), s.180(6)) (Q5, Q6, Q22, Q23, Q24, Q25)</p> <p>The employer took reasonable steps to explain the terms of the agreement and the effect of the terms while taking into account the particular circumstances and needs of relevant employees.</p>	<input type="checkbox"/>	
<p>Lodgment - (s.182(1), s.185(3)) (Q25 and Q1.4 of F16)</p> <p>Application was lodged no later than 14 days after agreement was made.</p>	<input type="checkbox"/>	
<p>Voting - (s.186(2)(a), s.188) (s.182(1)) (Q26)</p> <p>Did a majority of employees who cast a valid vote approve the agreement?</p>	<input type="checkbox"/>	

Pay rate comparison

Has the employer provided classification matching? (Q9 F17)	Basis of pay rate comparison

Section 3: terms of the agreement

Requirement/Consideration	Marked if an issue	Clause/s
<p>Nominal expiry date (s.186(5))</p> <p>Is the nominal expiry date more than 4 years after approval date?</p>	<input type="checkbox"/>	
<p>Date of commencement (s.54(1))</p> <p>Is the date of commencement anything other than 7 days after the date of approval?</p>	<input type="checkbox"/>	
<p>Superannuation term (s.186(4), s.194(h))</p> <p>If the Agreement specifies a superannuation fund:</p> <ul style="list-style-type: none"> • does the fund offer a MySuper product; or • is the fund or scheme an exempt public sector superannuation scheme; or • is the fund a fund of which a relevant employee is a defined benefit member of? 	<input type="checkbox"/>	
<p>Shiftworker for the purposes of the NES (s.187(4), s.196)</p> <p>Agreement defines or describes an employee as a shiftworker for the purposes of the NES?</p> <p>Is this consistent with the definition in the relevant award(s)?</p>	<input type="checkbox"/>	
<p>Unlawful terms, and designated outworker terms (s.172, s.186(4), s.186(4A), s.194, s.195, s.253)</p> <p>Unlawful terms include discriminatory terms, objectionable terms, terms that provide for a method which an employee or employer may elect not to be covered by the agreement, terms about unfair dismissal, terms about industrial action and terms about superannuation.</p>	<input type="checkbox"/>	
<p>Right of entry term (s.186(4), s.194(f) & s.194(g))</p> <p>Does the agreement contain any terms that deal with the rights of officials or employees or employees of employee organisations to enter the employer's premises?</p>	<input type="checkbox"/>	

Requirement/Consideration	Marked if an issue	Clause/s
Stand down provisions inconsistent with the Act?	<input type="checkbox"/>	
Deductions inconsistent with the Act?	<input type="checkbox"/>	
Dispute settlement term (s.186(6), reg 6.01, Sch 6.1 of FW Regs)	<input type="checkbox"/>	
Flexibility term (ss.202–204, reg 2.08, Sch 2.2 FW Regs)	<input type="checkbox"/>	
Consultation term (s.205, reg. 2.09, Sch 2.3 FW Regs)	<input type="checkbox"/>	

Details of any issues or considerations for Member:

Section 4: national employment standards

Relevant sections of the *Fair Work Act*: ([s.55](#), [s.56](#), [s.186\(2\)\(c\)](#), [s.196](#), [s.253](#))

NES Precedence Term	
Does the agreement contain a NES precedence term?	

Requirement	Marked if an issue	Clause/s
Maximum weekly hours of work (s.62 – s.64) 38 hours per week	<input type="checkbox"/>	
Request for flexible working arrangements (s.65 – s.66) Section 65(1A) FW Act	<input type="checkbox"/>	
Casual Conversion (s.66A) Must be offered casual conversion if employed for 12 months and working regular pattern for 6 months. Employer can refuse to make an offer if they have reasonable grounds. Employee can make request in certain circumstances.	<input type="checkbox"/>	
Parental leave (s.67 – s.88) 12 months unpaid + right to request further 12 months	<input type="checkbox"/>	
Annual leave (s.86 – s.94) 4 weeks paid leave (5 weeks for shiftworkers)	<input type="checkbox"/>	
Personal/carer's leave (s.95 – s.107) 10 days paid leave + 2 days paid compassionate leave + 2 days unpaid leave when paid leave has been used	<input type="checkbox"/>	
Community service leave (s.108 – s.112) 10 days paid jury leave + unpaid emergency service leave	<input type="checkbox"/>	
Long service leave (s.113 – s.113A) As per the pre-reform award or NAPSA, or is silent, or in accordance with state long service leave legislation	<input type="checkbox"/>	

Requirement	Marked if an issue	Clause/s
<p>Public holiday (s.114 – s.116)</p> <p>Paid day off for each public holiday (employer can request employee to work if such request is reasonable)</p>	<input type="checkbox"/>	
<p>Notice of termination and redundancy (s.117 – s.123)</p> <p>Up to 4 weeks' notice (5 weeks' if over 45 and in job for over 2 years) depending on years of service AND between 4-16 weeks redundancy pay depending on years of service</p>	<input type="checkbox"/>	
<p>Family and domestic violence leave (s.106A)</p> <p>5 days of unpaid family and domestic violence leave in a 12 month period</p>	<input type="checkbox"/>	
<p>Fair Work Information Statement (s.124 – s.125)</p>	<input type="checkbox"/>	

Section 5: better off overall test report

Relevant sections of the *Fair Work Act*: (s.186(2)(d), s.193)

Relevant award(s)	
BOOT considerations/ comments	

Concerns not noted above

Part-time	
Casuals	
Apprentices	
Juniors	
Trainees	

Modelling