

A Guide to Agreement Making Process and Good Workplace Practice



Australian Government

Office of the Employment Advocate

IMPROVING AUSTRALIAN WORKPLACES



Session outline

- What is the role of the OEA?
- Types of Workplace agreements available under WorkChoices
 - The steps to making a Workplace agreement
- Where can I get further information?



The new role of the OEA

- Providing advice to employers and employees on agreement making
- Explaining content of agreements to cater for employee specific needs
- Checking agreements for prohibited content
- Issuing certificates to bargaining agents
- Issuing transmission of business notices
- Making available all statutory forms



OEA Information and Tools

What tools and information is available?

- Fact sheets for employers and employees
- Workplace Agreements User Guide
- How to Guides
- Workplace Agreements Online

Where can I find this information?

- OEA website
- Workplace Agreements Information Service
- Seminars
- Local OEA offices



Pre-Reform agreements

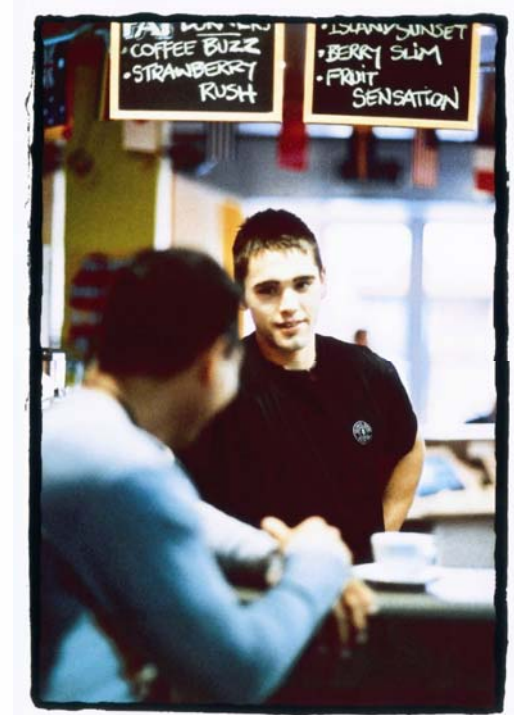
- Current agreements remain valid and continue to operate
- Pre-reform agreements can be replaced by a WorkChoices agreement before the nominal expiry date
- The Standard does not apply to these agreements
- Pre-reform agreements cannot be varied

Making a Workplace agreement – The 6 Steps



Step 1 – Selecting the type of Workplace Agreement

1. Employee collective agreements
2. Union collective agreements
3. Australian workplace agreements
4. Union greenfields agreements
5. Employer greenfields agreements
6. Multiple business agreements

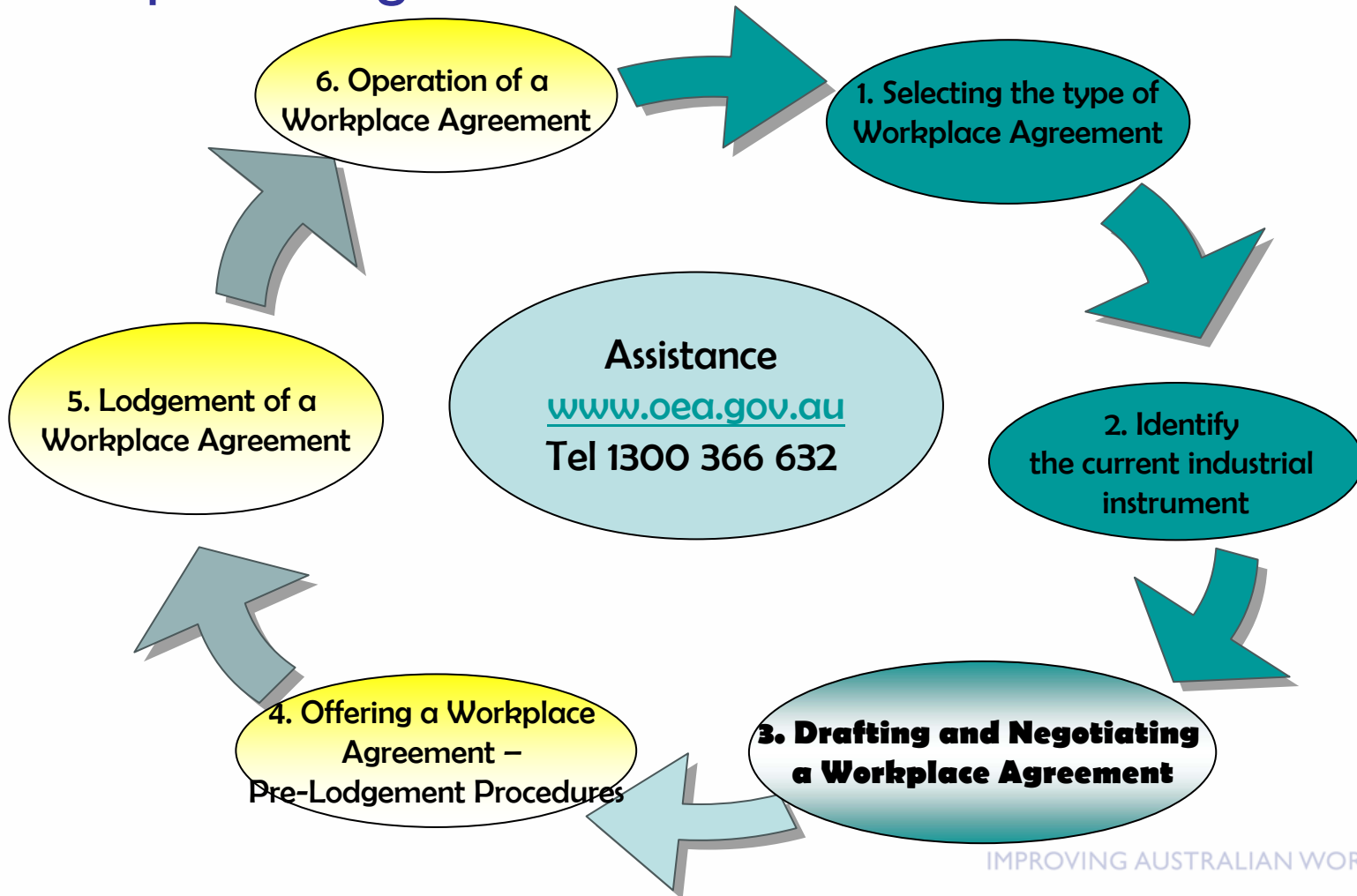


Step 2 – Identify the current Industrial Instrument

- Federal Awards
- Protected Award conditions
 - Rest breaks
 - Incentive Based Payments and Bonuses
 - Annual Leave Loading
 - Public Holidays
 - Allowances
 - Loading and Penalty Rates



Step 3 – Drafting and Negotiating a Workplace Agreement





Step 3 – Drafting and Negotiating the Workplace agreement

Drafting

- Minimum entitlements of the Standard must be met or exceeded
- Protected Award Conditions – unless expressly excluded or modified
- Required Content
 - Nominal Expiry Date;
 - Dispute Resolution Procedures
- Prohibited Content



The OEA's Role in Relation to Prohibited Content

- What is Prohibited Content?
 - Prohibited content is content that cannot be included in workplace agreements. A term of an agreement that contains prohibited content is void and cannot be enforced if it is included in a workplace agreement.



What content is prohibited in agreements?

- Terms that encourage or discourage union membership
- Terms allowing for industrial action during the life of the agreement
- Terms dealing with disclosure of details of workplace agreement
- Terms providing for remedies for unfair dismissal
- Term preventing the making of an AWA
- Discriminatory terms
- Matters that do not pertain to the employment relationship
- Deductions from pay or wages for union fees
- Provision of paid leave to attend training or meetings conducted by a trade union
- Restrictions on the engagement of independent contractors or labour hire workers



Prohibited Content (cont)

- What happens if an agreement is lodged with Prohibited Content?
- How can I make sure I have not included Prohibited Content in an agreement?

OEA Website – Prohibited Content

Employers

- ▶ Find out about workplace agreements
- ▶ Do you have employees under 18 years of age?
- ▶ Assistance for small business
- ▼ **Additional information to assist with agreement making**
 - > Australian Fair Pay and Conditions Standard
 - > Bargaining agents
 - > Coercion and duress
 - > Prohibited content
 - > Protected award conditions
 - > Transitional arrangements in state and federal systems
 - > Transmission of business
 - > Who can make an agreement?
 - > WorkChoices operating in Victoria
 - > Associates can help
 - > Industry Partners can help
- ▶ Workplace agreements made before 27 March 2006
- ▶ Contact us

Prohibited content

Index

- What is prohibited content?
- What about transitional instruments under WorkChoices?
- What kind of content is prohibited?
- What happens if a workplace agreement lodged with the Office of the Employment Advocate contains prohibited content?
- What can an employer do so as to not lodge an agreement with prohibited content?
- Workplace agreement negotiation and prohibited content
- Misrepresentations about prohibited content

What is prohibited content?

Prohibited content is content that cannot be included in workplace agreements. A term of an agreement that contains prohibited content is void and cannot be enforced if it is included in a workplace agreement.

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What about transitional instruments under WorkChoices?

Prohibited content that is included in certain transitional instruments operating under WorkChoices will also be void and unenforceable. Prohibited content for these instruments is limited to terms that prevent the making of Australian workplace agreements. Specifically, constitutional corporations currently covered by the following transitional instruments will not be able to enforce any terms that prevent an employer from making Australian workplace agreements:

- preserved collective or individual state agreements,
- Notional agreements preserving State awards,
- ~~not enforceable transitional instruments~~

▼ Lodge your
**WORKPLACE
AGREEMENT**



Step 3 – Drafting and Negotiating the Workplace agreement

Negotiating

- Bargaining Agents
- Bargaining Periods/Industrial Action

Step 4 – Offering Workplace agreements: Pre-lodgement Procedures

	WorkChoices
Provision of Copy of Agreement	At least 7 days before agreement is approved (7 day notice period can be waived)
Provision of Information Statement	At least 7 days before agreement is approved (7 day notice period cannot be waived)

Employee Information Statement

INFORMATION STATEMENT FOR EMPLOYEES AUSTRALIAN WORKPLACE AGREEMENTS

IMPROVING AUSTRALIAN WORKPLACES

You must have this Information Statement for at least seven days before you make, vary, or agree to terminate an Australian workplace agreement with your employer.

If you have any questions, you can call the Office of the Employment Advocate (OEA) on **1300 366 632**, or visit www.oea.gov.au.



WHAT IS AN AUSTRALIAN WORKPLACE AGREEMENT?

An Australian workplace agreement is an individual written agreement between you and your employer that sets out terms and conditions of your employment.

An Australian workplace agreement does not start to operate until your employer lodges it with the OEA.

IMPROVING AUSTRALIAN WORKPLACES

Step 5 - Lodgement of a Workplace agreement

	WorkChoices
Lodgement (AWA, Collective Agreement)	Within 14 days of approval of the agreement
Lodgement (Union greenfields)	Within 14 days after the agreement was made
Additional lodgement documents	Lodgement of declaration with the agreement
OEA Receipt	Must be provided to relevant employees within 21 days of receipt. AWA employees will receive a receipt direct from OEA

Employer Declaration Form

EMPLOYER DECLARATION FORM – UNION COLLECTIVE AGREEMENT

The employer makes this declaration and completes the declaration form when lodging a union collective agreement.

The employer's declaration applies to the union collective agreement named in the declaration form. The declaration form includes Part A: Employer's declaration, Part B: Agreement and employer details and Part C: Union details.

The employer makes this declaration and completes the declaration form under caution that the provision of any information or document to the Employment Advocate the employer knows to be false or misleading is a serious offence under the *Criminal Code Act 1995*. The maximum penalty is 12 months imprisonment.

Part A: Employer's declaration


The employer party to the agreement lodged declares that: *(Please mark boxes with 'X' to indicate)*

- the information in the declaration form is true and correct to the best of the employer's knowledge.
- the agreement being lodged is a copy of a union collective agreement.
- the union collective agreement was approved before lodgement because:
 - all employees employed at the time whose employment will be subject to the union collective agreement were given a reasonable opportunity to decide if they wanted to approve the agreement; and
 - either there was a decision made by a vote where a majority of the employees who cast a valid vote approved the union collective agreement, or
 - otherwise a majority of employees employed at the time whose employment will be subject to the union collective

Workplace Agreements Online (main page)

Workplace Agreements Online - Microsoft Internet Explorer

Help Information ?

 **Australian Government**
Office of the Employment Advocate

WORKPLACE AGREEMENTS ONLINE

Login to Workplace Agreements Online

Enter your ABN:

Enter your Account Name:

Enter your Password: * [Forgotten your Password?](#)

Select Role to Login: ▼

[Register New Account](#)

[Reset Password](#)

Important Notice

New arrangements for workplace agreements came into effect on 27 March 2006. Under these arrangements there are strict pre-

Local intranet

ACES

Agreement Making – Made or Approved

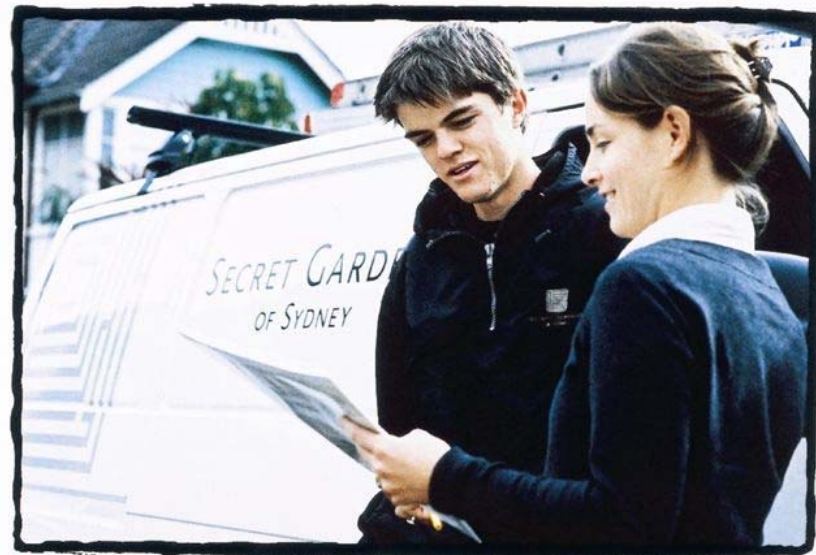
Type of Agreement	When “made”	When “approved”
AWA	Upon approval	<ul style="list-style-type: none">• signed and dated by both parties• witnessed (Note: special rule for under 18s)
Employee collective agreement	Upon approval	<ul style="list-style-type: none">• employee has had reasonable opportunity to consider; and• majority approve

Agreement making – Made or Approved

Type of agreement	When “made”	When “approved”
Union collective	When the parties agree to terms	<ul style="list-style-type: none">• employee has had reasonable opportunity to consider; and• majority approve
Union greenfields	When the parties agree to terms	When made
Employer greenfields	Upon lodgement by employer	When made

Step 6 – Operation of a Workplace Agreement

- Can operate for up to 5 years (except Employer Greenfields – 12 months)
- Transmission of Business





Transmission of Business

- Notice to employees – 28 days after commencement
- Notice to OEA – 14 days post employee notice
- Applies for maximum of 12 months



Hierarchy of Federal Industrial Instruments





Step 6 – Operation of a Workplace agreement (continued)

Terminating a Workplace Agreement

- Termination by agreement between the parties
- Unilateral termination (in defined circumstances);
- When it is replaced by another agreement; or
- If the Court declares the agreement void

Making a Workplace agreement – The 6 Steps

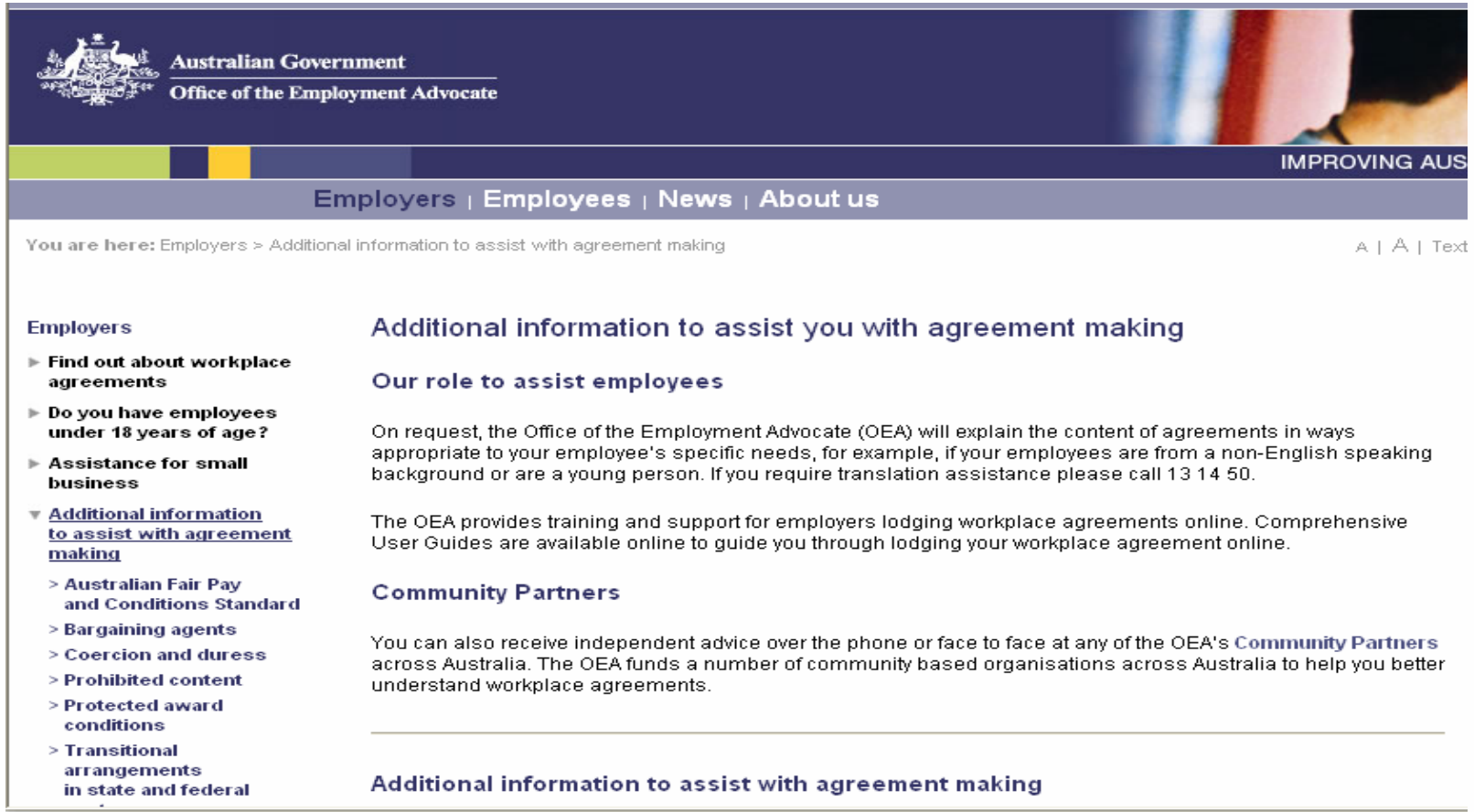




For Assistance

- OEA Workplace Agreements Information Service
Ph 1300 366 632
- OEA Web for Seminars and various publications -
including how to guides
www.oea.gov.au
- WorkChoices Info Line
Ph 1300 363 264
www.workchoices.gov.au

OEA Website Additional Information



The screenshot shows the OEA website header with the Australian Government logo and the text "Australian Government Office of the Employment Advocate". A navigation bar includes "Employers | Employees | News | About us" and "IMPROVING AUS". The breadcrumb trail reads "You are here: Employers > Additional information to assist with agreement making". The main content area is titled "Additional information to assist you with agreement making" and includes a sub-section "Our role to assist employees" with a paragraph explaining the OEA's role. A "Community Partners" section follows, describing independent advice services. A sidebar on the left lists various topics under "Employers", with "Additional information to assist with agreement making" selected and expanded to show sub-topics like "Australian Fair Pay and Conditions Standard", "Bargaining agents", "Coercion and duress", "Prohibited content", "Protected award conditions", and "Transitional arrangements in state and federal".

Australian Government
Office of the Employment Advocate

IMPROVING AUS

Employers | Employees | News | About us

You are here: Employers > Additional information to assist with agreement making A | A | Text

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Additional information to assist you with agreement making

Our role to assist employees

On request, the Office of the Employment Advocate (OEA) will explain the content of agreements in ways appropriate to your employee's specific needs, for example, if your employees are from a non-English speaking background or are a young person. If you require translation assistance please call 13 14 50.

The OEA provides training and support for employers lodging workplace agreements online. Comprehensive User Guides are available online to guide you through lodging your workplace agreement online.

Community Partners

You can also receive independent advice over the phone or face to face at any of the OEA's **Community Partners** across Australia. The OEA funds a number of community based organisations across Australia to help you better understand workplace agreements.

Additional information to assist with agreement making



For Assistance

- OEA Workplace Agreements Information Service
Ph 1300 366 632
- OEA Web for Seminars and various publications -
including how to guides and fact sheets
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