

EMPLOYER'S GUIDE TO

MAKING A MULTIPLE BUSINESS AGREEMENT



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A multiple-business agreement is an agreement that would be a collective agreement except for the fact that it relates to any combination or combinations of:

- (i) one or more single businesses;
- (ii) one or more parts of single businesses;

carried on by one or more employers.

A multiple business agreement can be one of the following:

- an employee collective agreement;
- a union collective agreement;
- a union greenfields agreement;
- an employer greenfields agreement.

An employer must obtain authorisation from the Employment Advocate to make a multiple business agreement otherwise it will not operate. Lodging a multiple business agreement or a variation to a multiple business agreement without authorisation constitutes a contravention of the *Workplace Relations Act 1996* and a penalty of up to \$33,000 may be imposed.

To make a multiple business agreement, follow the steps below.

STEP ONE

Obtain the Employment Advocate's authorisation

- One of the employers who are proposing to make a multiple business agreement takes responsibility for the proposed agreement on behalf of all employers who are to be parties to the agreement. That employer should be appropriately authorised by those other employers.
- Make sure all employers who will be subject to the agreement can make a workplace agreement (refer to Employers, Additional information on Who can make a workplace agreement at www.oea.gov.au)
- Write a letter to the Employment Advocate entitled 'Application for approval of a multiple business agreement' and request authorisation to make a multiple business agreement. This letter must:
 - include a copy of the proposed multiple business agreement;
 - identify each employer who will be bound by the proposed agreement;
 - identify the business or part of the business of the employer(s) that will be covered by the proposed agreement;
 - set out the reasons supporting the application, in particular why the authorisation of the making of the multiple business agreement is in the public interest. The submissions need to address the issue of why the matters dealt with in the proposed multiple business agreement are not more appropriately dealt with by a separate collective agreement for each employer; and,
 - include any other information to support your application.

- Send your application to:
Office of the Employment Advocate
Locked Bag 12
MARRICKVILLE NSW 2204

The Employment Advocate may or may not need to seek further information from you about your application. Ultimately the Employment Advocate will either:

- (a) reject your application-in which case you cannot lodge the agreement as a multiple business agreement (there are penalties of up to \$33,000 for doing so); or,
- (b) approve your application in which the Employment Advocate will issue a notice (containing a reference number) to you granting authorisation to make the multiple business agreement. You will also be issued Employer Declaration Form(s).

STEP TWO

Follow this checklist for making a multiple business agreement:

- Your agreement meets the Australian Fair Pay and Conditions Standard (the Standard)
- If applicable to your employees, you have noted and considered the protected award conditions
- You have included a dispute settlement procedure
- You have not included prohibited content
- If applicable to you, you have included mandatory provisions in relation to basic rates of pay and casual loading for Victorian employees (refer to Employers, Additional information on WorkChoices operating in Victoria at www.oea.gov.au)
- You have followed the steps required for making the particular type of agreement as set out below:

Employee or union collective agreements

- If a union collective agreement: union(s) agreed and agreement put to employees for approval within reasonable time of union(s) agreeing
- If a union collective agreement: the agreement includes the signatures of both the employer and the organisation or organisation(s) of employees who made the agreement
- If an employee collective agreement: the agreement includes the signatures of both the employer and a representative of the employees to the agreement or a bargaining agent
- The parties' signatures are accompanied by the full name and address of each person signing the agreement and an explanation as to their authority to sign the agreement
- All employees currently employed by each of the employers party to the collective agreement and who will be covered by the collective agreement, have been given the *Information Statement for Employees (Collective agreements)* at least seven days before the agreement was approved by those employees
- You included in the *Information Statement for Employees (Collective agreements)* details of how and when the employer would seek approval of the agreement by its employees
- If the agreement is an employee collective agreement and a bargaining agent was appointed by an employee, the employer if requested to, met and conferred with that bargaining agent

- All employees currently employed and who will be covered by the agreement were given a copy of, or ready access to, the collective agreement at least seven days before the agreement was approved by the employees (unless all employees stated in writing that they did not require this time) and given reasonable opportunity to decide whether they wanted to approve the agreement
- Employees employed in the seven days prior to the agreements approval were given the *Information Statement for Employees (Collective agreements)* and the agreement, or access to the agreement, as soon as they started work
- If the agreement incorporates terms from another workplace agreement or award, employees were given ready access to that agreement or award in writing
- The agreement was approved by either a vote in which a majority of the employees casting a vote approved or, if another method is used, by a majority of employees who will be covered by the agreement indicating they approved
- Your employees were not forced to agree or not to agree to make, approve or lodge a collective agreement
- The agreement is lodged within 14 days of its approval by employees

Union or employer greenfields agreements

- If a union greenfields agreement: the agreement is signed by you and the union(s) with whom you have agreed
- If an employer greenfields agreement: the agreement is signed by the employer
- The parties' signatures are accompanied by the full name and address of each person signing the agreement and an explanation as to their authority to sign the agreement
- If a union greenfields agreement: the agreement is lodged within 14 days of the employers and the union agreeing to the terms of the agreement
- If an employer greenfields agreement: the agreement is lodged before employing any of the employees whose employment will be subject to the agreement

STEP THREE

Make the declaration for the particular agreement by completing the Employer Declaration Form accompanying the approval notice sent to you by the Employment Advocate.

- Complete the relevant declaration form

To declare that (in summary):

- The information provided is true and correct
- The agreement being lodged is copy of an employee collective agreement, union collective agreement, union greenfields agreement or employer greenfields agreement, as the case may be

If lodging an employee collective agreement or union collective agreement:

- You gave all employees the agreement or ready access to it at least seven days before approval (unless all employees waived this in writing)
- You gave all employees a reasonable opportunity to decide whether they want to approve the agreement
- You gave all employees the completed *Information Statement for Employees (Collective agreements)* at least seven days before the agreement was approved
- All employees employed in the seven days prior to approval, were given the *Information Statement for Employees (Collective agreements)* and the agreement, or ready access to the agreement as soon as they started work
- The employer conferred with the employees' bargaining agents, if any were appointed (for employee collective only)
- Your employees approved the agreement before lodgement by either a majority of employees who voted approved it; or alternatively a majority of employees otherwise decided to approve the agreement
- The agreement is being lodged within 14 days of its approval

If lodging a union greenfields agreement:

- The agreement is being lodged within 14 days of the employer and the union agreeing to the terms of the multiple business agreement

If lodging an employer greenfields agreement:

- The agreement is being lodged before the employment of any employees who will be subject to the multiple business agreement

STEP FOUR

Lodge your declaration and the multiple business agreement

Lodge by post at this address:

Office of the Employment Advocate
Locked Bag 12
MARRICKVILLE NSW 2204

And ensure you:

- Include a covering letter titled 'Lodgement of multiple business agreement' containing the reference number given by the Employment Advocate when approving the multiple business agreement
- Include the relevant completed Employer Declaration Form(s)
- Attach a copy of the multiple business agreement
- Attach a copy of the Employment Advocate's notice of authorisation
- If you are lodging an employee collective agreement or an union collective agreement, make sure you lodge within 14 days of the agreement's approval by employees
- If you are lodging a union greenfields agreement make sure you lodge within 14 days of the employer and the union agreeing to the terms of the agreement
- If you are lodging a union greenfields or employer greenfields agreement you must lodge the agreement before you employ any persons whose employment will be subject to the agreement

Note

- Your agreement starts to operate as soon as it is lodged.
- You will receive a receipt from the Office of the Employment Advocate (OEA), a copy of which you must provide to:
 - all other employer parties to the agreement; and
 - if an employee collective or a union collective agreement, each employee covered by the agreement (within 21 days of you receiving it). Whilst you may in practice have the other employer parties provide these copies to their employees the responsibility rests with the lodging employer –there are penalties of up to \$16,500 for non compliance.
- Employers must keep a signed copy of the multiple business agreement for the duration of the agreement and for seven years after the agreement is terminated.

IMPORTANT INFORMATION

Multiple Business Agreements

A multiple business agreement is one that applies to either:

- (a) a number of single businesses carried on by different employers; or,
- (b) a number of different parts of one business carried on by different employers; or,
- (c) a combination of (a) and (b).

The making of a multiple business agreement needs to be authorised by the Employment Advocate before lodgement. Multiple business agreements can be any one of the four types of collective agreements:

- an employee collective agreement;
- a union collective agreement;
- a union greenfields agreement;
- an employer greenfields agreement.

Australian Fair Pay and Conditions Standard

A multiple business agreement cannot exclude an employee's entitlements under the Australian Fair Pay and Conditions Standard (the Standard).

The minimum conditions in the Standard are:

- (1) a federal minimum wage, Australian Pay and Classification scales casual loadings set by the Australian Fair Pay Commission;
- (2) four weeks paid annual leave per year (five weeks for continuous shift employees) up to two weeks of which can be cashed out if provided for in a workplace agreement;
- (3) ten days paid personal/carer's leave per year and two days compassionate leave per occasion;
- (4) up to 52 weeks unpaid parental leave (maternity, paternity and adoption); and,
- (5) a limit to the maximum ordinary hours of work to 38 hours per week (which can be averaged over twelve months in an agreement or an award) and reasonable additional hours.

Protected Award Conditions in Bargaining

When a multiple business agreement starts operating it will exclude award(s) that would otherwise apply. Certain award conditions are protected and will become part of any workplace agreement to the extent that the agreement does not expressly exclude or modify them. These award conditions can be the subject of bargaining, but can only be removed or modified by specific provisions in the multiple business agreement.

The protected award conditions are public holidays, rest breaks (including meal breaks), incentive-based payments and bonuses, annual leave loadings, allowances, penalty rates, outworker conditions and shift/overtime loadings. Note certain award conditions relating to outworkers cannot be excluded or modified to provide a less favourable outcome.

Dispute Settlement Procedure

Every multiple business agreement must have a dispute settlement procedure. Where an agreement is lodged without a dispute settlement procedure, the model procedure in the *Workplace Relations Act 1996* will automatically apply.

Prohibited Content

Some content cannot be included in an agreement. If such content is included when an agreement is lodged, it will be unenforceable, but it will not make the agreement invalid. There are penalties of up to \$33,000 for lodging an agreement which includes prohibited content. An employer can ask the OEA to check for prohibited content, before the agreement is lodged.

Prohibited content are terms of a workplace agreement that:

- (1) deal with pay deductions and payroll deduction facilities for trade union membership subscriptions or dues
- (2) allow employees to receive leave to attend union training sessions or paid leave to attend union meetings
- (3) deal with the rights of trade unions or employer associations to be involved in dispute resolution (unless the organisation is the representative of the employer or employee's choice)
- (4) deal with right of entry by unions and employer associations
- (5) deal with the renegotiation of a workplace agreement
- (6) restrict an employer from using independent contractors or labour-hire arrangements
- (7) deal with the forgoing of annual leave credited to an employee bound by the agreement (otherwise than in accordance with the *Workplace Relations Act 1996*)
- (8) require the provision of employee information to trade unions unless required by law
- (9) directly or indirectly encourage other persons bound by the agreement to become or remain a member of an industrial association
- (10) directly or indirectly discourage other persons bound by the agreement to not become or not remain a member of an industrial association
- (11) require a person bound by the agreement to indicate support, or lack of support for persons bound by the agreement being members of an industrial association
- (12) allow persons bound by the workplace agreement to engage in or organise industrial action
- (13) prohibit or restrict disclosure of a workplace agreement's details by parties to the agreement
- (14) provide a remedy for dismissal for a reason that is harsh, unjust or unreasonable
- (15) is discriminatory in that it discriminates against an employee bound by the agreement because of or for reasons including race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin. A provision is not discriminatory merely because it provides for rates in accordance with the relevant Australian Pay and Classification scale or federal minimum wage; or discriminates on the basis of the inherent requirements of the employment; or it is in respect of employment in an institution conducted in accordance with particular teachings/beliefs of a particular religion or creed and discriminates on the basis of those teachings/beliefs and is done in good faith
- (16) is objectionable in that it is a provision that requires or permits any conduct that would contravene the freedom of association provisions of the *Workplace Relations Act 1996* including a provision that requires payment of a bargaining services fee to an industrial organisation
- (17) deal with a matter that does not pertain to the employment relationship (unless it is ancillary/incidental/a machinery matter/or is trivial), or
- (18) directly or indirectly restrict the ability of Australian workplace agreements to be offered, negotiated or entered into.

For more information on prohibited content refer to Employers, Additional information on Prohibited content, at www.oea.gov.au

Nominal Expiry Date

A multiple business agreement may include a nominal expiry date, up to a maximum of five years (except for an employer greenfields agreement where it is one year). Where an agreement does not include a nominal expiry date, its nominal expiry date will be the fifth anniversary of its lodgement (or the first anniversary if it is an employer greenfields agreement). A multiple business agreement continues to operate following its nominal expiry date until it is either terminated or replaced.

Mandatory content for Victorian workplace agreements

For Victorian employers who are not constitutional corporations and their employees, multiple business agreements must contain mandatory terms (guarantees of minimum wage rates and casual loadings) without which the workplace agreement would be void (refer to Employers, Additional information on WorkChoices operating in Victoria, at www.oea.gov.au).

Information Statement for Employees

(Applies only to employee collective and union collective agreements)

The employer must give every employee (of each of the employers who will be parties to the multiple business) who will be subject to the agreement a copy of the *Information Statement for Employees (Collective agreements)* at least seven days before the agreement is approved.

In making an employee collective agreement or a union collective agreement, an employer must include in the *Information Statement for Employees (Collective agreements)* details about how and when the employer will seek approval of the collective agreement by its employees. For example, the employer must include details about how and when the vote is to be conducted, if approval is to be by a vote.

If employees are employed within seven days of approval the employer must give those employees a copy of the *Information Statement for Employees (Collective agreements)* as soon as they start work.

The *Information Statement for Employees (Collective agreements)* can be downloaded or ordered from Publications – Employee collective agreements or Publications – Union collective agreements, on www.oea.gov.au

Bargaining Agents

(Applies only to employee collective agreements)

An employee may request another person, a bargaining agent, to represent them in meeting and conferring with the employer about the agreement. The employer must give the bargaining agent a reasonable opportunity to meet and confer during the seven day 'ready access period'.

Seven Day 'Ready Access Period'

(Applies only to employee collective and union collective agreements)

For an employee collective agreement the employer must give the employees who will be subject to the agreement a reasonable opportunity to decide whether to approve the agreement. Every such employee must have, or have access to, the proposed agreement at least seven days before the agreement is approved. Employees can waive the seven day period if they all agree to do this in writing.

For a union collective agreement, the employer must do this within a reasonable time after the agreement has been made with the union.

Employees employed in the seven day period before the agreement is approved must be given the *Information Statement for Employees (Collective agreements)* and the agreement, or ready access to the agreement, as soon as they start work.

Approving the Agreement

(Applies only to employee collective and union collective agreements)

The employer must give all employees (of each of the employers who will be parties to the multiple business agreement) to whom the agreement will apply, a reasonable opportunity to decide whether they want to approve the agreement. The agreement is approved either by a vote in which a majority of the employees casting a vote approve, or if another method is used, by a majority of employees indicating they approve. Another method could be, for example, asking employees to indicate their approval by email.

Signing the agreement

All workplace agreements must be signed by the employer and:

- in the case of employee collective agreements, a representative of the employees or a bargaining agent appointed under section 335 of the *Workplace Relations Act 1996*;
- in the case of union collective agreements and union greenfields agreements, the organisation or organisations of employees with which the employer has made the agreement.

The parties' signatures must be accompanied by the full name and address of each person signing the agreement and an explanation of their authority to sign the agreement.

Declaration

A multiple business agreement operates on lodgement. It is the employer's responsibility to make sure that the agreement lodged meets the legal requirements for the particular agreement and to make the relevant declaration to this effect. A multiple business agreement can only be lodged by post, i.e. it cannot be lodged online. The declaration must be made on the Employers Declaration Form provided by the Employment Advocate.

Lodging

An employee collective or a union collective agreement must be lodged within 14 days of approval.

A union greenfields agreement must be lodged within 14 days of the employer and the union agreeing to the terms of the agreement.

An employer greenfields agreement must be lodged before any employees who will be covered by it are employed.

Lodgement is not completed until the declaration is received by the OEA.

Retention of signed agreement

An employer must retain a signed copy of the workplace agreement for the duration of the agreement and for a period of seven years after it is terminated.