

EMPLOYER'S GUIDE TO

MAKING A UNION GREENFIELDS AGREEMENT



Australian Government
Office of the Employment Advocate

STEP ONE

Follow this checklist for making a union greenfields agreement:

- Your union greenfields agreement meets the Australian Fair Pay and Conditions Standard (the Standard)
- You are eligible to make an union greenfields agreement (refer to Employers, Additional information on Who can make an agreement, at www.oea.gov.au)

You can make a union greenfields agreement if:

- The agreement relates to a new business that you propose to establish or are establishing
- You have not yet employed any of the persons who will be necessary for the normal operation of the business and whose employment will be subject to the agreement
- Potential protected award conditions have been noted and considered, if applicable to employees
- 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)
- The terms of your agreement have been agreed with union(s)
- The agreement is signed by you and the employee organisation(s) with whom you have made the agreement
- These signatures are accompanied by the full name and address of each person signing the agreement and an explanation of their authority to sign the agreement

STEP TWO

Make your declaration by either:

- Completing the online form at www.oea.gov.au

OR

- Completing the *Employer Declaration Form – Union greenfields agreement*, which is available to order or download from Publications - Union greenfields agreements. If your agreement involves more than one union you must complete an *Employer Declaration Form – Union greenfields agreement Part C: Union details*, for each union.

To declare that (in summary):

- The information provided is true and correct
- The agreement being lodged is a copy of the union greenfields agreement
- The terms of the union greenfields agreement were agreed with the union(s)
- The union greenfields agreement is being lodged within 14 days of it being made [i.e. its terms agreed with the union(s)]

STEP THREE

Lodge your declaration and the union greenfields agreement by either:

Lodging online via www.oea.gov.au

And ensure you:

- Complete the online declaration
- Attach a copy of the union greenfields agreement

OR

Lodging by post at this address:

Office of the Employment Advocate
Locked Bag 12
MARRICKVILLE NSW 2204

And ensure you:

- Include the completed *Employer Declaration Form – Union greenfields agreement*. If your agreement involves more than one union you must complete an *Employer Declaration Form – Union greenfields agreement Part C: Union details*, for each union.
- Attach a copy of the union greenfields agreement

Remember, you must lodge within 14 days of the union greenfields agreement being made [i.e. its terms agreed with the union(s)].

You must lodge the agreement before you employ any persons whose employment will be subject to the agreement.

Note

- Your union greenfields agreement starts to operate as soon as it is lodged.
- You and the union(s) will receive receipts from the Office of the Employment Advocate (OEA).
- You must keep a signed copy of the union greenfields agreement for the duration of the agreement and for seven years after the agreement is terminated.

IMPORTANT INFORMATION

Australian Fair Pay and Conditions Standard

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

The minimum conditions covered 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 by other written agreement) and reasonable additional hours.

Protected award conditions in bargaining

A union greenfields agreement starts operating from the date it is lodged. When employees are employed the union greenfields agreement will exclude award(s) that would otherwise apply to those employees.

Certain award conditions are protected and will apply when employees commence employment and are covered by the union greenfields agreement. Protected award conditions will become part of any union greenfields agreement to the extent that the agreement does not expressly exclude or modify them. These award conditions can be the subject of bargaining with the union(s), but can only be removed or modified by specific provisions in the new union greenfields 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 applying to outworkers cannot be excluded or modified to provide a less favourable outcome.

Dispute settlement procedure

Every union greenfields agreement must have a dispute settlement procedure. Where a union greenfields agreement is lodged without a dispute settlement procedure, the model procedure in the *Workplace Relations Act 1996* will automatically apply to disputes.

Prohibited content

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

Prohibited content includes terms of a workplace agreement that:

- (1) deals with pay deductions and payroll deduction facilities for trade union membership subscriptions or dues
- (2) allows employees to receive leave to attend union training sessions or paid leave to attend union meetings
- (3) deals 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) deals with right of entry by unions and employer associations
- (5) deals with the renegotiation of a workplace agreement
- (6) restricts an employer from using independent contractors or labour-hire arrangements
- (7) deals 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) requires the provision of employee information to trade unions unless required by law
- (9) directly or indirectly encourages other persons bound by the agreement to become or remain a member of an industrial association
- (10) directly or indirectly discourages other persons bound by the agreement to not become or not remain a member of an industrial association
- (11) requires 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) allows persons bound by the workplace agreement to engage in or organise industrial action
- (13) prohibits or restricts disclosure of a workplace agreement's details by parties to the agreement
- (14) provides 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) deals with a matter that does not pertain to the employment relationship (unless it is ancillary/incidental/a machinery matter/or is trivial)
- (18) directly or indirectly restricts the ability of Australian workplace agreements to be offered, negotiated or entered into, or
- (19) prevents an employer from making an Australian workplace agreement (this is the only type of prohibited content that is relevant for the content of pre-reform certified agreements, preserved state agreements and notional agreements preserving state awards).

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

Nominal Expiry Date

A union greenfields agreement may include a nominal expiry date, up to a maximum of five years. Where a union greenfields agreement does not include a nominal expiry date, its nominal expiry date will be the fifth anniversary of its lodgement. A union greenfields agreement continues to operate following the nominal expiry date until it is either terminated or replaced.

Mandatory content for Victorian union greenfields agreements

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

Signing the union greenfields agreement

A union greenfields agreement must be signed by the employer party to the agreement and the employee organisation or organisations who have made the agreement with the employer. These 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 workplace agreement.

Declaration

A union greenfields agreement operates on lodgement. It is the employer's responsibility to make sure that the union greenfields agreement lodged meets the legal requirements and to make a declaration to this effect.

If lodging the union greenfields agreement online, the declaration can also be made online. If lodging by post, the declaration must be made on *Employer Declaration Form – Union greenfields agreement*. If more than one union is involved you must include an *Employer Declaration Form – Union greenfields agreement Part C: Union details*, for each union.

Lodging

A union greenfields agreement can be lodged online or by post, but it must be lodged within 14 days of approval.

If lodged online, the lodgement can also be completed online.

If lodged by post, the *Employer Declaration Form – Union greenfields agreement*, must be completed and included. If more than one union is involved you must include an *Employer Declaration Form – Union greenfields agreement Part C: Union details*, for each union.

Remember: 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.